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# House of Representatives

The House met at 10 a.m.

The Reverend Dr. Calvin V. French, Reorganized Church of Jesus Christ of Latter Day Saints, Washington, D.C., offered the following prayer:

Eternal Father, who neither slumbers nor sleeps, we look to Thee at the beginning of the new day for a blessing of enlightenment and wisdom upon this body as they do their work today.

We thank You that You have chosen men and women from the common walks of life, and with Your empowerment, made them leaders of uncommon strength. You have called them to serve with a sense of commitment as truly as if before the altars of Thy sanctuary.

Endow each Member of this body with a sense of divine vocation. May their diversity of thought and vision become the manifestation of strength that comes when diversity is crowned with Thy grace. We stand on common ground when we seek the common good. It is for this purpose we have assembled to ask Thy help.

Finally, we invoke the counsel of Thy servant, David, who said: ''Blessed is the Nation whose God is the Lord.'' Our Forefathers understood that simple truth and so structured our Republic in the security of Thy word.

May the inspiration of the old Gospel hymn prevail today and in the days to come: ''Thy word our law, Thy paths our chosen way.'' Amen.

## THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

## PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New York (Mr. GILMAN) come forward and lead the House in the Pledge of Allegiance.

Mr. GILMAN led the Pledge of Allegiance as follows:

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

## MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed bills and a resolution of the following titles, in which the concurrence of the House is requested:

S. 880. An act to amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program.

S. 886. An act to authorize appropriations for the Department of State for fiscal years 2000 and 2001; to provide for enhanced security at United States diplomatic facilities; to provide for certain arms control, nonproliferation, and other national security measures; to provide for reform of the United Nations; and for other purposes.

S. Res. 127. That the Secretary of the Senate is directed to request the House to return the official papers on S. 331.

The message also announced that pursuant to section 276h–276k of title 22, United States Code, as amended, the Chair, on behalf of the Vice President, appoints the Senator from Alabama (Mr. SESSIONS) as a member of the Senate Delegation to the Mexico-United States Interparliamentary Group Meeting during the First Session of the One Hundred Sixth Congress, to be held in Savannah, Georgia, June 25–27, 1999.

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize the gentleman from Iowa (Mr. BOSWELL) and then 15 one-minutes on each side.

## WELCOME TO THE REVEREND DR. CALVIN V. FRENCH

(Mr. BOSWELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOSWELL. Mr. Speaker, I ask my colleagues to join me in thanking our distinguished guest Chaplain Dr. Calvin French.

Calvin French is a graduate of Graceland College, Lamoni, Iowa, where he presently serves on the board of trustees. He received a B.S. degree in education from the University of Iowa, a master's degree from Temple University, with doctoral studies at Harvard University, and received his doctorate in educational administration from Drake University in Des Moines.

He has given a lifetime of ministry with principal appointments to Philadelphia, Boston and Des Moines. For the past 20 years he has been the Reorganized Church of Jesus Christ of Latter Day Saints Pastor of the Washington, D.C., congregation where he continues to serve on Massachusetts Avenue.

Dr. French is a clinical member of the American Association of Marriage and Family Therapists. For 10 years he served on the board of Park College in Kansas City. He was appointed to the National Institutes of Health Advisory Board for Minorities Health and Education, Bethesda, Maryland, and for many years was a member of the executive board of the National Conference on Ministry to the Armed Forces.

Dr. French was a delegate to the Attorney General's Commission on Pornography. He is currently a member of the Secretary of Education's Advisory Council on Partnership for Family Involvement in Education and has provided liaison services to U.S. Government units for the RLDS Church. On several occasions he has presented opening prayers in the U.S. Senate and the U.S. House of Representatives.



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He is an active member of Rotary International and served as president of the Washington, D.C., Rotary Club. He is presently president of the Rotary Foundation Board that provides financial support for 48 charitable organizations in Washington, D.C.

His wife LaVon and their two children, Colin French, an attorney in Dallas, Texas, and Dr. Kelsey French, a clinical psychologist, Washington, D.C., are all graduates of Graceland College.

## PASS THE PATIENTS' BILL OF RIGHTS

(Ms. KILPATRICK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KILPATRICK. Mr. Speaker, one of the most important things that this Congress can do is to pass an effective health plan for American citizens. That is why I am happy that 168 Democrats signed a discharge petition yesterday to bring our Patients' Bill of Rights to the House floor. Let us debate it, debate it now.

Yesterday, the Nation's doctors passed a resolution to unionize. They want to be able to practice medicine, to decide which care their patients should have, to decide what medicines, the length of stay their patients need.

Let us have meaningful debate on the Patients' Bill of Rights today. It is important, Americans want it, and Democrats want to get the job done.

## SUPPORT H.R. 2280, VETERANS BENEFITS IMPROVEMENT ACT OF 1999

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, yesterday the Committee on Veterans' Affairs marked up H.R. 2280, the Veterans Benefits Improvement Act of 1999. I would like to take this opportunity to inform my colleagues of a very important provision of this much-needed bipartisan legislation for our Nation's veterans. That provision is the expansion of the fund-raising authority of the American Battle Monuments Commission to expedite the establishment of the World War II memorial in our Nation's Capital. This memorial, to one of this Nation's greatest generations, is long overdue.

Mr. Speaker, of the 16 million Americans that answered their Nation's call to duty and sacrificed to protect humanity against tyranny and aggression, fewer than 7 million are alive today. We are losing them at the rate of 1,000 of these courageous veterans each and every day. We cannot wait if we are to honor these great men and women while they are still with us.

I encourage all Americans to donate what they can to the World War II memorial and my colleagues to support this important legislation. It is truly time to say thank you and to provide a permanent tribute and inspiration so future generations of Americans will be reminded of the sacrifices that were necessary to preserve the freedoms and opportunities that we enjoy today.

## SUPREME COURT IS OUT OF TOUCH

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the first amendment says there is freedom of speech, and that freedom of peaceable assembly shall not be abridged. The Supreme Court ruled that this language permits dissidents to burn our flag. Beam me up. I believe the Founding Fathers are rolling over in their graves. From school prayer to flag burning, the Supreme Court is out of touch. They are wrong, and Congress must reverse that wrong. In America, the people govern, not the Supreme Court, and Congress should pass a law to protect our flag. A Nation that does not protect and honor their flag is a Nation that will not survive.

I yield back any common sense left in this Congress.

## SUPPORT H.R. 1218, CHILD CUSTODY PROTECTION ACT

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, at my alma mater, Southwest High School in Miami, a student with a headache did not receive an over-the-counter aspirin to relieve her pain because the school nurse did not have a signed parental medical waiver; a teenager who wanted to pierce her ears was not able to because she did not have a parental consent form; and a school field trip accompanied by teachers and chaperones left behind a student because he failed to get a parent's signature. How ironic is it that friends and peers of these same teenagers are undergoing dangerous life-altering and potentially fatal medical procedures without parental consent or even notification.

Yesterday, the Committee on the Judiciary approved my bill, H.R. 1218, the Child Custody Protection Act, which will prevent nonparental adults who deliberately circumvent State parental consent or notification laws so that someone else's daughter or perhaps the teenager whom they have raped could obtain an abortion.

Young girls face complications and perhaps even death from botched abortions that their parents may never know about. This bill will put an end to the exploitation of young, immature, vulnerable girls. I hope the House will soon favorably vote on the Child Custody Protection Act.

## ON GUN SAFETY AND MANGED CARE REFORM LEGISLATION

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I think the question this morning is what is our legislative agenda? Last week this House missed an enormous opportunity to pass real gun safety legislation. The only thing we did was prolong the time that criminals can get guns in their hands, and 13 of our children die every day by gun violence. As a mother, I will never give up on passing real gun safety legislation in this House, and we are going to do it.

Mr. Speaker, I will also not stop the fight for a Patients' Bill of Rights that responds to the needs of seniors and families and children that need real health care in America.

My question, Mr. Speaker, is what is our legislative agenda? Are we here for the American people? Or are we just here for special interests?

## RECOGNIZING HASKELL SLOUGH SALMON HABITAT RESTORATION PROJECT

(Mr. METCALF asked and was given permission to address the House for 1 minute.)

Mr. METCALF. Mr. Speaker, recently I attended a demonstration of the Haskell Slough Salmon Rehabilitation Project in my district. Private landowners working cooperatively with government agencies and volunteer groups have been able to restore approximately 3½ miles of old riverbed into prime salmon habitat by excavating 6,000 feet of stream channel, thus connecting 11 existing ponds.

The efforts of private citizens donating their time to projects like this one are absolutely vital as we work to rehabilitate salmon runs. Everyone involved with the undertaking should be proud of what they are doing and what they have already accomplished. All around the State, we are mustering community support for projects like the one at Haskell Slough. These voluntary community efforts are paying big dividends in the salmon rehabilitation effort.

## MANAGED CARE REFORM DISCHARGE PETITION

(Mr. GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREEN of Texas. Mr. Speaker, yesterday we began signing a discharge petition to bring the HMO reform bill to the floor of the House, simply because of the refusal to bring up the Patients' Bill of Rights for debate on this floor. The American people have been very clear about their desire for meaningful HMO reform. It is estimated

that 122 million Americans who have insurance do not have these same patient protections.

In my home State of Texas, we passed health care legislation similar to the Patients' Bill of Rights, which has proven to be very successful. However, we still have 8 million insured people in Texas who fall under ERISA, which preempts Texas law, who do not have these basic patient protections.

This is not about politics, it is about fairness, protection and accountability. The American people deserve a Patients' Bill of Rights that eliminates gag clauses, open access to specialists, external and timely appeals, coverage for emergency room care for families to go to the closest emergency room, and accountability for medical decisions.

□ 1015

Mr. Speaker, the American people cannot afford any more delays. We need to support the Patients' Bill of Rights. Let us sign that discharge petition today.

## U.S. MILITARY FORCES FALLING UNDER SEVERE STRAIN

(Mr. ROGAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGAN. Mr. Speaker, we Republicans are the first to urge government to do more with less. However there are limits, and the United States military has reached them. More and more experts are becoming alarmed at the level of funding available to meet our defense needs. U.S. military forces are being called to perform more and more missions, but they are being given fewer and fewer resources to accomplish them.

Mr. Speaker, while precious resources are being diverted to the Balkans, our critical missions in both Iraq and Korea are falling under severe strain. Our forces are short on ammunition, and our force levels have been reduced to dangerously low levels. Since 1989, the Army and Air Force have been cut by almost 50 percent, the Navy by 36 percent, and the Marine Corps by 12 percent. All while our commitments overseas have increased some 300 percent.

This mismatch must not continue, Mr. Speaker.

## WE NEED A PATIENTS' BILL OF RIGHTS

(Mr. WYNN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYNN. Mr. Speaker, I rise today to talk about the Patients' Bill of Rights.

As my colleagues know, health care in America works real well until we get sick or until we grow old. Then HMOs begin to tell us, ''Well, your concerns don't meet our criteria.'' or ''We're not going to refer you to the specialist that you need to see.'' or ''The person who is reviewing your case is not in; he's on vacation.'' Then our system breaks down critically.

People are concerned about access to specialists. Sixty-two percent of the American population say they have a problem with HMOs because they cannot get access to needed specialists. ''Your specialist is not in our network.'' That is what we often hear.

We need a Patients' Bill of Rights. We need to guarantee access to specialists. We need to guarantee redress in the courts when HMOs make decisions that hurt our health. We need to have a deterrent which says if they deny people access to specialists, if they deny people access to care, then they can be brought to a court of law, and they can be made to pay for it. That not only gives the victim a remedy, it gives the HMOs a strong incentive to provide high quality care.

## SUPREME COURT SHIFTS POWER FROM FEDERAL GOVERNMENT BACK TO THE STATES

(Mr. WELDON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON of Florida. Mr. Speaker, this morning we hear the hue and cry of big government liberals everywhere, and what are they languishing over today? Not once, not twice, but three times yesterday the Supreme Court struck down overreaching Federal laws and uplifted the concept of State federalism. This was like a punch in the nose to those who relish more and more federal laws. They are now staggering under the blow.

Mr. Speaker, what is their nose bent out of shape about? The Supreme Court shifted power from the Federal Government back to the States. More importantly, it said that the Federal Government has no business in usurping State sovereignty by placing layers and layers of Federal statutes on them.

Mr. Speaker, yesterday the Supreme Court rightly halted decades of presumption and arrogance by the Federal Government, and they are right moving the powers back to where it belongs, outside the Beltway and back to the people.

Three cheers for the checks and balances.

## UNIONS IN AMERICA

(Ms. SANCHEZ asked and was given permission to address the House for 1 minute.)

Ms. SANCHEZ. Mr. Speaker, I rise today to pay tribute to the unions of America.

Unless someone is a member of a union or unless they grew up in a union household they may not understand the advantages in the workplace that have been made because of unions for the American worker.

Like many Americans, I know how hard it is to earn a paycheck. I worked my way through college as a clerk at a Sav-on Drug store in Anaheim, and I was a member of the Retail Clerks Union in Orange County.

If someone is a worker in America and they have a pension, they should thank the unions. They understand about dignity and retirement. Thank the unions for their efforts to secure the 8-hour workday, the 40-hour work week, overtime pay and compensatory time off. Unions have been instrumental in obtaining health benefits for workers. We all know how expensive health care is, and without the unions' efforts think of how many workers and families would be without health insurance.

Quality of life; unions understand this.

Today I thank the unions for all they have done to make our country better.

## WHAT DOES IT TAKE TO GET LIBERALS OUTRAGED?

(Mr. SCHAFFER asked and was given permission to address the House for 1 minute.)

Mr. SCHAFFER. Mr. Speaker, what would it take to get Congress outraged over high taxes, a tax code that looks like it was designed by Saddam Hussein and an IRS less accountable than the weather man? Is there anything at all that would provoke liberal Democrats to denounce the greedy hand of government, the insatiable force of government and the government's sponsored erosion of our liberties?

If they knew that Taxpayer Freedom Day, the day when Americans are finally finished paying Uncle Sam was May 12, would that outrage them? If the White House knew that average middle class families pay somewhere around half of their income to the government, would that outrage them?

If they knew that most Americans pay more in payroll taxes than they do in Federal income taxes, would that outrage them? If they knew that the tax code was so complicated that even Members of Congress on the House Committee on Ways and Means have to hire professional help to figure out their tax forms, would that get anyone's attention around here?

If they knew that the IRS is simply incapable of reforming itself, would that spark their outrage?

Mr. Speaker, just what does it take?

## REPUBLICANS PREVENTING DEBATE ON HEALTH CARE REFORM

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, yesterday was a watershed day. I never thought I would pick up the Washington Post and have it read: AMA Votes to Unionize Doctors.

Now I graduated from medical school in 1963, and the thought of being in a

union or being an employee of an insurance company never ever crossed our minds. But this world has changed, and doctors are frustrated.

This was not the leadership of the AMA that came forward with this. This came from the grass roots, and the reason it came is that as HMOs have taken over the control of the health care industry in this country, they and the patients have lost control.

Now the Republican party gets total control, and they get total everything for making this happen because they would not have a debate on a Patients' Bill of Rights. The longer they push and prevent us discussing this issue, the more they drive the doctors into the arms of the Democratic party and the labor unions, and they destroy the health care system we know.

Bring up health care debate.

## THE MIRACLE AND GIFT OF HUMAN LIFE

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, today I want to draw attention to an amazing scientific and medical breakthrough that has received little attention in the press. It should cause each of us to pause and ponder the miracle and gift of human life.

Little Neal Borkowski is still a tiny baby, yet he differs from most because he already has undergone brain surgery, not since his birth, but while he was still in his mother's womb. It was discovered as young Neal was only 20 weeks old and in utero that he had a condition of fluid on the brain.

Without corrective measures he surely would not have survived, so at such a critical stage of development doctors opened Neal's mother's uterus, and brain surgery was performed on this unborn baby so that fluid could not collect on his brain.

Mr. Speaker, when will we, as a Nation, begin to see this unborn life as sacred and valuable and protected as it deserves? Let us bring our children and grandchildren into the world where they know that all human life, born and unborn, is a miracle and gift from God.

Not a sermon, just a thought.

## WE MUST PASS AN EFFECTIVE PATIENTS' BILL OF RIGHTS

(Mr. WATT of North Carolina asked and was given permission to address the House for 1 minute.)

Mr. WATT of North Carolina. Mr. Speaker, my colleague, the gentleman from Washington (Mr. MCDERMOTT) has pointed to the headline in the Washington Post this morning that says the AMA Votes To Unionize Doctors, and that comes at the same time that we are considering in the Committee on the Judiciary granting an exemption for doctors to ban together and not be subject to antitrust laws.

The question I ask is: How do we pass those rights to patients? How do we get them together to assert their rights? HMOs can do it, doctors will be able to do it, but who will be speaking for the patient? Mr. Speaker, that is where the Patient Bill of Rights comes into play.

We have got to pass an effective Patients' Bill of Rights in this body so consumers and patients will have the rights that are being bargained for by doctors and already given to HMOs in the health care system.

## ACCOUNTABILITY IN EDUCATION

(Mr. STEARNS asked and was given permission to address the House for 1 minute.)

Mr. STEARNS. I would say to my colleague from Washington (Mr. MCDERMOTT) I do not think the doctors are ever going to run to the Democratic party because they do not want to have socialized medicine.

Now when it comes to education, Mr. Speaker, Republicans and Democrats have different visions. We differ on our assumptions, and that leads to very different policy choices. Democrats start with the assumption that what ails public education is more money. We need much more money.

Republicans do not agree. If money were the problem, and given that Congress has increased federal spending on education every single year since 1960, the schools would long ago have improved. However, both parties agree smaller class size, better teacher training, writing, wiring classrooms for the Internet; that will improve education.

But here is the main point, my colleagues. What it needs is more accountability for the money that is already spent and discipline in the classroom. Democrats believe that competition is bad and that the public school monopolies are good. Republicans do not agree. Competition produces excellence and requires, Mr. Speaker, accountability.

But we do have exactly the same goal: better schools for our children.

## LAW ENFORCEMENT OFFICIALS WANT GUN SAFETY LEGISLATION

(Mrs. TAUSCHER asked and was given permission to address the House for 1 minute.)

Mrs. TAUSCHER. Mr. Speaker, last week's failure by this Republican-led Congress to deliver commonsense, practical gun safety legislation disappointed working families and law enforcement officials of both parties in my suburban district in San Francisco's East Bay.

I would like to call attention to the reaction of a Republican law enforcement official in my district. Saying he had enough, Alameda County Sheriff Charles Plummer, a life long Republican, switched his party registration away from the Republican party. These are Sheriff Plummer's words:

I was coming back from a meeting Friday and listening to a couple of Republicans on the radio talking about gun rights saying this legislation is not needed. I went ahead and changed my registration after being a Republican for 47 years.

Sheriff Plummer said that gun safety, and I quote, ''has to be solved nationally . . . Even in the hunting country where I was raised, my friends think if someone needs an AK–47 to kill a deer they are not much of a sportsman.''

Mr. Speaker, I could not have said it better myself.

## CLOSING THE LOOPHOLE

(Mr. SMITH of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Michigan. Mr. Speaker, I was going to make some comments on the Republican agenda and the best program on where we go on saving Social Security, and our best defense, our excellence in education and tax relief, but after the previous speaker, I want to mention my disappointment that we have not closed the loophole in a vote by this House on what happens at gun shows. And for the information of those that voted against the loophole closing bill the other day, I just want to explain what happens if an individual lies on the form in the application to buy the gun and they do not find out that he has committed a felony until maybe 2 days later or 3 days later.

What happens is the FBI and the ATF call local law enforcement because this individual has now committed two felonies, one in lying on the application; second, taking possession of the gun. They go after him.

□ 1030

They do that immediately. They take him, they prosecute him, they confiscate the weapon.

Additionally, States have the right to impose restrictions as they see fit. I am disappointed on that side of the aisle that we did not move ahead with closing the loophole.

## HOUSE SHOULD ALLOW DEBATE AND VOTE ON DEMOCRATS' PATIENTS' BILL OF RIGHTS

(Mr. ROTHMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTHMAN. Mr. Speaker, yesterday I joined my Democratic colleagues in signing a discharge petition to force the Republican leadership here in the House to bring the Democrats' Patients' Bill of Rights up for debate and a vote. The Republican leadership refuses to permit debate and a vote on the Democrats' Patients' Bill of Rights.

The Democrats' Patients' Bill of Rights is based on a revolutionary idea that managed care should be more

about managing the health of our loved ones than managing the profits of the HMOs.

We need to ensure that treatment decisions are made by a patient's doctors, not by an HMO accounting clerk; that patients can enforce their rights by taking HMOs to court if the HMO wrongfully denies surgery, specialists, hospitalization or other medically necessary care that causes the death or injury to the patients.

Moderates on both sides of the aisle have endorsed the Democrats' Patients' Bill of Rights, but the Republican leadership here in the House of Representatives refuses to allow us to debate and vote on it.

I urge my Republican colleagues to persuade your Republican leadership here in the House to allow debate and a vote on the Democrats' Patients' Bill of Rights.

## CONGRESSIONAL ACTION REQUIRED ON 50 CALIBER ARMOR-PIERCING AMMUNITION

(Mr. BLAGOJEVICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLAGOJEVICH. Mr. Speaker, the role of the United States military is to provide for the national security of our country. We are grateful for that. What is not the role of the military is to provide armor-piercing ammunition to the civilian market.

Mr. Speaker, 50-caliber sniper rifles are among the most powerful and destructive weapons available today. Armor-piercing ammunition that that weapon uses can destroy aircraft and armored personnel vehicles. The General Accounting Office reports that, unbelievably, our military provides surplus ammunition to a company in West Virginia that refurbishes the ammunition and then resells it to the civilian market.

Adding insult to injury, we, the taxpayers, pay the company to take the ammunition. This ammunition is easily accessible to the general public. One can buy it by mail order, one can buy it by the Internet, and one can buy it in gun stores.

Who would want to buy this ammunition, one might ask? If one is a hunter and a sportsman, one does not need this ammunition. But if one wants to take out a helicopter, take out a limousine, or commit some sort of heinous crime, one might want that ammunition.

## CONSTITUTIONAL AMENDMENT AUTHORIZING CONGRESS TO PROHIBIT THE PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES

The SPEAKER pro tempore (Mrs. EMERSON). The unfinished business is the further consideration of the joint resolution (H.J. Res 33) proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. When proceedings were postponed on Wednesday, June 23, 1999, pursuant to the previous order of the House, all time for debate on the joint resolution had expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Speaker, pursuant to the rule, and as the designee of the ranking member, the gentleman from Michigan (Mr. CONYERS), I offer an amendment in the nature of a substitute, which has been made in order.

The SPEAKER pro tempore. The gentleman from North Carolina is the designee of the gentleman from Michigan (Mr. CONYERS).

The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. WATT of North Carolina:

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

''ARTICLE—

''Not inconsistent with the first article of amendment to this Constitution, the Congress shall have power to prohibit the physical desecration of the flag of the United States.''.

The SPEAKER pro tempore. Pursuant to House Resolution 217, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Madam Speaker, I yield myself 1 minute.

Madam Speaker, we engaged in an exciting debate yesterday, and today is the culmination and continuation of that debate in which we have an opportunity to make it explicitly clear that whatever amendment we pass in this body will be subject to the first amendment to the United States Constitution.

My amendment in the nature of a substitute simply says, not inconsistent with the first article of amendment to this Constitution, the Congress shall have power to prohibit the physical desecration of the flag of the United States. That simply makes this proposed constitutional amendment subject to the provisions that have stood us in good stead for 200 years, and shapes and focuses the value of this debate.

Madam Speaker, I yield 6 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Speaker, I urge support of the amendment that has just been offered. The gentleman from North Carolina has, in his service here, distinguished himself by the careful thought he brings to difficult issues, and this amendment today is an example of that.

I am one of those who questioned whether there was a need for any amendment at all. I thought there was not. We have had people say, well, but desecrating the flag is not simply an expression of opinion, as crude and as stupid an expression as it is, and, of course, the first amendment protects crudeness and stupidity in expression; but people have said there is something about the desecration which as a physical act could go beyond expression.

Well, the amendment of the gentleman from North Carolina is very carefully drawn so as to say, to the extent that one is simply engaging in an expression of opinion by desecrating the flag, one is protected, but if there are elements involved in that desecration that go beyond expression, we will leave that to the courts to decide in the specific circumstances. I think that is a reasonable compromise.

I want to address, therefore, the part of the amendment that says, to the extent this desecration is an expression of opinion, we should not make it illegal.

I understand, all of us do, the motivation of those who want to make it illegal. The flag is a very powerful symbol. The flag symbolizes the greatness of this country. Yes, there are veterans who saw their comrades lose their lives, who lost their health, who sacrificed years when they could have been with their families, and they did it under a flag which they understandably want to protect. But we have to look at the implications of what we do.

In the first place, passing the amendment as originally presented says that there are times when one can express oneself in ways that we find so offensive that we will make it illegal. That is a great breach in a wall that we have had between the rights of individuals and the government. And I am surprised that many of my friends who are conservative, who want to limit government, want to put this forward, because what this amendment says, without the refinement added by the gentleman from North Carolina, is there are things that one does to one's property, we are talking about now people who own a flag; remember, this applies to people who own a flag and who desecrate the flag they have bought, the physical flag; no one owns the symbol, but they have bought the physical material, they have desecrated it by writing outrageous words on it, by physically mistreating it. Remember, desecration covers things one would write on the flag that would be abusive and offensive, and we are saying we are so offended by what you have done to your property, on your property; you

can be standing in your yard with a flag you own and desecrate it, we are so offended by that, that we will make that illegal. We will perhaps send you to prison.

That is a fundamental line that has been crossed. No one is affecting your property; no one is disrupting your peace of mind; no one is making noise and interfering with your right to privacy. Someone on his or her own property, with his or her own physical property, is doing something you find outrageous. But it does not affect you in any material or physical way.

That is a great expansion in the power of government in and of itself.

I was very impressed with the Special Order I heard the night before last by our colleague, the gentleman from Texas (Mr. PAUL), when he talked about and said correctly, the purpose of a first amendment freedom of speech clause is precisely to protect people's right to be obnoxious and offensive, and we do that not because we think obnoxiousness is a virtue, although sometimes, watching this House, people might fall into the assumption that we do; we do it because we fear government. We do it because there is no neutral, impersonal arbiter that can decide which expressions are so offensive as to ban them and which ones should be allowed. We will do it. Elected officials will do it. Politicians a couple of months before an election will do it. Elected judges will do it.

And we have said, we think the danger of discriminatory and arbitrary interference with freedom of expression is so great that we would rather put up with the occasional obnoxious jerk than to empower the government to decide what is acceptable and what is not.

Of course, we have not had many flag burnings lately. My guess is that this debate will probably increase the number of flag desecrations, because it will put ideas in people's heads. But the fact is, to most of us, the fact that some fool wants to desecrate the flag as a way to get attention ordinarily would not work.

There is one other aspect of this that I want to address. There is no logical way that one can say, if one adopts this principle, that someone who has expressed himself or herself obnoxiously should be banned. How can we limit it to the flag? Because once we have said, look, if we care enough about something, we will make it illegal to desecrate, what are we then saying about people who desecrate venerated religious symbols? What about people who burn crosses? Because the Supreme Court said, and I agree, burning a cross on your own land should not be a crime.

This is a principle it is impossible to limit, because if we say burning a flag, desecrating a flag, writing rude words on a flag is so offensive that we are going to make it illegal, then what we are apparently saying is, but it is okay to do this with anything else. I do not think it will stop. We will ratify this amendment, if we do, and we will soon after be asked to protect important religious symbols, the Constitution, other important symbols of our unity.

We choose here, if we pass this amendment without the gentleman from North Carolina's proposal, to break a very important line, and we say that we, the government, will say what is too offensive to express, and that is a terrible step to take.

Mr. CANADY of Florida. Madam Speaker, I rise in opposition to the amendment.

The SPEAKER pro tempore. The gentleman from Florida (Mr. CANADY) is recognized for 30 minutes.

Mr. CANADY of Florida. Madam Speaker, I do rise in opposition to the substitute amendment offered by the gentleman from North Carolina. While I understand and respect the gentleman's intention in offering this substitute, I must point out that the adoption of the substitute would produce a measure that is, quite frankly, meaningless. The fundamental flaw in the gentleman's proposal arises from the fact that the present Supreme Court would declare that any legislation prohibiting the physical desecration of the flag is inconsistent with the first amendment to the Constitution.

The reason we are here today considering this constitutional amendment is that the Supreme Court has made it clear beyond any doubt in the Johnson and Eichmann cases that, under the Court's current view of the Constitution, individuals who physically desecrate the flag of the United States enjoy the protection of the first amendment.

The decisions of the Court demonstrate that any law which prohibits the physical desecration of the flag will be held to involve an impermissible suppression of free expression. The Court is committed to this position, which I can only view as mistaken, that trampling, shredding, defacing, burning, or otherwise desecrating the flag is protected expression under the first amendment. Everyone understands that this is the Court's view of the issue, and there is really no debate on that.

I would like to quote again what the representative of the Department of Justice said back in 1995 on an earlier constitutional amendment on this subject. Mr. Dellinger wrote on behalf of the Department of Justice that the Supreme Court's decision in Eichmann, invalidating the Federal Flag Protection Act, appears to foreclose legislative efforts to prohibit flag burning. There is really no dispute about that. Everyone has acknowledged that any meaningful legislation to protect the flag would be found unconstitutional by the Supreme Court. That is beyond dispute.

Once we understand that basic point, I think we can all see that the amendment of the gentleman from North Carolina (Mr. WATT) travels in a circle to nowhere. How would the Supreme Court interpret the power of Congress under the gentleman's amendment? What statutory provision would the Court be bound to uphold under the Watt amendment? It is obvious that the Court would find that the introductory phrase of the amendment, not inconsistent with the first article of amendment to this Constitution, is the language that the gentleman uses, and the Court would find that to be the crucial operative language in the measure. The introductory phrase would limit and restrict the clause that follows, and this is no great revelation. That is, I am sure, the very clear intent of the gentleman from North Carolina in offering this substitute.

But the fact remains that, given the Court's interpretation of the first amendment, the introductory language of the amendment of the gentleman would rob the clause granting Congress power to protect the flag of any force or meaning.

□ 1045

Under the amendment of the gentleman from North Carolina (Mr. WATT) the court would continue to strike down any laws protecting the flag from desecration. As the gentleman from North Carolina (Mr. WATT) well knows, when he adds ''not inconsistent with the first article of amendment to the Constitution,'' he simply ratifies the constitutional status quo.

But we are here today because the status quo created by the Supreme Court is unacceptable. We are here today because, a decade ago, the Supreme Court imposed novel and flawed interpretation of the First Amendment. We are here today because the Supreme Court, in its mistaken interpretation of the First Amendment, stripped our flag of the protection to which it is entitled. We are not here to ratify that mistaken interpretation. We are here to repudiate it.

It is important for us all to understand that this was something that was new, prior to these decisions about a decade ago, the flag had enjoyed protection against desecration. It was the virtually universal view that such legislative restrictions protecting the flag were constitutional.

Indeed, as I pointed out in my statement yesterday, some of the greatest civil libertarians of this century who have served on the Supreme Court, recognized the power of the government to protect our national symbol from acts of desecration. Justice Hugo Black, Justice Earl Warren, Justice Abe Fortas, all clearly expressed their view that it was not inconsistent with the First Amendment to protect the flag from acts of desecration.

Let me also address the point that has been made by the gentleman from Massachusetts that somehow the First Amendment provides absolute protection for expression in any form, in any circumstance. That is simply not so.

We know that the First Amendment does not protect obscenity, for instance. That is carved out by the Supreme Court's interpretation of the First Amendment, and I think it is a proper interpretation. I do not believe the First Amendment was ever intended to protect that sort of expression.

We also know that certain conduct, which may have an expressive element in it, and that is what we are really talking about here when we talk about the desecration of the flag, it is conduct which admittedly can have an expressive element is not always protected under the First Amendment simply because of the expressive element.

There are certain indecent things that people will not be permitted to do in public simply because they have chosen to use that indecent act as a way of expressing themselves.

People may wish to parade through the streets unclothed as a way of expressing a particular viewpoint. Now, that conduct may have an expressive element in it, but the fact that the people engage in that conduct have chosen that means to express a particular viewpoint or idea does not mean that the indecent public conduct has a protection of the First Amendment.

It is the same point here with the flag. We are not limiting anyone who wishes to express any idea about anything. They can say whatever they choose about the flag, about the leaders of this country, about our Constitution, about the Congress. The list goes on and on.

Free and full public debate can go forward without any restriction under this proposal. All we are saying is that, when people choose to engage in conduct that involves the physical desecration of the flag, they have gone too far, they have transgressed a limit into behavior that is not acceptable, and behavior that is not, like obscenity, expression which is not protected by the First Amendment of our Constitution.

That is why we are here on the underlying proposal. The amendment of the gentleman from North Carolina (Mr. WATT) would simply undo what we are trying to accomplish through the underlying proposal.

So I would submit to the House that the amendment of the gentleman from North Carolina (Mr. WATT) should be rejected by the House and that we should proceed with the passage of the proposal of the gentleman from California (Mr. CUNNINGHAM), and we should proceed with the important work of restoring the legal protection for the flag of the United States of America.

Madam Speaker, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Madam Speaker, the flag symbolizes our Nation, its history, and its values. We all love the flag, I think, equally.

That is not what this debate is about. The flag is our national symbol of pride, of unity, and of freedom. Many of us have family or friends who died defending it, and so we have to be heard on this. So this becomes deeply personal.

I think what they really died for were the freedoms embodied in the Bill of Rights that the flag represents. We can and should be incensed when the flag is burned or defaced. We have a responsibility to protect the flag.

That is why I have cosponsored the Flag Protection Act which was introduced by the gentleman from Virginia (Mr. BOUCHER). This legislation would protect the flag by punishing those that burned or defaced it. This bill would also punish any person who steals our flag or commits trespass in order to do damage to one.

The Bill of Rights is one of America's greatest gifts to mankind. For over 200 years, the First Amendment, which protects our freedom of speech and expression, has never been amended. Amending the Constitution, I think, is the wrong way to protect the flag.

I urge my colleagues to support a statutory approach which would protect the flag without doing violence to what it stands for. We need a tough law consistent with our Constitutional responsibilities that can be enacted in a timely fashion and can accomplish what we want without compromising the integrity of our Constitution and Bill of Rights.

Mr. CANADY of Florida. Madam Speaker, I yield myself 1 minute.

Madam Speaker, I want to address this issue about a limited statutory approach to protecting the flag. I think the emphasis there should be on the ''limited.'' I have looked at the proposal that has been brought forward as an alternative to the constitutional amendment; and the truth of the matter is, it does nothing to protect the flag from physical desecration. The only thing that that statute does is prohibit some actions that are already crimes, like destroying government property. It prohibits things that would be prohibited under laws that impose penalties for disorderly conduct.

But the bottom line is, it does not protect the flag from physical desecration. There is a very good reason that the statute does not do that. The reason is that the Supreme Court has made very clear that any statute which does that, under their interpretation of the First Amendment, would be struck down. That is the dilemma that those face who wish to talk about offering a statute. It just does not work.

Madam Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. CLEMENT).

Mr. CLEMENT. Madam Speaker, I thank the gentleman from Florida (Mr. CANADY) for yielding to me.

I also want to say to the gentleman from North Carolina (Mr. WATT), he is offering this amendment, he is a true gentleman, he is a friend, and he is an American, but we look at it differently. We can have a difference of opinion without having a difference of principle.

This weekend, I am going to be speaking to the State American Legion Convention in Tennessee in Gatlinburg, Tennessee. I will tell my colleagues that I am proud of those veterans. I am proud of the fact of what they have meant to this country. I am proud of the fact that they were willing to lay their life on the line in order for us to be free.

I rise today in strong support of the flag protection amendment to the Constitution. As one who served in the U.S. Army, and who currently serves as a colonel in the Tennessee Army National Guard, my colleagues do not have to tell me about the significance of the flag.

To me, the flag represents the many sacrifices our veterans have made throughout history to protect our precious freedoms and to preserve our democracy. Historically, the flag has served as a sacred emblem of the principles on which our Nation was founded. The flag is a national asset which I believe deserves our respect and protection.

While I fully support an individual's right to express himself or herself freely, when it comes to the American flag and such a gross disrespect for something so precious as our national symbol of freedom, I feel it is necessary for Congress to take action.

I believe the ideas flag burners want to communicate can be expressed just as effectively without burning our national symbol. We should not protect such horrendous behavior when our forefathers, our veterans, and many patriotic citizens of this great land sacrificed and fought to protect the freedom it symbolizes.

Madam Speaker, I stand up here, not as a legal scholar, but I say that, if the Supreme Court holds that our Constitution permits flag burning, it is time to change our Constitution.

As we prepare to celebrate the independence of this great Nation, I urge my colleagues to join me in saying thank you to every veteran that fought and every soldier that died to defend this flag and the country for which it stands by voting for the flag protection amendment.

A lot of people may not have thought about this, but we celebrated our 200th birthday in 1976. We are now 223 years old. But do my colleagues know what the average longevity of the great democracies of the past is? Two hundred years.

If we want to rededicate and recommit ourselves, we need to fight for this country in order to make sure that we have that opportunity to celebrate our 300th birthday. Vote for the flag protection amendment.

Mr. WATT of North Carolina. Madam Speaker, I yield 3½ minutes to the gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Madam Speaker, I want to thank the gentleman from North Carolina (Mr. WATT) for yielding to me. I also want to thank the gentleman for all of his good work. He is a good friend, and he is a great American.

Our flag is worthy of the emotion it stirs deep within us. It is worthy of reverence. I love the flag. We all love the flag. Our flag is worthy to stand, by itself, against the attacks of those who seek to denigrate it and all that it stands for.

Is our flag so weak that it cannot withstand public desecration and attack? Is our flag so weak that we must pass a constitutional amendment to protect it? No, our flag is greater than that.

America, our America, is the free-est Nation on earth. In our America, we have freedom of speech, freedom of assembly, freedom of press, freedom of religion. Our Constitution guarantees each of these freedoms.

The Constitution is a sacred document. It is the foundation of our democracy. It is the foundation of our freedom.

Our flag, Old Glory, is worthy of every word of praise and respect that will be spoken here today, tomorrow, and years to come. Throughout the world, the American flag symbolizes freedom, liberty, and the glory of democracy. Old Glory has served as a beacon of hope and opportunity for generation upon generation, not just in the United States, but throughout the world.

But above Old Glory, above a symbol of our liberty, is our sacred Constitution. The Constitution guarantees that we have the freedom to have political belief and express those beliefs openly.

An amendment to our Constitution will not protect Old Glory, it will destroy Old Glory. Because Old Glory is nothing without freedom. When freedom is strong, Old Glory is strong. When we persecute our citizens for expressing political belief, yes, even the burning or desecration of the flag, we weaken our freedom. When freedom is denied, Old Glory dies.

My colleagues, if Old Glory could speak to us today, she would cry for us. She would weep. Today, on the floor of this House, we are attacking freedom. We are attacking the liberties guaranteed in the Bill of Rights.

□ 1100

To honor our flag and all that it stands for, we must reject a constitutional amendment. We must embrace not just a symbol of freedom, but freedom itself. To suppress freedom by passing a constitutional amendment is to make a flag stronger than the people and the Nation it represents.

For the sake of our people, our freedoms and our Constitution, I urge my colleagues to reject this well-meaning but unnecessary constitutional amendment. I urge my colleagues to vote ''no.''

Mr. CANADY of Florida. Madam Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. BRYANT).

(Mr. BRYANT asked and was given permission to revise and extend his remarks.)

Mr. BRYANT. Madam Speaker, I thank the gentleman for yielding me this time, and as I listened to the debate, I could not help but come to the floor to talk about this very important bill.

I have the greatest amount of respect for the gentleman from Georgia who preceded me. He is certainly a hero. He has served his country well. And certainly in this Nation where we have freedom of speech and the freedom to disagree, I must respectfully disagree with his opinion on this very important issue.

I also greatly respect the sponsor of this bill, the gentleman from California (Mr. CUNNINGHAM), and people like him who not only can talk about liberty and patriotism and wave that flag, but actually, when it came time to serve his country, he did so greatly. He, too, is a great American hero.

Many of my colleagues that are new to this Congress may not know that the gentleman from California (Mr. CUNNINGHAM) was the inspiration for the movie Top Gun. I think all those military scenes and those kinds of things he certainly stood for and was representative of many of those actual events, and during Vietnam was a top gun pilot himself. I think some of the other scenes he did not represent, but certainly as a military man he is one of our true American heroes, and it is a privilege to serve in Congress with him.

I think people like the gentleman from California, who have fought over the years, and we have heard it argued they fought for the freedom to burn the flag, I do not think that was the case. They fought for the freedom that is in the Constitution, but they stood for that flag. At Iwo Jima they raised those flags, and those marines certainly did not intend for that flag to be burned.

But I think what this comes down to can be boiled down to this. Very simply, the overwhelming majority of the American people, whom we represent in Congress, we are elected to represent these people throughout the country, the majority of the American people want this protection of the American flag. They believe, like I do, that it is the symbol of this country and deserves to be protected, deserves that constitutional protection.

It takes an amendment to the Constitution, because the courts have, over the years, declared any law, any statute, any simple bill that we pass as unconstitutional. But in the end we have had as many as 48 States at one time who had their own individual State laws against burning flags. Right now this Congress has, I believe, resolutions from 49 of the 50 States asking us to pass a constitutional amendment to protect the flag.

And, yes, there are limitations to the first amendment freedom of speech. We have probably heard them argued many times on this floor already. We cannot yell fire in a crowded theater; we cannot slander or libel somebody; and in most places we cannot walk around without clothes on, if that is someone's way of freedom of speech. It is against the law to do that. So we have, as a lawful society, placed some restrictions on freedom of speech. This would simply be another that the people want. Three-fourths of the States have to ratify it. We are simply setting forth that process today that allows them to make that choice.

Madam Speaker, I ask support for this bill.

Mr. WATT of North Carolina. Madam Speaker, I yield 2 minutes to the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Madam Speaker, I love our flag. It stirs my heart every time I recite the Pledge of Allegiance, but the Constitution says Congress shall make no law abridging our freedom of speech. We also know that the Supreme Court twice has ruled that flag burning, as upsetting and despicable as it is to many of us, comes under the protection of the first amendment.

I believe that the patriotic thing to do is to condemn flag burning whenever and wherever it happens, but not to ban it. The right thing to do is to leave well enough alone with the Constitution. That means leaving the Constitution the way it is by keeping the first amendment intact.

Cutting into the first amendment, the cornerstone of our great democracy, would curtail what our beautiful flag stands for: freedom, the very freedom that each of us holds so near and dear, the very freedom that so many brave Americans have courageously fought to protect throughout history.

I am so very proud of our veterans, but I believe the best way to honor our veterans is to defend the Constitution. Let us show respect for our precious flag by pledging allegiance to the flag for which it stands and upholding the integrity of the Constitution.

Mr. CANADY of Florida. Madam Speaker, may I inquire of the Chair concerning the amount of time remaining on each side?

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from Florida (Mr. CANADY) has 15 minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 16 minutes remaining.

Mr. CANADY of Florida. Madam Speaker, I yield myself 1 minute.

I wanted to respond again to the point that has been made that here we are attempting to change the first amendment. That is not what we are attempting to do, and that is not what we would do here. We are simply responding here to a flawed and novel interpretation of the first amendment that the Supreme Court imposed a decade ago.

Let me quote once more what Justice Black said back in 1969. He said, ''It passes my belief that anything in the Federal Constitution bars making the deliberate burning of the American flag an offense.'' And Chief Justice Earl Warren said this: ''I believe that the States and the Federal Government do have power to protect the flag from acts of desecration and disgrace.''

That was the understanding of the first amendment until the Supreme Court 10 years ago changed direction and created this right to desecrate the flag which previously had not been recognized. I think the Supreme Court was wrong, and that is why we are here with this amendment today.

Madam Speaker, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Madam Speaker, I have to speak out today on this issue because the first amendment means so much to me, and I want to thank the gentleman from North Carolina (Mr. WATT) for yielding me this time and for his hard work on this issue.

As an African American woman, the right to free speech has allowed me to challenge the inequities in the society based on race, gender, age, sexual orientation and disabilities. The proposal to amend the first amendment's guarantee of free speech for the first time in the Constitution's history will have a chilling effect on those who fight for freedom and justice.

Madam Speaker, this amendment will weaken one of our most fundamental rights. Our government cannot, must not, prohibit freedom of expression simply because it disagrees with its message. We condemn other countries for stifling dissent. We condemn the lack of freedom of speech. In fact, we impose blockades against countries which we believe crack down on citizens who oppose their own government. This Congress needs to stop its hypocrisy.

I implore my colleagues not to be superficial and to stand for the freedom, yes, the liberty and the justice that the flag represents.

Mr. CANADY of Florida. Madam Speaker, I yield myself such time as I may consume.

I just want to point out that what we are talking about here is conduct which attacks our national symbol. What this amendment represents is the view that the people of the United States have a compelling interest in protecting our national symbol from that sort of physical act which is intended to desecrate it.

Let me refer again to something that Justice Stevens said in his dissent in the Eichmann case where he started off by acknowledging that we all understand that the government should not attempt to suppress ideas because we find them to be objectionable. I certainly accept that the government should not be in the business of suppressing debate about public issues in this country. That is not the purpose of the government. That does contravene the first amendment of the Constitution. But that does not mean that there are no limitations on the type of conduct that people can engage in in this country in the name of freedom of expression.

Justice Stevens said in his dissent that, ''In addition to being well settled that we should not attempt to suppress disagreeable or offensive ideas, it is equally well settled that certain methods of expression may be prohibited if, A, the prohibition is supported by a legitimate societal interest that is unrelated to the suppression of the ideas the speaker desires to express; B, the prohibition does not entail any interference with the speaker's freedom to express those ideas by other means; and, C, the interest in allowing the speaker complete freedom of choice among alternative methods of expression is less important than the societal interest supporting the prohibition.''

Now, I believe if we look at this test, which is a very responsible test, and a test which is quite protective of freedom of expression, we will see that prohibitions on the desecration of the flag are not objectionable. The prohibition is supported by a legitimate societal interest that is unrelated to the suppression of the idea the speaker desires to express.

We are not attempting to express any idea when we protect the flag from desecration. The truth of the matter is, desecration of the flag is conduct which is used by people who are trying to express a whole range of different ideas in a very inarticulate way. The Chief Justice, I think, has aptly described this as more like an inarticulate grunt or roar as opposed to real articulate expression.

But what we are doing is not related to the expression of any idea, and we are not interfering, under the second part of this test, with the speaker's freedom to express those ideas by other means. People can choose any other means to express whatever idea they wish to express. We are simply saying that they cross the line and they will not be permitted to use the one means to express their view, which is the desecration of the flag of our Nation, which I believe is the property of the people of the United States and is not to be used for desecration by any one individual.

I believe that that interest of the people of the United States, in protecting the symbol of our Nation, of our national unity, is more important than whatever marginal value some individual might derive from using the particular means of flag desecration to express some viewpoint. I believe that full and robust and free public debate will go forward. There is no question that that will take place. It took place before the Supreme Court decided those cases 10 years ago. There was wide-open debate on public issues. Nobody's opinion was suppressed even though the flag was, before that decision and for many years, had been protected under the laws of the United States and the laws of the various States of the Union.

So looking at this all in context, I think we see how reasonable what we are asking is, and it is just another reason for opposing the gentleman's amendment, which would render the underlying proposal by the gentleman from California (Mr. CUNNINGHAM) meaningless.

Madam Speaker, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, let me again put in context what this debate is all about. First of all, we all abhor the desecration of the flag, and the proposed constitutional amendment that my colleague the gentleman from Florida (Mr. CANADY) and my colleague the gentleman from California (Mr. CUNNINGHAM) have put forward express that abhorrence for the desecration of the flag in the precise wording of their proposed amendment. It says, ''The Congress shall have power to prohibit the physical desecration of the flag of the United States.''

□ 1115

My proposed substitute amendment expresses that same abhorrence for the desecration of the flag, but at the same time it expresses a higher commitment to the command of the First Amendment that is already in the Constitution of the United States that has stood our Nation so well for over 200 years.

My proposed substitute to their amendment simply says, not inconsistent with the First Amendment, not inconsistent with the First Amendment, the Congress shall still have the power to prohibit the physical desecration of the flag of the United States. So we have got two clear options.

Now, their defense to my proposal is, on the one hand, that it is meaningless and, on the other hand, that it is too meaningful. Now, they have got to make a choice. And my colleagues must make a choice.

First of all, they say they are not doing anything to the First Amendment by proposing to protect the flag from physical desecration under the amendment that they have offered. If that is the case, if that is the case, the language that I have proposed to insert here in this amendment is meaningless.

Well, it might be meaningless. But if it is, I want to be on record as saying that I support the First Amendment to the Constitution.

The other side of their argument is, well, it is so powerful this language that I have proposed in my amendment that it undermines completely the amendment that they have offered. That is the opposite side of their argument. And if that is what they are saying, what I want my colleagues to

know is that that is exactly what should be the case. I am not backing away from that.

But if their proposed constitutional amendment is inconsistent in any respect with the First Amendment to the Constitution, which they say it is not and which I do not know because we do not know how it will be interpreted, but if it is, then I want to go on record right now as saying I want the First Amendment to rule in this conflict. And that is really what this debate is all about.

We talked a lot yesterday about things that the debate is not about, and I want to go through those things one more time. We all agree that this is not about patriotism. There are patriots on every side, both sides of this issue. In the committee, the patriot the gentleman from California (Mr. CUNNINGHAM) came. Another patriot came from the Republican side who was on our side of this issue.

So second, it is not even about partisan politics. Is that not wonderful that we have something on the floor of the House of Representatives that we can debate that we can all stand up and say to America, this is not about partisan politics? We have agreed on that.

Third, we have agreed that it is not a liberal versus conservative issue. Because if we read the opinions of the court, we have got conservative justices and liberal justices on both sides of the Supreme Court's opinion. So it is not a liberal-conservative issue.

The gentleman from Florida (Mr. CANADY) and I even agreed that it is not even about where we went to law school. Because both of us went to law school at the same place. He is on one side of this issue. I am on the other side of it. So it is not even about that.

I want to talk to my colleagues about one other thing that this amendment is not about. It is not about burning the flag. Let me repeat that. This is not about burning the flag. We have heard all this discussion about burning of the flag, but this is not about burning of the flag.

There is a reason that my colleagues decided not to use the word ''burning'' in this proposed constitutional amendment. The reason is that the appropriate way to dispose of a flag is to burn it. The court has acknowledged that. Where is the language here that I can just point that out and be explicit? I had it right here. Well, I cannot find it right now. But it will come back to me. Here it is. This is from the underlying case that was decided by the Supreme Court.

''The Defendant Johnson was prosecuted because he knew that his politically charged expression would cause serious offense. If he had burned the flag as a means of disposing of it because it was dirty or torn, he would not have been convicted of flag desecration under this Texas law. Federal law designates burning as the preferred means of disposing of a flag when it is in such condition that it is no longer a fitting emblem to display.''

So we have got a Federal law that says we can burn the flag. So what is this about? What is this word ''desecration'' all about? It is about expression of an opinion. Because if we burn the flag in reverence to the flag as an honorable way to put that flag to bed, to end the use of that flag, the Federal statute protects us. But if we go out and we burn that same flag as an expression of our disgust with some idea that our constitutional government has not lived up to or some disgust with the principles for which that flag stands, it is, at that point, desecration, which has a different connotation than burning, kicks into this equation.

So this is not about burning the flag. This is about what they are thinking about, what they are saying, what they are expressing when they burn that flag. That is what this debate is about. The case law clearly says they can have antiburning statutes at the local level. Sure they can have antiburning statutes. But they cannot single out the flag and say they cannot burn the flag as a process for expressing themselves. That is what the underlying amendment does. That is why the word ''desecration'' is used instead of ''burning.''

Just think about it. That is a little subtle difference. I know some of my colleagues are just going to say, well, he is just playing on words. But think about why they did not use the word ''burning'' in the statute, in the proposed constitutional amendment. Because the law already allows the flag to be burned as long as they are thinking good thoughts and supportive thoughts when they burn it.

Madam Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Madam Speaker, may I inquire of the Chair concerning the time remaining.

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from Florida (Mr. CANADY) has 9 minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 3½ minutes remaining. The gentleman from Florida (Mr. CANADY) has the right to close.

Mr. CANADY of Florida. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I want to commend the gentleman from North Carolina (Mr. WATT) on the role that he has played in the debate. I think the gentleman from North Carolina has made the best case that can be made against the amendment. I do not think it is a strong case, and I disagree with it. But I think the gentleman has made the case that can be made.

The problem that I think underlies the attack on this proposal is it does not come to terms with the fact that we in this proposal are not preventing anyone from expressing any idea or opinion they wish to express. This is simply a restriction on the means that they have chosen. And this is a point I have made before. But I think this is a fundamental flaw in the argument that is used by those against this amendment who claim that somehow we are undoing the First Amendment or that we are acting in a way that is inconsistent with the purpose of the First Amendment.

It is true that we are acting in a way that is inconsistent with the interpretation of the First Amendment that has come down from the Supreme Court. That is why we are here. But the substitute, in my view, does not, as the gentleman from North Carolina (Mr. WATT) said, express a higher commitment to the command of the First Amendment.

What the substitute of the gentleman from North Carolina (Mr. WATT) does instead is express a higher commitment to the command of the Supreme Court. I would just remind the gentleman that, under our Constitution, the Congress also has a role to play and under Article V, we are playing the role that we have in the constitutional amendment process.

That was put in the Constitution for a purpose. I believe that one of the reasons it was put there is to make certain that the people's representatives and the people themselves ultimately could address mistakes that might be made by the Supreme Court.

Now, the gentleman has also argued that we are claiming that his amendment is meaningful in one sense but not meaningful in another. Well, we are claiming that. I will confess to that. Now, the change that the gentleman is making by his amendment in the amendment that has been offered by the gentleman from California (Mr. CUNNINGHAM), the underlying constitutional amendment, is quite meaningful.

There is no question that the change that the gentleman from North Carolina (Mr. WATT) is attempting to make to the amendment of the gentleman from California (Mr. CUNNINGHAM) is extraordinarily meaningful. It is so meaningful that it destroys the Cunningham proposal. That is true. But another way of looking at that is saying that the end result of making the change that the gentleman from North Carolina (Mr. WATT) would have us make is a constitutional amendment that is meaningless because it would ratify the constitutional status quo, which has been established not by the First Amendment itself but by the Supreme Court of the United States.

So the amendment that the gentleman offers is meaningful in that it changes the proposal that the gentleman from California (Mr. CUNNINGHAM) has brought forward, and it is meaningless in that the end result of adopting the Watt amendment would be a constitutional amendment that simply ratifies the status quo and, thus, does nothing. And I do not know why anyone would want to do that.

I would have to candidly suggest that I find it hard to believe that the gentleman or any of the other opponents of the Cunningham amendment would

actually want to adopt the substitute as a part of the Constitution of the United States.

Now, I know they do not want to adopt the amendment of the gentleman from California (Mr. CUNNINGHAM) either, but I really have a hard time believing that they would support adoption of the substitute. Because they understand, of course, that it is a proposal that would simply endorse what the Supreme Court has already said.

□ 1130

For that reason, I think we need to move on, vote down the amendment of the gentleman from North Carolina, and then go on to the important business of passing the resolution that has been brought to this House by the gentleman from California, whose leadership on this has been outstanding.

Madam Speaker, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Speaker, I yield 1 minute to the gentleman from New York (Mr. MEEKS).

Mr. MEEKS of New York. Madam Speaker, first I want to associate myself with the words of the gentleman from North Carolina.

The Constitution has been amended only 27 times over 200 years, and this was to expand our freedom. Why should we amend our Constitution to limit a person's freedom? This Nation stands for freedom, not for enslavement of one's views. The ultimate demonstration of a Nation's commitment to freedom of expression is to allow its symbol of freedom to be used for individual expression.

Freedom of speech is one of the most fundamental rights we as United States citizens have. What makes the United States different from Iran, China, Cuba and other countries is that we can voice our concerns freely under the first amendment without the penalty of being fined or going to jail. If we strip our citizens of this right, we will be taking a step backwards to the practices that are pervasive in many tyrannical countries.

I am not for flag burning. As the gentleman from North Carolina has indicated, this is not about flag burning, but this amendment would infringe on a person's right to express what they feel. For example, I am against the practices of the Ku Klux Klan, but they still have the right to their freedom of expression.

The 1st Amendment protects all people and their opinions—if their opinions disagree with your beliefs—that is what makes this country unique—the environment of discourse and the ability to pick and choose what you believe in.

As we debate many beliefs in this great House, let us not forget that each and everyone of us has the opportunity to hear both sides and make an individual decision on what is right and wrong for their constituents. But, the wrong decision would be to limit a person's freedom of expression by penalizing how they feel.

The First Amendment makes the U.S. unique from all other countries. Let us continue to be a world leader in preserving our citizen's right under the 1st Amendment.

Mr. WATT of North Carolina. Madam Speaker, I yield 1 minute to the gentleman from Maryland (Mr. CARDIN).

(Mr. CARDIN asked and was given permission to revise and extend his remarks.)

Mr. CARDIN. Madam Speaker, the people of my district are conflicted on this issue. They and I have a special feeling towards our flag. I represent Fort McHenry in which Francis Scott Key saw the flag that inspired the National Anthem, the symbol of our freedom. But they and I also understand that protecting the first amendment of the Bill of Rights, we must do. It is part of the founding principles of our country, the right to speak out even when it is not popular.

I want to applaud the gentleman from North Carolina for giving us the opportunity to both protect the Constitution and the Bill of Rights and putting this issue in proper context. Yes, we want to protect the flag from desecration, but we also want to protect our Bill of Rights.

Mr. WATT of North Carolina. Madam Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from North Carolina is recognized for 1¾ minutes.

(Mr. WATT of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. WATT of North Carolina. Madam Speaker, the words keep resonating in my head from my senior law partner that I talked about yesterday, when I was sent to represent people who had demonstrated on an issue that was on the opposite side of a position that I held, and I called my senior law partner and said, ''Why would you send me here to represent these demonstrators that are demonstrating against something that I believe in?'' And his simple words to me were, ''Don't you believe in the first amendment?''

That is what I ask my colleagues today: ''Don't you believe in the first amendment?''

This is what Justice Kennedy said in his concurring opinion in the Supreme Court case:

> For we are presented with a clear and simple statute to be judged against a pure command of the Constitution. The outcome can be laid at no door but ours. The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution compel the result.

I call on my colleagues today to make the decision that they know is right. It is a difficult political decision. It was not easy for the Supreme Court. But they stood and upheld the first amendment to the Constitution of the United States. I ask my colleagues in this House to do the same in the face of this adversity.

AMERICAN BAR ASSOCIATION,
*Washington, DC, June 21, 1999.*

DEAR REPRESENTATIVE: On behalf of the American Bar Association, I write to urge you to oppose H.J. Res. 33, the proposed constitutional amendment to prohibit the physical desecration of the flag of the United States.

The Association deplores any desecration of the flag, but we must not forget that the flag is a symbol of both national unity and sovereignty and the individual freedoms we so uniquely enjoy in this country—freedom to think one's own thoughts, to express one's beliefs, and to associate freely with those of like mind. As important as the flag is to all of us, we must never protect it at the expense of the precious freedoms it symbolizes.

Proponents of this measure argue that it would merely restore 200 years of ''tradition'' of protecting our flag. In fact, the amendment would actually violate our nation's true tradition of preserving and expanding individual freedoms. The Bill of Rights has endured intact since its adoption in 1791. Previous amendments to the Constitution have acted only to expand the individual liberties guaranteed in the Bill of Rights, not to limit them. As Acting Assistant Attorney General Randolph Moss noted, ''[p]art of the unique force, security, and stature of our Bill of Rights derives from the widely-shared belief that it is permanent and enduring.''

In a recent statement, Keith A. Kreul, a U.S. Army veteran and former National Commander of the American Legion, warns that this amendment ''will neither protect the flag nor promote true patriotism.'' He goes on to say that, ''Our nation was not founded on devotion to symbolic idols, but on principles, beliefs and ideals expressed in the Constitution and the Bill of Rights.'' Mr. Kreul cautioned Congress against attempting to impose patriotism by legislative fiat. ''We must not delegate to government our responsibility of citizenship lest we endanger our most precious freedoms . . . Respect for our beautiful flag can only come from the hearts of the people. Attempts to bestow honor by government decree upon the flag are idle myths and must not prevail.''

Arguments that this amendment is needed in order to address moral malaise in this country are misdirected. Moral malaise did not begin ten years ago with the Supreme Court's ruling in *Texas* v. *Johnson*. The notion of drawing a line in the sand on this issue in order to send a message on morality diverts attention and resources from real and serious problems. The issues of concern facing our nation today—violence in our streets and schools, economic security, questions of race, and armed conflict abroad—will have a far greater impact on the shape of our society than a constitutional amendment on flag desecration. It would better serve our nation if the time and effort Congress is expending on the flag amendment would be directed toward those and other critical issues.

Proponents of the amendment argue that flag desecration is a serious national problem. They cite 72 incidents that have taken place over the past five years and claim that ''hundreds'' more have occurred but remain unreported. First, if they have been unreported, how can the proponents possibly affirm they have occurred? What evidence of the ''hundreds'' of cases has been offered? None. Second, of the 72 specific incidents they do cite, almost ⅔ involved actions that are already punishable under existing law.

Amending our Constitution is a serious endeavor that must be reserved for issues of the fundamental structure of American government and social order. As James Madison once stated, amending the Constitution should be reserved for ''great and extraordinary occasions.'' Infrequent incidents of flag desecration do not warrant this unprecedented action to undermine the freedom of

speech guaranteed under the First Amendment.

In the more than 200 years since the adoption of the Bill of Rights, we have seen that our institutions cannot be destroyed by the exercise of the First Amendment freedoms, only strengthened. Do we really want or need to go to the extreme of tampering with the First Amendment to deal with the rare actions of a few individuals? Walter Cronkite, a highly respected journalist and one who has personally witnessed and recorded for history some of our nation's most difficult challenges, says emphatically ''no.'' In his own words;

''This tiny band of malcontents has inspired a threat by otherwise thoughtful, serious citizens to amend the very foundation of our liberties, which has stood solid and unshaken through political and economic crises, through insurrection and civil war, through assaults by foreign ideologies. Even if the flag desecrators were of far greater numbers and represented a cause of some significance, they still would cause no threat to the integrity of our national emblem. But those who would amend the Constitution do threaten the integrity of that far more precious of our possessions—our freedom of thought and speech.''

The American Bar Association urges you to oppose the amendment and vote ''no'' to protect the American flag by preserving one of the most precious constitutional principles it represents—the First Amendment's guarantee of freedom of expression.

Sincerely,

ROBERT D. EVANS.

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EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
*Washington, DC, June 22, 1999.*

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

H.J. RES. 33—CONSTITUTIONAL AMENDMENT AGAINST FLAG DESECRATION

(Cunningham (R) California and 279 cosponsors)

The President is deeply committed to protection of the United States flag and will continue to condemn those who show it any form of disrespect. The Administration believes, however, that efforts to limit the First Amendment to make a narrow exception for flag desecration are misguided. The Congress should be deeply reluctant to tamper with the First Amendment.

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AMERICAN SOCIETY OF NEWSPAPER EDITORS,
*Reston, VA, May 5, 1999.*

AMERICAN SOCIETY OF NEWSPAPER EDITORS STATEMENT ON FLAG AMENDMENT

In order to defend the foremost symbol of freedom, the American flag, proponents of this amendment are prepared to diminish freedom itself.

For more than two centuries, our Bill of Rights has guarded individual liberties against the awesome power of government. It has been the blueprint for freedom around the world, as other societies seek to establish and emulate the democratic traditions they so admire here.

And now, with the Cold War won and liberty blossoming in soil once ruled by tyranny, Congress is considering a proposal to trim back the Bill of Rights for the first time in our history and give itself the power to punish offensive speech.

What urgent national interest demands that America turn even slightly away from its singular heritage of freedom and liberty? Is it public order? Does violence against the flag create a climate of physical violence, even chaos among the public as a whole?

No, it does not. Even the proponents of this amendment cite only a handful of flag-burning and other disrespectful acts each year, and those episodes hardly constitute a pressing threat to public order. Thirty years ago, this country weathered a thunderstorm of political turmoil and civil unrest. These current acts of flag-desecration cannot begin to test our democratic resilience and resolve.

To the contrary, this amendment would likely encourage the very acts it seeks to punish. Criminal prosecution would provide the attention that those who set the flag on fire most crave.

Is common decency, then, the reason to erode the liberties established by the Bill of Rights? Does even a single act of flag-burning so offend the patriotic spirit that we must outlaw this particular expression?

Such disrespect does offend all who honor the values the flag symbolizes and the heroic sacrifices made defending them. But offensive speech comes in many varieties beyond desecration of the flag. Is flag desecration a special category of speech, clearly more hateful than other brands of offensive expression?

Does the person who sets fire to a flag, for example, clearly do greater damage to the public good than the person who advocates racism or other bigotry? and if not, how will the rest of us know where to stop, once we start putting limits on the things that may be said and defining some ideas that cannot find voice?

That is the great threat posed by this amendment, a threat that far exceeds the harm it is supposed to prevent. The occasional act of disrespect for the American flag creates but a flickering insult to the values of democracy—unless it provokes America into limiting the freedoms that are its hallmark.

The architects of the Constitution were themselves veterans of a war that began as a revolution against the power of government. To guarantee the liberties for which they risked everything, those authors of America drafted the Bill of Rights, and they put the freedom of expression first.

After more than 200 years, we must not diminish their enduring promise of freedom by putting this footnote on the First Amendment.

PAUL C. TASH, *Chair,*
*Freedom of Information Committee,*
*St. Petersburg Times, Florida.*

Mr. CANADY of Florida. Madam Speaker, I yield the balance of my time to the gentleman from California (Mr. CUNNINGHAM).

The SPEAKER pro tempore. The gentleman from California is recognized for 4 minutes.

Mr. CUNNINGHAM. Madam Speaker, this is a very difficult issue for many of us. I would like to thank my friend the gentleman from North Carolina (Mr. WATT), and he is my friend. I would also like to thank Mr. Solomon who I am just the torch bearer of a long evolution, as well as Major General Patrick Brady who is President of the Citizens Flag Alliance that put most of this whole effort together in the grassroots. I would say to my friend that I laud him. It would be very difficult for me to represent David Duke or the KKK or anybody of that kind, but I would support him in the same manner on the first amendment.

Nothing in this amendment prevents anyone from expressing themselves in writing, speech, or any other way except for the desecration of the flag. For over 200 years, all the Supreme Courts in the United States, the Congress and the American people agreed. It does not violate the first amendment. That is why 48 States had laws to protect the flag from desecration. One bad, in my opinion, Supreme Court voted against 200 years of tradition. My friend's amendment would throw this whole amendment back to that pack of wolves, that particular Supreme Court, and it would destroy this whole process, or the amendment. We think that is wrong.

The Massachusetts' 54th Regiment, a regiment of African American soldiers who fought for the Union for freedom. Among its leaders was Frederick Douglass. The movie ''Glory'' was produced about this whole episode. It was a suicide mission, these African Americans knew it, but they were fighting for freedom and their country, and the Constitution of the United States. Colonel Robert Shaw, commander of the 54th asked these men, he said, ''I will carry the flag into battle, but when the flag falls, who will carry it for me?''

There have been people given the Medal of Honor specifically for protecting the flag. Article 5 of the Constitution allowed us to have the first amendment to give us the freedom for speech. I was amazed at my colleague from California (Mr. BILBRAY) that brought up the fact that article 5 also used in the Dred Scott decision that said African Americans were only property, they could not be citizens of this great country. The Supreme Court ruled that. And quite often, as the gentleman from California (Mr. BILBRAY) pointed out, the Supreme Court has been wrong. Fortunately, Congress enacted the 14th amendment which protected those rights.

I would say to my friend, if I felt the first amendment was abridged, as much anger as I felt for Jane Fonda during the Vietnam War when she wanted to open a sports store, I was there protecting her right to do that. I think she stepped over the line in that particular issue. But I would support every issue and my friend, but to support this amendment would kill everything that we are trying to do as far as this bill that the gentleman from North Carolina has offered.

Many of us were moved by the speech of the gentlewoman from New York (Mrs. MCCARTHY) last week, deeply moved, because we knew that she was speaking from the heart. But many of us disagreed on that issue because of a second amendment right.

Mr. WATT of North Carolina. Madam Speaker, I ask unanimous consent that the gentleman be granted 1 additional minute.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. CUNNINGHAM. But many of us disagreed with the gentlewoman, not

because of special interest groups but because we have a strong belief in the second amendment, and we thought it would be violated. In the same vein, my friend feels that the first amendment would be violated. We disagree. Two hundred years of Supreme Courts disagree with my friend.

I am not worried if God is on the side that we are portraying, because God is always on the right side. I think we need to ask ourselves, are we on the side of God?

Mr. PRICE of North Carolina. Madam Speaker, two pictures of the American flag are etched in our minds, and they embody the kind of nation we are: one is of the U.S. Marines planting the flag at Iwo Jima and the other is Neil Armstrong standing next to the flag on the moon. Those visions move us because they show the commitment and courage of our people, representing what we can overcome and what we can achieve as a nation working together.

I do not understand people who are unmoved by these visions, or the even smaller minority who, for whatever reasons, feel compelled to desecrate our flag. These people do not reflect my values or the values of our people. To me, the American flag is a symbol of our nation's greatness, of our aspiration toward ''liberty and justice for all,'' and of the Constitutional protections that we offer our citizens.

I don't think any of us would disagree with the goals we are discussing today, protecting our flag and honoring the values it stands for. But we do have significant disagreement about the means by which this can best be accomplished.

Along with a bipartisan group of members, I am cosponsoring the Flag Protection Act, which would protect the flag without compromising or changing the Constitutional protections which the flag symbolizes. I am reluctant to base a change in the Bill of Rights—something we have not done in over 200 years—on the misguided actions of a small group of people who choose to express themselves by desecrating the flag. The Flag Protection Act would let us honor and protect both the flag and the Constitution, which is what I believe most of our fellow citizens and most of us here today wish to accomplish.

The alternative Constitutional amendment offered by my friend from North Carolina would leave the Bill of Rights intact and is consistent with the approach I am advocating. It would state simply that ''not inconsistent with the First Amendment, the Congress shall have the power to prohibit the physical desecration of the flag of the United States.'' I believe this is the proper and appropriate way to prevent the desecration of the American flag. We don't need to change the Bill of Rights to protect our nation's most powerful symbol.

I urge passage of the Watt substitute.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 217, the previous question is ordered on the joint resolution and on the amendment in the nature of a substitute offered by the gentleman from North Carolina (Mr. WATT).

The question is on the amendment in the nature of a substitute offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. WATT of North Carolina. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 115, nays 310, not voting 9, as follows:

[Roll No. 251]

YEAS—115

Abercrombie
Ackerman
Allen
Baldwin
Barrett (WI)
Becerra
Bentsen
Berman
Blagojevich
Blumenauer
Bonior
Borski
Boucher
Brady (PA)
Brown (OH)
Cardin
Carson
Clay
Clayton
Clyburn
Conyers
Coyne
Cummings
Davis (IL)
DeFazio
Dicks
Dixon
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gejdenson
Gonzalez
Greenwood
Hastings (FL)
Hinchey
Hoeffel
Hoekstra
Hooley
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy
Kilpatrick
Kind (WI)
Kolbe
Kucinich
LaFalce
Lampson
Lantos
Larson
Leach
Lee
Levin
Lowey
Maloney (CT)
Maloney (NY)
Markey
Martinez
McCarthy (MO)
McDermott
McIntosh
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Miller, George
Minge
Mink
Moore
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pastor
Payne
Pelosi
Porter
Price (NC)
Rivers
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Scott
Serrano
Slaughter
Stark
Tauscher
Thompson (MS)
Tierney
Udall (CO)
Udall (NM)
Velazquez
Vento
Waters
Watt (NC)
Waxman
Weiner
Wexler
Woolsey

NAYS—310

Aderholt
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boyd
Brady (TX)
Brown (FL)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crowley
Cubin
Cunningham
Danner
Davis (FL)
Deal
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Filner
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinojosa
Hobson
Holden
Holt
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kanjorski
Kelly
Kildee
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Luther
Manzullo
Mascara
Matsui
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Napolitano
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Ose
Oxley
Packard
Pallone
Pascrell
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Portman
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Regula
Reyes
Reynolds
Riley
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tiahrt
Toomey
Traficant
Turner
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—9

Barton
Brown (CA)
Davis (VA)
Gilchrest
Hefley
Kasich
Millender-McDonald
Rangel
Towns

☐ 1203

Mrs. KELLY, and Messrs. PEASE, GOODLING, MATSUI, SAXTON, SHAYS, DOGGETT, HOBSON, and HILLIARD changed their vote from ''yea'' to ''nay.''

Mrs. MEEK of Florida and Mrs. MALONEY of New York changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. MILLENDER-McDONALD. Madam Speaker, during rollcall vote no. 251 on June 24, 1999, I was unavoidably detained. Had I been present, I would have voted ''yes.''

Mr. STARK. Madam Speaker, I rise today in strong opposition to H.J. Res. 33, ''The Flag

Desecration Constitutional Amendment.'' This constitutional amendment would undermine the very principles for which the flag stands—freedom and democracy.

The First Amendment to the Constitution reads as follows: ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.''

Those who founded our nation recognized that the First Amendment to the Constitution must protect citizens from their objections to the workings of their government. Freedom of expression is what makes the United States of America strong and great—it is the bedrock of our nation and has kept our democracy strong for over 200 years.

In an effort to overturn two Supreme Court decisions that upheld flag burning as symbolic speech protected by the Constitution, the Flag Desecration Amendment would be the first to amend the Bill of Rights and limit Americans' freedom of expression.

It would also open the door to other ''well-intentioned'' limits on our free speech. Just last week this Congress debated an amendment that would have barred the sale of films, books, pictures, and sculptures that qualify as ''patently offensive'' or lack ''serious literacy, artistic, political or scientific value.''

Who is to decide what is offensive, what is desecration, and what is free expression? While the idea of someone burning or destroying an American flag is upsetting, the thought of police arresting peaceful protesters is even more so. Our government's toleration of criticism is one of America's greatest strengths.

This is not an issue of patriotism, it is an issue of preserving every American's protected right to dissent. Our commitment to freedom can best be displayed with a vote against this misguided constitutional amendment.

Mr. LEACH. Madam Speaker, as has been the case in past Congresses, this amendment is being brought forward in an attempt to affirm all that is good about our great country. This is an honorable motive and I am reluctant to oppose it.

Moreover, as in the past this amendment is championed by organizations—particularly the American Legion, VFW and DAV—which represent those without whose sacrifices this country and its values would not exist. Had it not been for our nation's veterans, the only competition in the world today would be between totalitarianism of the Left and totalitarianism of the Right.

These are honorable men and women, and I am reluctant to oppose them.

Yet I remain unable to support this amendment because I remain convinced that to do so is to undercut the very essence of the system of governance for which the flag itself stands.

At the heart of our democracy is a struggle, an ongoing conflict of ideas for which the Constitution provides the rules. It is in this conflict that the e pluribus unum—the ''one out of many,'' as the motto borne on the ribbon held in the mouth of the American bald eagle on The Great Seal of the United States puts it—arises. And it is precisely this unity in multiplicity for which our flag with its 50 stars and 13 stripes stands.

The genius of our Constitution lies in the way in which it structures and ensures the continuity of this conflict of ideas which is our democracy. It does so through the system of checks and balances and separation of powers with which it structures our government on the one hand, and the protection of freedom of expression it provides in the First Amendment on the other. the former ensures that the fight is always a fair one and that no momentary majority uses its temporary advantage to destroy its opponents; the latter ensures that no idea, however obnoxious, is excluded from consideration in the debate.

It should be stressed that the protection provided by the First Amendment is a two-edged sword. In fact, the Bill of Rights does not exempt ideas and the actions that embody them from criticism, but ensures they are exposed to it. As Jefferson put it in his ''Act for Establishing Religious Freedom'' in Virginia:

> Truth is great and will prevail if left to herself; . . . she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapon, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

Thus any abridgment of the protections provided by the First Amendment, no matter how nobly motivated, would diminish freedom and in all likelihood precipitate, in this instance, more symbolic incidents tarnishing the flag than would otherwise be the case. Accordingly, great care must be taken not to take actions in the name of protecting the flag that have the effect of misinterpreting the meaning of the flag.

In making this assessment, the distinction between liberties to protect and symbols to rally behind remains essential. Freedom of speech and freedom of religion require constitutional protection. The flag, on the other hand, demands respect for what it is—the greatest symbol of the greatest country on the face of the earth. It is appropriate to pass laws expressing reverence for the flag and applying penalties, wherever possible, to those who would desecrate it, but I have grave doubts the Constitution is the right place to address these issues.

Mr. BLUMENAUER. Madam Speaker, the authors of the Constitution and the Bill of Rights gave us a wise and enduring framework, one that has guided this Nation for over 200 years. We should but rarely and in moments of absolute necessity alter their work. I can say unequivocally, that this flag burning amendment does not meet that test.

Americans cherish their flag and all it represents. It is fitting and proper to honor this symbol. This proposed constitutional amendment however, is the wrong way to attempt to protect the flag. Ironically, the fastest way to take the very rare occurrences of flag burning and make them more frequent would be to pass this amendment.

Once it is illegal, and after all the publicity surrounding ratification by the states occurs, we will have made our flag the target for every publicity-seeking kook in America. Burning the flag will be the fastest way to go to court, to jail and onto the evening news.

Regardless of how distasteful burning or otherwise desecrating the flag is to most Americans—it is important to note that flag burning is not a major problem today. What is clear is that making flag burning illegal would backfire.

The First Amendment doesn't need any help from this Congress.

Mr. KOLBE. Mr. Speaker, Congress enacted the first Federal flag protection act in the midst of the Vietnam War protests. However, Madam Speaker, I was not here to see these protests, I was in Vietnam, fighting for the very freedoms some are seeking to limit today. The flag is a special symbol for our country, but it is certainly no more than the Constitution itself. Embodied in our Constitution is the First Amendment.

The First Amendment is no small part of the protections that make our country unique in the history of civilization and no small part of the freedoms others and I fought to protect. Freedom of speech protects both those with whom we agree and those with whom we disagree.

What we are debating today is a proposal to chip away at the First Amendment and I cannot support that. I would like to see the intellectual prowess of this institution brought to bear upon the task of drafting legislation would make it illegal to desecrate the flag of the United States and still meet the Constitutional standard. However, taking the simplistic but dangerous task of amending the Constitution to accomplish this end is neither agreeable nor advisable. I ask my colleagues to consider the monumental implications of today's proposal. We are toying with a right we all hold dear: that of free speech.

Though this Amendment may sound reasonable on the surface, I implore you to look beyond the superficial. Recall that in the 1975 case of Spence v. Washington, taping a peace symbol to the flag was at issue. Do you really believe imprisonment is the appropriate punishment for such an act? The fundamental issue is public protest—that is what gave rise to this issue and that is also the heart of First Amendment protection.

The Supreme Court articulated a standard in the 1989 case of Texas v. Johnson by which each of us should consider this issue. In that flag desecration case, the Court said: the First Amendment stops the government from prohibiting expression of an idea merely because society finds the idea offensive, even when the flag is involved. Can anyone stand before us with intellectual honesty and deny that this is precisely what we aim to do? Consider the language of the 1990 flag case of U.S. v. Eichman:

> The Government's desire to preserve the flag as a symbol for certain national ideals is implicated ''only when a person's treatment of the flag communicates [a] message'' to others that is inconsistent with those ideals.

To me freedom is greater than any symbol can encapsulate. How can we possibly promote freedom by restricting an object that is so clearly identified as a symbol of freedom? What should give all of us pause is that we stand in the Capitol of the government and debate outlawing speech with which we disagree. I cannot support such an Orwellian piece of legislation.

Mr. SHAYS. Madam Speaker, today I rise in opposition to the Flag Desecration Constitutional Amendment.

I find it abhorrent anyone would burn our flag. It's a symbol of all the values we cherish—freedom, democracy and tolerance for others.

When I think of the flag I think about the men and women who died defending it. What they really were defending was the Constitution of the United States and the rights it guarantees.

The Constitution has been amended only 17 times since the Bill of Rights was passed in 1791. This is the same Constitution that guarantees freedom of speech and freedom of religion, and that eventually outlawed slavery and gave blacks and women the right to vote.

These are monumental, historic issues—issues that directly affect people's lives. Amending the Constitution is a very serious matter. I don't think we should allow a few obnoxious attention-seekers to push us into a corner, especially since no one is burning the flag now, and there is no constitutional amendment.

Madam Speaker, I love the flag for all that it represents, but I love the Constitution even more. The Constitution is not just a symbol. It's the very principles on which our nation was founded.

Mr. MOORE. Madam Speaker, I rise in opposition to H.J. Res. 33, a bill to prohibit the physical desecration of the flag of the United States of America.

Since our nation was born in battle 223 years ago, hundreds of thousands of American soldiers, sailors, airmen and women, and Marines have fought and died across the globe to preserve the great American experiment in freedom and democracy. One of the cornerstones of our freedom is our Constitution, including the Bill of Rights. The Bill of Rights, including the First Amendment protections for speech and political expression, has been the envy of the world for more than two hundred years.

Our democracy has withstood many tests over time, and has been strengthened as a result. The occasional, random, despicable acts of public desecration of our flag by a few malcontents presents another such test. There is no more important protection provided by the First Amendment than its protection of political expression.

I love our country. I love our flag—and the principles for which it stands. The American flag is a symbol for liberty and justice, for freedom of speech and expression and all of the other rights we cherish which are guaranteed in the Bill of Rights. But as important as the symbol may be, more important are the ideals and principles which the symbol represents.

That our nation can tolerate dissension and even disrespect for our flag is proof positive of the strength of our nation. It would be a hollow victory to preserve the symbol of freedom by chipping away at the freedoms we hold sacred.

As one who served with the U.S. Army and the Army Reserves, I know how deeply our veterans love and revere our flag. I share those feelings for our flag and all that it represents. I have absolute faith and every confidence that even without amending our Bill of Rights, our nation and our flag are strong and will survive and continue to be a source of hope and inspiration to all Americans and freedom loving people around the world.

Ms. PELOSI. Madam Speaker, as an issue, the flag-desecration amendment is, of course, entirely symbolic. Its sponsors believe that support is, symbolically speaking, tantamount to being a patriotic American.

But what is true patriotism in the context of the American experiment? At its heart, I believe, is an abiding tolerance—a tolerance so deep and so pervasive that it easily absorbs all insults. The American saga is, in essence, a tale of ever-expanding realms of acceptance and inclusion.

Tolerance of extraordinary diversity is the mystery that lies at the heart of our origins and our destiny, the magnificent quality that renders the American project unique in human experience—diversity in ethnic and religious origins; diversity in language and lifestyle; diversity in aptitude and ambition; and, yes, diversity in behavior, including the bizarre, the distasteful, and even the contemptuous.

We Americans are most patriotically American when we display our tolerance of virtually all behavior short, of course, of crimes against people and property. Simply turning away from even such objectional behavior as the burning of the flag is, then, a true test of our tolerance, a measure of our patriotism, a demonstration of our Americanism.

E Pluribus Unum!

The SPEAKER pro tempore (Mrs. EMERSON). The question is on engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CANADY of Florida. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 305, noes 124, not voting 5, as follows:

[Roll No. 252]

AYES—305

Aderholt
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boyd
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Castle
Chabot
Chambliss
Chenoweth
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crowley
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
Delahunt
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Gutierrez
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hilliard
Hinojosa
Hobson
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Kelly
Kildee
King (NY)
Kingston
Knollenberg
Kucinich
Kuykendall
LaHood
Lampson
Lantos
Largent
Larson
Latham
LaTourette
Lazio
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Martinez
Mascara
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McNulty
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Moakley
Mollohan
Moran (KS)
Morella
Murtha
Myrick
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Ose
Oxley
Packard
Pallone
Pascrell
Pease
Peterson (MN)
Peterson (PA)
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Portman
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Regula
Reyes
Reynolds
Riley
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanchez
Sandlin
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shaw
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Toomey
Traficant
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wise
Wolf
Wynn
Young (AK)
Young (FL)

NOES—124

Abercrombie
Ackerman
Allen
Baldwin
Barrett (WI)
Becerra
Berman
Blumenauer
Bonior
Borski
Boucher
Brady (PA)
Capuano
Cardin
Carson
Clay
Clayton
Conyers
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
DeLauro
Dicks
Dingell
Dixon
Doggett
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank (MA)
Gejdenson
Gonzalez
Greenwood
Hall (OH)
Hastings (FL)
Hill (IN)
Hinchey
Hoeffel
Hoekstra
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kennedy
Kilpatrick
Kind (WI)
Kleczka
Klink
Kolbe
LaFalce
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Maloney (NY)
Markey
Matsui
McCarthy (MO)
McDermott
McKinney
Meehan
Meek (FL)
Meeks (NY)
Miller, George
Minge
Mink
Moore
Moran (VA)
Nadler
Oberstar
Obey
Olver
Owens
Pastor
Paul
Payne
Pelosi
Petri
Porter
Price (NC)
Rangel
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schakowsky
Scott
Serrano
Shadegg
Shays

| | | |
|---|---|---|
| Slaughter | Udall (CO) | Waxman |
| Snyder | Udall (NM) | Weiner |
| Stark | Velazquez | Wexler |
| Tanner | Vento | Weygand |
| Tauscher | Visclosky | Woolsey |
| Thompson (CA) | Waters | Wu |
| Tierney | Watt (NC) | |

NOT VOTING—5

| | |
|---|---|
| Brown (CA) | Millender-McDonald |
| Gilchrest | Towns |
| Kasich | |

□ 1221

So (two-thirds having voted in favor thereof) the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Ms. MILLENDER-McDONALD. Madam Speaker, during rollcall vote No. 252 on June 24, 1999, I was unavoidably detained. Had I been present, I would have voted "no."

## APPOINTMENT OF CONFEREES ON H.R. 775, YEAR 2000 READINESS AND RESPONSIBILITY ACT

Mr. GOODLATTE. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 775) to establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the request of the gentleman from Virginia?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. CONYERS

Mr. CONYERS. Madam Speaker, I offer a motion to instruct.

The Clerk read as follows:

Mr. CONYERS moves that the managers on the part of the House at the conference on the disagreeing votes of the two houses on the amendment of the Senate to the bill H.R. 775 be instructed to ensure, within the scope of conference, that their eventual report to the House reflects due regard for—

The substantive concerns of the high-technology community and the possible implications of the ''Y2K'' date change on that community and on the Nation's economy;

The substantive inputs of the Administration and of the bipartisan Leaderships in the Congress on the issues committed to conference; and

The sense of the House that a decision not to follow this process will lead to a failure to enact legislation.

The SPEAKER pro tempore. Under rule XXII, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Virginia (Mr. GOODLATTE) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. Conyers).

Mr. CONYERS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today to urge my colleagues to support the motion to instruct the conferees to engage the administration and the congressional leadership of both parties in a substantive discussion to make every effort possible to produce a Y2K bill that President Clinton can sign.

The information technology community, as we know, has legitimate concerns due to the unique nature of the Y2K problem that should be and could be addressed through legislation. This legislation would first encourage remediation, it would then encourage mitigation, and finally, deter as much as possible frivolous lawsuits.

We are all interested in legislation that will solve the concerns of the high-tech community as we recognize the possible implications of the Y2K date change on the high-tech community and on the Nation's economy.

We are optimistic that the conference will result in a bipartisan compromise through a substantive discussion of the concerns of the information technology community, the administration, and the congressional leadership, and that we will address the unique nature of the Y2K problem. I urge this cooperation on the part of all the different forces that will be part of this conference.

We on the Democratic side are willing to engage in a deliberative conference that makes every effort to avert an impasse and to produce a bipartisan bill.

Mr. Speaker, I urge all my colleagues to support this motion to instruct, and I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to say to my good friend, the gentleman from Michigan, that we are prepared to accept the motion to instruct that the gentleman has offered, and I would say with regard to the legislative process that we have been through that we have from the outset been concerned about the substantive inputs of the administration and the leadership of both the House and Senate and both the Democratic and Republican leadership, and in fact, the House bill, which I think is an outstanding piece of legislation, which will go a long way to address the concerns of the American people, of the business community, of those who have been negatively affected by the failure to have certain equipment or software, whatever the case may be, ready for Y2K needs; that in all those cases we have in the legislation we passed listened to everyone who had input in this process, and have adapted the legislation that passed the House while taking those inputs into consideration, agreeing with some and disagreeing with others. I know that same process has taken place in the Senate, where they also have passed a good bill.

So when the conference meets and considers the relative merits of both the House bill and the Senate bill, we will be interested in hearing the input of the leadership, and have heard the input of the administration in that process.

For that reason, we are prepared to accept this motion to instruct. I would say, however, that the House of Representatives is a sovereign body, that it is duly designated on the basis of the United States Constitution to represent the will of the people that we represent, and we will do so with input from a number of different sources, but most importantly, with input from the majority of the Members of the House who supported the bill that we passed through the House of Representatives, taking into account the fact that we want to see legislation signed into law by the President which will reflect the need to address the Y2K problem to avoid frivolous and fraudulent lawsuits, to encourage parties to work on solving the Y2K problem and not on an increasing amount of litigation.

We believe those things are reflected in the bill passed by the House. We believe they are also reflected in the bill passed by the Senate. So we will proceed in a fashion that will allow us to come up with legislation that surely the President will want to sign because it is urgent that we solve this problem.

One of the points to be made about Y2K legislation addressing this problem is that time is of the essence. It is not only important that we pass this before January 1, 2000, it is important that we pass this and get it signed into law by the President now, because the effects of this legislation will take place immediately.

Those who need to solve Y2K problems will be less fearful of getting into a litigation mess and more anxious to get about the business of correcting the actual technological problems that individuals and businesses face with their computer systems if they know now that they can get started now or continue work now without fear of a massive problem with litigation. That is what this bill that we have passed through the House is designed to do. I know that is what the Senate intended, as well.

So surely when we work out the differences between the House and Senate bills, we will be able to present to the President something that he should sign immediately, given, I know, the concern that the President has for addressing this problem and addressing it immediately and not dragging us through a long process involving a veto; the addressing of this problem with new legislation that we would have to take up with another version passed through the House, another version passed through the Senate, another conference, and then still not knowing whether the version that that we come up with in that conference would be signed by the President.

□ 1230

So it would be my hope that the version that we pass out of the conference will be signed into law by the President, recognizing that we have already been taking into account the

concerns raised by the President, have, in the legislation passed in the House and in the legislation passed in the Senate, a reflection of a number of those concerns, but obviously not all of those concerns because, as I said, this is a body that must do the will of the people that we represent.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I am delighted to yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I am pleased to hear the comments of the gentleman from Virginia (Mr. GOODLATTE) and glad to learn that the motion will be accepted.

But, at the very least, I want to explore a little bit further where I think we are in this whole process. I received yesterday a letter from the Year 2000 Coalition to the Speaker, to the gentleman from Texas (Mr. ARMEY), to the gentleman from Texas (Mr. DELAY), to the gentleman from Oklahoma (Mr. WATTS), and to the gentleman from Virginia (Mr. DAVIS). The letter outlines the hopes and expectations of many high-tech community leaders.

Let me just read a couple of important points they made in this letter. The Coalition points out that: ''A legislative process that terminates in a veto would be viewed as a complete failure, and would possess substantial risk to the American economy and could result in a serious economic set-back.''

The letter continues: ''We are confident that, in the course of discussions that may occur, resolution of differences can be achieved.'' They then go on to offer their assistance in whatever way they could to help us as we seek a resolution.

This letter is signed by dozens of associations; among them, there are: the American Electronics Association, the Business Software Alliance, the Computing Technology Industry Association, the Information Technology Association of America, the National Venture Capital Association, and the Semiconductor Industry Association. I might add that there are many others.

I think the concern expressed in this letter is based on various press reports as well as rumors that I think we should discuss openly.

In the Washington Post today, and I have no idea whether this quote is accurate so I shall just read it from the paper. Mr. HASTERT, the Speaker's spokesperson, was quoted as saying, ''You know that the President has to make a choice. Basically it is a take it or leave it proposition on the bill.''

The President's people are quoted in turn, saying that the bill that passed the Senate will be vetoed by the President. So I do not think there is a doubt about the veto. We have the President's statement on that.

So what I see unfolding here is a train wreck that we can avoid, and that, I believe, it is our obligation to avoid.

I note further that, in today's National Journal, in Congress Daily, that there is a suggestion, and I do not know if this is what is really going to happen, that the conferees will meet only for a short period of time, the sole purpose of which meeting would be to remove a section of the Senate bill inserted by Senator HOLLINGS, and that no further work would be done.

If this is the case, if this is what does happen, I think it will be a tremendous mistake. I think we ought to listen to the 2000 Coalition people and understand that we need to work through this and to compromise and to come up with legislation that will become law.

Now, as the gentleman from Virginia (Mr. GOODLATTE) and I have said privately from the beginning, it is my belief—and I think maybe his—that, if he and I were to go sit in the Speaker's lobby together, we could write up a bill that would be acceptable, and would be signed by the President.

There are six or seven different ways to approach the very contentious issues that are before us. There is no one magic solution. Part of legislation in an issue such as this is to stretch out, to reach your hand across the aisle and I would say down Pennsylvania Avenue as well, to come up with rational solutions that are flexible, that are narrowly tailored, that work.

I know we can do this. I know that we could do it together. I hope that we do it together. If we do not, if instead, we insist, having fallen in love with our own work product, that we cannot produce an alternative, we shall have failed. We must let go of the love we have for the work product we have created, and instead try and understand the other person's point of view, craft together narrowly tailored, rational responses. I know that we can solve this problem, and we can do so promptly.

But we are not going to be able to achieve this if, instead, we do what the press reports suggest, which is to go through a sham of a conference that really does not get into the substantive work.

So I do hope that we can approach this in this way. I am willing to do my very best to be flexible and respectful and to come together with my colleagues across the aisle and in the Senate and in the White House.

With that, in the spirit of optimism and hope, I appreciate the willingness to accept the motion, but I hope that it is more than just a motion. I hope it results in some good, solid hard work that extends more than an hour and is certainly not what the rumor control has said.

Mr. Speaker, I include the letter from the Year 2000 Coalition as follows:

YEAR 2000 COALITION,
*June 22, 1999.*

Hon. J. DENNIS HASTERT,
Hon. RICHARD K. ARMEY,
Hon. TOM DELAY,
Hon. J.C. WATTS,
Hon. THOMAS M. DAVIS III,
*U.S. House of Representatives.*

DEAR HOUSE LEADERSHIP: The Y2K Coalition, which has been working with all interested parties to successfully enact legislation which will promote Y2K remediation, is concerned by recent statements by the President's senior advisors that they will recommend the President veto the bill passed by the Senate if that were presented to him for his signature. We are convinced that if such a bill were vetoed, the momentum to legislate on this important matter would be lost. A legislative process that terminates in a veto would be viewed as a complete failure, and would pose substantial risk to the American economy and could result in a serious economic set-back. We therefore urge congressional leaders and the Administration to make every effort possible to avert an impasse and avoid such a catastrophe.

We are confident that, in the course of discussions that may occur, resolution of differences can be achieved. The Coalition will be prepared to offer suggestions for the resolution of such differences.

We further urge you to initiate and conclude such efforts before the 4th of July recess.

Sincerely,

Aerospace Industries Association, Airconditioning & Refrigeration Institute, Alaska High-Tech Business Council, Alliance of American Insurers, American Bankers Association, American Bearing Manufacturers Association, American Boiler Manufacturers Association, American Council of Life Insurance, American Electronics Association, American Entrepreneurs for Economic Growth, American Gas Association, American Institute of Certified Public Accountants, American Insurance Association, American Iron & Steel Institute, American Paper Machinery Association, American Society of Employers, American Textile Machinery Association, American Tort Reform Associates, America's Community Bankers, Arizona Association of Industries, Arizona Software Association, Associated Employers, and Associated Industries of Missouri.

Associated Oregon Industries, Inc., Association of Manufacturing Technology, Association of Management Consulting Firms, BIFMA International, Business and Industry Trade Association, Business Council of Alabama, Business Software Alliance, Chemical Manufacturers Association, Chemical Specialties Manufacturers Association, Colorado Association of Commerce and Industry, Colorado Software Association, Compressed Gas Association, Computing Technology Industry Association, Connecticut Business & Industry Association, Inc., Connecticut Technology Association, Construction Industry Manufacturers Association, Conveyor Equipment Manufacturers Association, Copper & Brass Fabricators Council, Copper Development Association, Inc., Council of Industrial Boiler Owners, Edison Electric Institute, Employers Group, and Farm Equipment Manufacturers Association.

Flexible Packaging Association, Food Distributors International, Grocery Manufacturers of America, Gypsum Association, Health Industry Manufacturers Association, Independent Community Bankers Association, Indiana Information Technology Association, Indiana Manufacturers Association, Inc., Industrial Management Council, Information Technology Association of America, Information Technology Industry Council, International Mass Retail Association, International Sleep Products Association, Interstate Natural Gas Association of America, Investment Company Institute, Iowa Association of Business & Industry, Manufacturers Association of Mid-Eastern PA, Manufacturer's Association of Northwest Pennsylvania, Manufacturing Alliance of Connecticut, Inc., Metal Treating Institute, Mississippi Manufacturers Association, Motor & Equipment Manufacturers Association, National Association of Computer Consultant

Business, National Association of Convenience Stores, National Association of Hosiery Manufacturers, National Association of Independent Insurers, National Association of Manufacturers, National Association of Mutual Insurance Companies, National Association of Wholesaler-Distributors, National Electrical Manufacturers Association, National Federation of Independent Business, National Food Processors Association, National Housewares Manufacturers Association, and National Marine Manufacturers Association.

National Retail Federation, National Venture Capital Association, North Carolina Electronic and Information Technology Association, Technology New Jersey, NPES, The Association of Suppliers of Printing, Publishing, and Converting Technologies, Optical Industry Association, Printing Industry of Illinois-Indiana Association, Power Transmission Distributors Association, Process Equipment Manufacturers Association, Recreation Vehicle Industry Association, Reinsurance Association of America, Securities Industry Association, Semiconductor Equipment and Materials International, Semiconductor Industry Association, Small Motors and Motion Association, Software Association of Oregon, Software & Information Industry Association, South Carolina Chamber of Commerce, Steel Manufacturers Association, Telecommunications Industry Association, The Chlorine Institute, Inc., The Financial Services Roundtable, The ServiceMaster Company, Toy Manufacturers of America, Inc., United States Chamber of Commerce, Upstate New York Roundtable on Manufacturing, Utah Information Technology Association, Valve Manufacturers Association, Washington Software Association, West Virginia Manufacturers Association, and Wisconsin Manufacturers & Commerce.

Mr. GOODLATTE. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), a distinguished member of the committee.

Mr. SENSENBRENNER. Mr. Speaker, I support the motion to instruct, as does the gentleman from Virginia (Mr. GOODLATTE). But since the gentlewoman from California (Ms. LOFGREN) has expressed concerns of the administration, let me say that, first of all, the administration does not legislate under the Constitution. They have the choice of signing or vetoing the work product of both Houses of Congress.

However, the Senate, during its deliberations on this bill, moved in major efforts towards the President's position to try to modify the legislation to address many of the President's concerns. Included are changes in the proportional liability section of H.R. 775, the elimination of the liability caps on directors and officers, the elimination of the reasonable efforts defense, the tort claims, modification of the punitive damages provision in H.R. 775, and elimination of obligations on attorneys to disclose and report certain information to their clients, all of which were in the statement of administration position expressing opposition both to the House bill and to the Senate bill.

So there has been a huge movement in the direction of the President. However, we all know that this President has been very strongly opposed to any changes in tort liability law and any changes in product liability law. This is kind of a product liability bill, because it is dealing with software that is manufactured by computer companies that may or may not fail when the odometer rolls over next New Year's Eve, the danger that exists in agreeing to everything that the President objects to is, by the time we are done, the bill does not do anything. It is merely cosmetic in nature.

Then I think that, if that is the case, the President and the Congress will be equally guilty in fooling the American public that something is being done to shield people from frivolous litigation and destructive litigation when, in fact, that is not the case.

So the conferees, I think, have got to be careful. They have got to make sure that we give a conference report for consideration by this House and the other body which does address this problem and prevent frivolous litigation rather than simply passing a piece of paper, all of us taking a bow, and this bill becomes law, knowing full well that this bill really does not solve the legal problems relating to Y2K liability.

As a conferee, those are the goals I am going to try to achieve, and that is to pass a bill that does something, that addresses these problems. I would hope that the President, in the spirit of compromise, recognizing that the Senate really met him more than halfway with his objections to the House bill, would move a little bit by himself.

Mr. CONYERS. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I appreciate the dialogue coming from both the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Wisconsin (Mr. SENSENBRENNER), and I would say to the gentleman from Wisconsin, many of those issues that he mentioned, as good as we were about working them out, they are more largely peripheral issues.

Now, some have made it clear that the conference's only purpose is to take up the Senate bill, and that is the troublesome part of our job in front of us, strip the Hollings language and send it to the President.

Now, we are not looking for veto bait. What he will do almost surely, if his word can be relied on, and I think that it can, is that he will veto the bill as he has suggested.

Now, the truth of the matter is that I do not think that the sides, the two sides are that far apart. I think that we can work something out. That is my desire and my hope.

But let us confront what the larger differences are. The first point is the extent to which punitive damages are capped. That has not been worked out. It is one that we need to give our most vigorous attention to. Then there is the situation, the extent to which joint liability is limited. That has yet to be resolved. But I think that we are, we are, within close proximity to which we can move forward on it. Then we have the extent to which we will federalize State class actions, another matter that needs to get our careful and cooperative attention.

Now, these are issues that can be resolved. They can be resolved between Republicans and Democrats, and they can be resolved between the administration. Now, I want a bill, and I think all of us here on the floor do. If we want a bill, we are going to resolve these issues. I hope that we will. I know that we can.

If there is any desire on anyone's part to kill the bill, then we can engage in a campaign, a season of finger pointing, and we will end up having a conference that does not attempt real negotiation.

So the question that this motion poses is, which road will we take? How are we going to move here, serious and sincere negotiation which will result in a bill within a week or weeks or an insincere process which will result in failed legislation and probably a veto?

I am confident that we can do the former. I am prepared to bring to the table conferees that will be working very sincerely on accomplishing that.

Mr. Speaker, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Virginia (Mr. DAVIS), the sponsor of the legislation.

Mr. DAVIS of Virginia. Mr. Speaker, I appreciate the gentleman from Virginia (Mr. GOODLATTE) yielding me this time.

It is ironic that we have a Year 2000 Coalition letter referred to on the other side of the aisle, quoting it as somehow gospel. When they supported our legislation here in the House, they were not quoting it then, because they opposed what this Coalition wanted at that point. They did not give this Coalition the tools they wanted.

The Coalition, I have met with them subsequent to this letter. I might add, the letter was not addressed to the gentlewoman. The letter was not addressed to anyone on the other side. It was addressed to the Republican leadership, and we have subsequently had discussions with members of this group. I think that the representation coming from the other side is not quite appropriate, I think, to where everyone is.

□ 1245

We want a solution to this problem. The difficulty is on the other side of the aisle there is absolutely no willingness, no willingness that was put forward in their substitute to put any kind of caps on punitive damages to any companies at all. Small companies, large companies, anyone.

Their proportion liability was a joke. We cannot have proportion liability if, in fact, it is under the circumstances that they have outlined. What they have outlined is that if everybody can pay their proportion, then they get

proportional liability. In point of fact, someone is always missing from the table. And it is a jury question, as they have defined how we get to it. It goes to a jury. And it just, I think, does not give the protection to companies that they need.

I was general counsel for an IT company out in Fairfax. It does a billion dollars a year in sales. I understand the issues that are raised here. What has been proposed by the administration to date does not advance the agendas of these companies one step. Now, if the President would reengage, if he would come and sit with us or send an emissary up to work something out, we have been waiting for this for 6 months. But it was 5 months ago that John Koskinen, who is their Y2K guru, came before our committee in the House and said, we do not need any legislation on Y2K at all.

They subsequently backed off that, but they have offered nothing in the way of punitive damage caps. They have offered nothing in the way of proportion liability that makes any sense today. They have offered nothing in the way that gives anybody any kind of protection that we want. If they have some suggestions, we are happy to hear from them.

We know what their, quote, bipartisan substitute was that was brought up on the House floor during the debate. It got one Republican vote. That is how bipartisan it was. We got 28 for our legislation. Now, we are willing to compromise with the Senate, and we are willing to work with the President, but we have to have something on the table, and at this point they have remained silent. As the chief author of the legislation, we have had zero contact from the White House on this, despite numerous entreaties that we engage in a dialogue.

American industry wants this problem resolved. The worst thing that can happen is to pass the legislation they put before the House earlier that does absolutely nothing and to have tens of billions of dollars, perhaps a trillion dollars, as the Gardener Group estimated, from these companies going into attorneys' fees, litigation, or punitive damages instead of going to putting these profits into the production of new products so they can compete in the global marketplace, and instead of hiring and training new workers so we can remain atop the world economy on these IT issues. And that is what this is about.

We certainly, certainly entreat our colleagues to engage in a dialogue with us, but it has to be a real dialogue. And nothing I have heard from the other side today and, more importantly, nothing we have heard from the White House indicates any willingness at this point to come to the table at all on these issues.

We have a House version that is a pretty strong and a pretty good bill, and I do not just say that because I authored it, I say it because 230 Members of this body supported it and lined up behind it. We have a much, much weaker Senate version. And we are, I think, willing, in a very short period of time, within a very limited window of time, to engage in discussions with the administration and interested Members to bring about a solution to this problem. But we are not going to let the administration string this thing out for months and let this roll, which, if we left it up to them, is exactly what would happen.

We have to force the issue. If a veto is the end result, it will be regrettable. It will not have achieved the goals we had coming in, and we will do anything we can to work this out. But it takes two to talk, and to date the White House has been silent.

So I think we need to move ahead and appoint the conferees. I think we need to move with the Senate. If the President wants to engage in a dialogue, now is the time. This legislation has got to be out and working and in operation before we go to the July 4 recess, and if the outcome is a veto, so be it.

I just hope that the administration will engage. We can put legislation on his desk that will have the vast majority, if not veto-proof numbers from both Houses, and we can show the President that the American people as well as the titans of industry want this legislation and need it, and that they will come around and work with us.

Mr. CONYERS. Mr. Speaker, I yield myself 15 seconds.

I want to say to my good friend from Virginia (Mr. DAVIS), let us keep hope alive. Let us not assume that the White House has shut down negotiations or the process. That is not the case at all.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I am concerned, as I hear the tenor of this discussion, that we might, in fact, not have the kind of substantive conference that I think is going to be required.

I do not agree with the White House on everything, far from it, but I have contacted senior members in the White House repeatedly to find out what their views are, why they hold those views. I have also contacted key players in the technology community. As my colleagues might expect, because my district is Silicon Valley, I have talked often to general counsels and CEOs on this issue, and I know that there is plenty of room to craft a bill that resolves issues for high technology and that will get a signature from the President.

But it is going to take some time and work to do that, and to say that we need to pass the Senate bill before the July 4 recess, and if there is a veto, well, so be it, that does not solve the problem. What we need is a law to be enacted. And we can do that, but it has taken 6 months for this conference to begin. The maximum allowable time for a conference is 20 days. I do not think we would need 20 days, but we are going to need more than an hour to find common ground.

Mr. GOODLATTE. Mr. Speaker, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, the gentlewoman referred to the letter that was sent to the Republican leadership, and yet she indicates that we need to take some time to resolve this. This letter urges us to conclude the process by the July 4 recess.

Ms. LOFGREN. Reclaiming my time, Mr. Speaker, I think it is quite possible to do that. But if instead of doing a conference and coming up with a piece of legislation that can get support from both sides of the aisle and can get a signature from the White House, which I know we could do, if instead of that effort in a productive conference we instead just jam the Senate bill through both bodies up to the White House for the veto that he has already said awaits it, then we will have done something before July 4, but it will not have been anything very productive for the companies that require a resolution and remediation of this problem.

I hope, and I believe my colleague the gentleman from Virginia (Mr. Goodlatte), who I have worked very closely with on many technology issues, I believe him when he says he wants to accept the motion to instruct. I am just concerned that some of the rhetoric can lead me to a contrary conclusion; that we are not really, all of us, going to work together in the way we need to and that we could do.

Mr. GOODLATTE. Mr. Speaker, I yield myself 30 seconds to respond to the gentlewoman by saying that the President has not indicated that he would veto this legislation. Some of his advisers have indicated that they will recommend to the President that he veto it.

I think that is very poor advice, given the urgency that we address this problem immediately, given the fact that we have two good bills to work with between the House and the Senate and that we will come up with a very good solution that we would urge the President to sign.

Mr. Speaker, I yield 30 seconds to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Speaker, let me just ask, what is wrong with appointing conferees today? I think we can all agree that until we get the conferees in place, we cannot negotiate with anybody. So we appoint the conferees today, and I hope we will get a unanimous vote on that, and then we can argue it in conference, and, hopefully, the administration will engage.

But I might add that the substitute put up by my friend, the gentlewoman from California (Ms. LOFGREN), was overwhelmingly rejected by this White House when it was put up before. The members of the Year 2000 Coalition,

many of the members in her own district, did not support that legislation. And if that is the basis for a compromise, that is not a compromise at all.

Mr. GOODLATTE. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me this time, and I congratulate him for his fine efforts on this, and my friends on the other side of the aisle who have worked on this, and, of course, our lead sponsor, the gentleman from Virginia (Mr. DAVIS), who has been working long and hard on it.

Let us look at what it is we are trying to address. Y2K litigation reform is about one thing and one thing only, and it is about keeping our economy strong. We have to take a close look at where we have been on this Y2K litigation reform issue. I began working on it over a year ago. So what is it that has now happened? The House passed a very solid, bipartisan, comprehensive bill. And again, I underscore the fact that it was reported out of this House with bipartisan support.

The Senate passed a bill that is unquestionably weaker than the House bill. It is the Dodd-Wyden-McCain bill. It is not a Republican bill. And, in fact, it is really a bare bones bill when we get right down to it. Finally, we have we have what is known as the Kerry proposal, which industry groups unanimously agree is so weak that it would not help to alleviate the Y2K litigation concerns out there. In fact, it failed miserably in both the House and the Senate. And the main reason for that is that those individuals, those companies, those engineers, those technicians who are trying their doggonedest to find a solution to the Y2K problem are, in fact, not helped at all with any kind of relief if we were to go ahead with the Kerry proposal.

So I want very much to see the President sign an effective bipartisan Y2K litigation reform bill, even if it is not exactly what we did here in the House, which is the measure that I support most strongly. We are, in fact, on this side, looking forward with what I believe is really a spirit of compromise. I sincerely want to see us do that. In fact, I am not one of those who is a proponent of gross politicization of this issue. Why? Because we have a very serious potential problem out there, and uncertainty is very great.

So as we have actually said since day one, we want to address the Y2K concerns just as quickly as possible. And that gets to the point that was just discussed between my friends on this side of the aisle and the other. We have that letter that was just referred to by the gentleman from Virginia (Mr. GOODLATTE) where the Coalition talked about a July 4 date. We want to move quickly. In fact, one of the jokes was that we might come up with some kind of Y2K litigation reform by 2001. Obviously, that would be way too late. We have been working for 6 months on this measure. And with uncertainty out there, I think everyone can agree that it is our desire to move just as quickly as we possibly can.

This legislation has, in fact, been working its way through what has been a very open legislative process in both Houses over the last several months. The compromise that was reached in the Senate was the product of very, very long and hard bipartisan efforts that were launched. Again, it is not a Republican bill that passed over there. It is a bill that has people like our former colleagues, Mr. WYDEN and Mr. DODD, working with Mr. MCCAIN. So it is itself is a bipartisan measure.

In many ways, and this is the argument that we are making, the bill that did pass the Senate is what could really be considered a conference compromise. But what we have said is that there are some concerns that do need to be addressed, and so what we are doing here today is we are moving to go ahead with the conference. We want very much to do that.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I want to commend the chairman of the Committee on Rules for what he said here, because his remarks have underscored what I think we are saying: compromise.

We have to move to another position. We can do it. A week or so would be adequate. And I am just putting that on the table. But the whole point is that the gentleman is right. A legislative process that ends in a veto would be a huge setback, and that is what I think the Coalition was trying to tell us in the letter.

Mr. DREIER. Mr. Speaker, reclaiming my time, I thank my friend for his contribution, and let me just say that I think a veto would be a veto of what really is a bipartisan compromise. And we have to recognize that what has emerged from the other body is not a Republican bill. And again, what emerged from this body was not a Republican bill, it was a bipartisan measure.

Trying to find that balance between something that is strong enough to ensure that those who are looking for a solution are in a position to address it and, at the same time, addresses the concerns of others is the wisest thing we could do. We need to move ahead with a streamlined, bipartisan compromise, and I think we have got it in the Senate with a couple of minor modifications.

So I wholeheartedly support this effort to go to conference.

□ 1300

Mr. CONYERS. Mr. Speaker, how much time remains on each side?

The SPEAKER pro tempore (Mr. PEASE). The gentleman from Michigan (Mr. CONYERS) has 15 minutes remaining, and the gentleman from Virginia (Mr. GOODLATTE) has 11 minutes remaining.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I still commend the chairman of the Committee on Rules. I just wanted to caution him that a couple of things remain, and they may not be tiny. Joint liability, class action, and punitive action do not sound like small issues that can be resolved easily or quickly. That is why we want to move forward, and that is why we come to my colleague and support this motion.

We want conferees appointed. We want to begin our work. But it seems to me not totally accurate to say that the administration has not been involved in the process. They have not been silent. They have been working with us. The high-tech community says that they want us to work together to resolve the differences.

I want to conclude before July 4, but I would rather conclude with something we can take back to both bodies if it takes a little longer than that then to end up in a veto position. We do not want to serve up veto bait. I think the warnings of the administration's representatives have been pretty clear in that regard.

I hark back to this letter that has been re-interpreted here. ''A legislative process,'' this is the Year 2000 Coalition, ''that terminates in a veto would be viewed as a complete failure.'' I could not agree more. And I think we are all in agreement with that.

So let us get to it, gentlemen. Let us roll up our sleeves and let us start moving along.

Let me pose this question to the gentleman from Virginia (Mr. GOODLATTE). Are the issues of joint liability and class actions and punitive damages really on the table, or are these issues really not on the table and we are going to end up with the Senate bill minus Hollings? Because it seems to me that is the heart of how we move forward and make sure there is no impasse.

Mr. GOODLATTE. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding.

Everything is on the table before we go to conference. I will, on my own time in a moment, address the efforts that have been made to take into account the input that the administration claims to seek with regard to that.

Mr. CONYERS. Mr. Speaker, reclaiming my time, can the gentleman assure us that the conference will have a serious discussion on these three items? Because I know everything is on the table, but not everything is in dispute.

Mr. GOODLATTE. Mr. Speaker, if the gentleman would further yield, surely there are differences between both the House and the Senate on those

two items. So, therefore, there will have to be some discussion with regard to the final disposition of the legislation.

Mr. CONYERS. Mr. Speaker, then will we be able to negotiate not only with ourselves but with the administration on these subject matters?

Mr. GOODLATTE. Mr. Speaker, it is my hope that we will have input from the administration.

Mr. CONYERS. Mr. Speaker, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to work with the gentleman from Michigan (Mr. CONYERS) and the gentlewoman from California (Ms. LOFGREN) on this issue. I will say to them that I appreciate their concern about the administration's input but, quite frankly, their concern exceeds the concern of the administration.

Let me just point out a few things. First of all, I have had the honor of managing this bill both in the Committee on the Judiciary and on the floor of the House, and to this day I have not received one contact, one communication from the administration with regard to this legislation.

The gentleman from Virginia (Mr. DAVIS) is the principal sponsor of the legislation and he has never received one bit of input from the administration. I checked with my staff to see if perhaps the staff was contacted. Neither my legislative director nor the committee staff has been contacted by the administration to give their input on this legislation.

In fact, the only contact with the administration regarding their input came from the committee, because the committee contacted the administration and invited them to testify before the Committee on the Judiciary, and they declined our offer to have a representative of the administration come and testify before the committee and have input with the committee regarding this.

So while I know the gentleman from Michigan (Mr. CONYERS) and the gentlewoman from California (Ms. LOFGREN) are sincere in their desire to have input from the administration, I certainly hope that the administration's statements regarding this legislation contain the sincerity to work out this problem and address Y2K in a manner that immediately puts to work the Nation on solving the problem rather than setting up a massive problem with litigation.

Mr. DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Virginia.

Mr. DAVIS of Virginia. Mr. Speaker, let me ask my friends, the gentleman from Michigan (Mr. CONYERS) and the gentlewoman from California (Ms. LOFGREN), we are talking about compromising, but from their perspective, not the administration's, are they willing to support the Senate bill, basically the outlines, the parameters of the Senate bill in terms of concept, particularly in mind with punitive damages caps, or is that too far for them?

Mr. CONYERS. Mr. Speaker, if the gentleman would yield, the problem is that framework that the President has said that he would veto.

Mr. DAVIS of Virginia. Mr. Speaker, if the gentleman would continue to yield, so my colleagues would not support it because the President would not support it?

Mr. CONYERS. Mr. Speaker, let me ask the gentleman, can we negotiate with the administration? Maybe they were talking to so many staff that they did not know that the staff of the gentleman was not there.

Mr. DAVIS of Virginia. Mr. Speaker, let me just say to the gentleman, they know how to reach me. They know my interest in this.

Mr. GOODLATTE. Mr. Speaker, reclaiming my time, let me say that while the administration has not contacted us, they have put out into thin air their administration's Statement of Policy, which we have carefully reviewed. In fact, they put out two, one prior to the House legislation and one prior to the Senate legislation. We have carefully studied these statements, and I can tell my colleague that the overwhelming majority of the principles outlined by the President are contained in either the House bill or the Senate bill or both.

And so, if the President is intent upon vetoing this legislation because of the few small remaining matters that are not addressed in either the House bill or the Senate bill, I think there is a great deal of disingenuous behavior on the part of the administration if that is the case.

Mr. DAVIS of Virginia. Mr. Speaker, would the gentleman yield for just a comment?

Mr. GOODLATTE. I yield to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Speaker, it seems to me that we could be helped by our friends on the other side if instead of representing the administration they would represent their constituents and urge the administration to work towards signing a bill instead of trying to give them cover and not voting for a bill unless they approve it. I think that is what our constituents are telling me, let us put forward that. And if the administration wants to come in, we are open to negotiate even at this late hour even though they declined to come to the hearings and testify and have declined to notify and talk to our offices.

Mr. GOODLATTE. Mr. Speaker, the gentleman makes a very good point. But let me point out the things that are in the Statement of Administration Policy that are contained in these bills.

The pre-litigation procedures contained in the legislation are compatible with the pre-litigation procedures outlined in the Statement of Policy. The pleading requirements are compatible. The class action, with the exception of the point regarding class action remedies, should be retained and State courts should continue to hear State class actions, in point of fact, States will continue to hear State class actions. It is only class actions that involve a Federal class that would be changed. The duty to mitigate damages that they set forth, that is contained in either the House or the Senate or both.

The contract interpretation provisions are the same in the House and the Senate or both. The joint and several liability they have expressed in their statement support for change from the traditional joint and several liability to proportionate liability. They expressed some concerns about the House version. Those are addressed in the Senate version. The economic loss issue is addressed in either the House or the Senate or both.

Ms. DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Virginia.

Mr. DAVIS of Virginia. Mr. Speaker, let me just say I want desperately to work something out with the administration and that has been our goal from day one. But I am not going to surrender principles, and I am not going to surrender on issues the point that we are not passing any legislation at all that does any good to the people we are trying to help. I cannot do that in good conscience.

I would rather, under those circumstances, let my constituents know I did my best to help them and the President vetoed them than to come up with nothing. But we are willing to compromise our goal. Our goal and our hope is that we can work something out in this. But time is very, very short. We have been playing a delay game now for months. It cannot go on much longer. The conference will start. I hope they will address the conference, give their input, and we can work something out. But if not, we have got to move ahead.

Mr. GOODLATTE. Mr. Speaker, I yield to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I just want to make this point. I think sometimes we rush and abbreviate and then we end up paying for it down the road.

Looking back, I know it certainly was not the fault of the gentleman from Virginia (Mr. GOODLATTE) because he and I had a private discussion on this, but the draft of this legislation was not available for very long before the Committee on the Judiciary went into markup. There was one business day between Judiciary markup and being in the Committee on Rules.

So we rushed it through. We could have gotten I think better input had we taken more time. That is history now. We cannot undo it. But I think that if we take the time at this point, we will be able to resolve these issues.

As I said, we put together an alternative. It got 190 votes. But I am not wedded to that. I have got very favorable feedback from CEOs in Silicon Valley on that effort. But it is not perfect. And there are ways to make that better or to make the Senate bills better. But we need to think outside the box. We cannot just be controlled by the Senators' names on which bills. It is think outside the box. It is think in terms of the functionality of relief that is required, and we will get there.

Mr. GOODLATTE. Mr. Speaker, reclaiming my time, I hope that we do have a substantive conference that considers the House bill, which I think is a very strong bill. I was pleased to work with the gentleman from Virginia to craft it and see that it got through the House with a strong bipartisan vote. The Senate bill, while it does not go as far as I would like to see the legislation go, is a bill that I certainly can work with Senator MCCAIN and other representatives of the Senate, and we certainly want to have that input from the administration.

The only issue that I have not mentioned yet with regard to the broad subjects of this bill is the cap on punitive damages. It is clear the administration does not like the House bill. The Senate version is considerably watered down from the House version. So between the House bill and the Senate bill there is a lot to work with to enable us to come up with a very, very good bill; and we welcome the administration's input as we work to come up with that.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just a couple corrections. One is that the White House has communicated to every member on the committees and the leadership, indeed every Member in the House. So they have not heard back. If my colleagues have not communicated with them, I mean these letters are to initiate communication. So that the communication may have been one way, but it certainly is not the White House's responsibility after they have reached out.

Secondly, the Department of Justice sought to testify in the House Committee on the Judiciary and they were put in a very difficult position and were not able to do that.

So it is not the White House that has not been out of communication. But that is not the issue here today. What we are talking about is whether or not the questions of joint liability, class action, and punitive damages caps are really on the table.

I think I have heard from the Members on the other side of the aisle that they are. If they are, we are all set to take care of the real problems. And if we do that, we will be able to take care of a conference that will, I think, reflect confidently and positively on both Houses.

The main thing that we want to do is not end up in a situation where we have ignored one branch of Government that would force them into a veto situation. And that is the only reason I am mentioning them today in this debate.

Mr. Speaker, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Virginia (Mr. MORAN) from the other side of the aisle to close the debate for us.

□ 1315

Mr. MORAN of Virginia. Mr. Speaker, I would hope that when we get into conference, that we support as much as possible the principal elements of the House bill, because the House bill makes common sense.

A special committee of the American Bar Association was put together to look at the potential Y2K litigation. They concluded that the potential cost of litigation on Y2K could be more than asbestos, breast cancer implants, tobacco and Superfund combined. They concluded that the litigation cost associated with Y2K could be as much as $1 trillion.

Now, if the cost of fixing the problem is only a small fraction of that $1 trillion, do we not have a responsibility as representatives of the American people to try to fix the problem, to avoid injuries, damages, problems before they occur? We do not want to wait, do we, until January 1st of the year 2000 and then get into a long, extended legal battle in every part of our economy and our society? We have a responsibility to fix the problem.

When we talk about punitive damages, basically the lesson is, ''Go and sin no more.'' That is the lesson we want to tell people. But the fact is, this is a one-time occurrence. The same rules do not apply. We have got one serious situation and it arises by virtue of the fact we are in a technology revolution, things have changed, we have got to get over this change in dates. We can do it, we can do it responsibly, we can avoid spending $1 trillion to accomplish nothing, or we can do the people's will and prevent problems before they occur.

Let us do the right thing. I would hope we would get a conference report that would resemble the House bill as much as possible.

Mr. CONYERS. Mr. Speaker, I yield myself 45 seconds to ask my friend from Virginia if he supports the principle of compromise that we have argued, that all parties, not just the House and the Senate, but the White House, too, has to indulge in for us to accomplish our goal? This is where we are at now.

Mr. MORAN of Virginia. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. MORAN of Virginia. I totally agree with that, but I think the gentleman also agrees, our job is not to pad the pockets of the trial lawyers but it is to prevent problems from occurring and to ensure that we represent what is in the best interests of the American economy and the American society. Sometimes there is a conflict between those two. But I agree with what the gentleman said, and I hope that we can be in agreement when the conference report comes back on the floor.

Mr. CONYERS. I tell the gentleman that that is absolutely not in contention now. I am just hoping that he can support the Conyers-Lofgren motion to instruct which is about the compromise around three major issues that are still out.

Mr. MORAN of Virginia. The answer is yes, I think we all will and we all should.

Mr. CONYERS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I just would note that the gentleman from Virginia mentioned the study done by the American Bar Association on the potential exposure of the American economy to litigation, and I think that is a serious issue. That is why we are all here. But I would note that, I think all of us received a copy of the letter sent by the American Bar Association to the President yesterday pointing out that the ABA opposes both the Senate bill and the House bill and this letter details the reasons why.

One of the issues that is in contention has to do with federalizing all the class actions relative to Y2K litigation. The Chief Justice of the United States Supreme Court opposes that, and I think he knows how Federal courts work and how our court system works. So these are serious issues. They need to be addressed, they need to be remediated, and they can be.

I have been in communication, as I have mentioned, with many, many of my constituents in Silicon Valley who are interested in this issue. Some of the issues in the Senate bill are meaningless to them, it is not important to them in terms of resolving things. Some of the issues are important. For example, joint and several liability is a very important issue and does need to be addressed.

I will say this, that the White House has moved from no change in joint and several liability to the possibility of change in joint and several liability, but I would also note that there are five or six different ways to deal with that issue, all of which would resolve the problem for high tech. And so it is that kind of approach we are going to need, thinking outside the box, and applying solutions to problems rather than embracing bills that have been drafted and are in play.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

In conclusion, we have made it clear that, first of all, we want everyone to support the Conyers-Lofgren motion to instruct. Secondly, if we want a bill,

then we will resolve these outstanding issues. Everyone has spoken in the spirit of compromise. The question that this motion poses is which road we will take. Are we going to engage in serious, sincere negotiation which will result in a bill in a week or so or an insincere process that will lead to the finger-pointing that will be inevitable with a veto?

I urge my colleagues to support the motion to instruct.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEASE). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 426, nays 0, not voting 8, as follows:

[Roll No. 253]

YEAS—426

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Clay
Clayton
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Oxley
Packard
Pallone
Pascrell
Pastor
Paul
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Schakowsky
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Traficant
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—8

Brown (CA)
Clement
DeLay
Ehrlich
Gilchrest
Kasich
Rogan
Towns

□ 1343

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. PEASE). Without objection, the Chair appoints the following conferees:

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Messrs. HYDE, SENSENBRENNER, GOODLATTE, CONYERS, and Ms. LOFGREN.

From the Committee on Commerce, for consideration of section 18 of the Senate amendment, and modifications committed to conference:

Messrs. BLILEY, OXLEY, and DINGELL.

There was no objection.

## PROVIDING FOR CONSIDERATION OF H.R. 1658, CIVIL ASSET FORFEITURE REFORM ACT

Ms. PRYCE of Ohio. Mr. Speaker, by the direction of the Committee on Rules, I call up House Resolution 216 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 216

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the bill modified by the amendment recommended by the Committee on the Judiciary now printed in the bill. Each section of that amendment in the nature of a substitute shall be considered as read. Before consideration of any other amendment it shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, which may be offered only by Representative Hyde or his designee, may amend portions of the bill not yet read for amendment, and shall be considered as read. No further amendment to the amendment in the nature of a substitute made in order as original text shall be in order except those printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII and except pro forma amendments for the purpose of debate. Each amendment so printed may be offered only by the Member who caused it to be printed or his designee and shall be considered as read. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the

Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1345

The SPEAKER pro tempore (Mr. PEASE). The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 216 is a modified, open rule providing for the consideration of H.R. 1658, the Civil Asset Forfeiture Reform Act.

The Committee on the Judiciary reported the bill by a bipartisan vote of 27-to-3, which demonstrates the broad support this legislation has garnered across the ideological spectrum.

The list of organizations that have endorsed H.R. 1658 ranges from the Eagle Forum, Americans for Tax Reform, and the NRA, to the National Association of Criminal Defense Lawyers, the American Bar Association, and the ACLU.

Despite this broad support, there are some who feel that this legislation may go too far, and the rule accommodates these concerns by providing ample opportunity to debate and amend the bill.

Under the rule, 1 hour of general debate will be equally divided among the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill and, for the purpose of amendment, the rule makes in order the amendment in the nature of a substitute modified by the amendment recommended by the Committee on the Judiciary, which is now printed in the bill.

First, it will be in order to consider an amendment printed in the Committee on Rules report, which may be offered by the gentleman from Illinois (Mr. HYDE) or his designee.

The Hyde amendment clarifies that the bill applies only to civil asset forfeiture, not criminal asset forfeiture. Few dispute that it is proper for the government to seize the yachts, planes and mansions of convicted drug dealers who finance their possessions with illegal drug money. Therefore, the bill does not alter the law with regard to criminal asset forfeiture.

What H.R. 1658 seeks to address are the abuses of civil asset forfeiture law, where the government can seize the property of a person who may never be accused of any crime or wrongdoing. The Hyde amendment makes the focus of this bill unmistakably clear.

After consideration of the amendment of the gentleman from Illinois (Mr. HYDE), the rule allows the House to debate and vote on any amendment, as long as it has been preprinted in the CONGRESSIONAL RECORD and complies with the Rules of the House.

To ensure the orderly and timely consideration of H.R. 1658, the Chair is given the option of postponing votes and reducing voting time to 5 minutes on postponed questions, as long as the first vote in the series is a 15-minute vote.

Finally, the rule provides the minority with the option of offering a motion to recommit with or without instructions.

Mr. Speaker, American citizens hold dear the protections they are afforded under our Constitution. Sometimes, we take these rights for granted, but we are quick to identify violations of the principles that serve as a foundation of our system of justice and government.

Our current civil asset forfeiture laws, at their core, deny basic due process, and the American people have reason to be both offended and concerned by the abuse of individual rights which happens sometimes under these laws.

Today, the government may seize the assets of any individual if there is probable cause to believe that these assets have been part of some illegal activity. Strange as it may sound, the legal tenet behind this process is that it is the property that is being accused, not the person. That means that even if there is no related criminal charge or extra conviction against the individual, the government may confiscate his or her property. And the current law gives little consideration to whether the forfeiture of the property results in a mere inconvenience to the owner, or jeopardizes the owner's business or very livelihood.

All that is required of the government is a demonstration of probable cause, an unreasonably low standard of proof, given the fundamental property rights at stake. Then the burden shifts to the property owner, who may have done nothing wrong and may have absolutely no knowledge of any crime to prove that his property is not subject to forfeiture.

To reclaim his property, the owner must overcome a number of obstacles that turn the principles of presumed innocence on its head.

To contest a seizure of property, the owner must come up with $5,000 or a 10 percent cost bond, whichever is less. This serves little purpose other than to discourage individuals from seeking justice, and may even preclude low-income folks or those who have been made poor by the seizure of their assets altogether.

Then, if the owner can come up with the money and afford to hire a lawyer, he has the burden of proving, by a preponderance of the evidence, that his property is ''innocent.'' And again, under current law, if the owner succeeds in reclaiming his property, the government owes him nothing for his trouble; no apology, no interest, no compensation, nothing whatsoever.

H.R. 1658 would put into check the possibility of government to unintentionally trample over the rights of innocent citizens in its rightful pursuit of the criminal element in our society.

Again, this bill does nothing to prevent the confiscation of assets owned by convicted criminals. It applies only to civil asset forfeiture in an effort to restore due process for law-abiding citizens who are not accused of doing any wrongdoing.

The bill includes eight reforms to restore fairness to the law.

Under H.R. 1658, if a property owner challenges a seizure, the burden would be placed on the government to prove by clear and convincing evidence that the property is ''guilty'' and is subject to forfeiture. In cases where the confiscation of property imposes substantial hardship on a citizen, judges would have the flexibility to release the property before final disposition of the case. Judges also would be able to appoint counsel for indigent citizens in civil forfeiture proceedings to ensure that the poorest in society are protected from the government's exercise of power. In addition, property owners would no longer have to file a bond, and they could sue if their property is damaged while in the government's possession.

The bill also provides for interest payments to a property owner who is successful in winning his money back.

Other reforms would increase the time period during which a citizen may challenge civil forfeiture and provide a uniform defense for innocent owners who knew nothing of the illegal use of their property or did all that they could reasonably do to prevent it.

Mr. Speaker, these are reasonable reforms that bring the scales of justice closer to balance and to protect the rights of Americans. For those who disagree, the rule provides an opportunity to debate the finer points of the law and amend the legislation, if it is the will of this House.

I look forward to today's debate, and I hope my colleagues will give serious consideration to the fundamental issues of fairness that this legislation embodies. I urge the swift passage of the rule so that the House may proceed with the bill's consideration.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank my good friend, the gentlewoman from Ohio (Ms. PRYCE) for

yielding me the customary time, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, while I generally support this rule, I do not support the requirement that amendments to this bill must be preprinted in the CONGRESSIONAL RECORD. We offered an amendment in the Committee on Rules to delete this provision from the bill, but it was defeated.

I am concerned that there seems to be an increasing pattern on the part of my friends on the Committee on Rules majority to report rules which allow only those amendments which are preprinted. This may be helpful to the committee of jurisdiction in preparing for the floor, but it can be troublesome to the rest of the House Members who are then limited in their opportunities to contribute their ideas to the overall debate. A truly open rules process does not limit the offering of amendments in this way.

The Civil Asset Forfeiture Reform Act, H.R. 1658, gives people whose property has been seized by the Federal Government because of alleged connection to criminal activity improved chances to recover that property.

To some degree, we are today attempting to amend the law of unintended consequences, a law of nature which usually applies in situations where apparent only through the luxury of hindsight.

Civil asset forfeiture in its current form was created to fight the war on drugs. Law enforcement officials have reported that civil asset forfeiture is one of law enforcement's most effective tools and have expressed concern that H.R. 1658 would impair the ability of law enforcement to deprive criminals of the proceeds of their illegal activities, and I hope that an amendment will pass today that will satisfy the concerns of law enforcement.

However, in recent years, many have complained that the government's authority to seize property has been used excessively and has resulted in abuse suffered by innocent property owners.

Civil assets forfeiture differs from criminal assets forfeiture in that criminal forfeitures are part of a criminal proceeding against a defendant, and the verdict of forfeiture is rendered by a court or jury only if a defendant is found guilty of the underlying crime.

In contrast, civil asset forfeiture focuses on property connected to an alleged crime. The government targets the property, and because the property itself is the defendant, the guilt or innocence of the property owner is said to be irrelevant.

This bill requires the government to prove by clear and convincing evidence that the property confiscated was subject to forfeiture because of illegal misuse. Under current law, the burden of proof lies with the person whose property was seized, and the government has only to show probable cause that the property is subject to forfeiture.

Under the bill, an owner would not be required to forfeit property at the time of the illegal conduct if the person did not know of the conduct giving rise to forfeiture; or, if the property owner did all that he reasonably could to keep the property from being used illegally. The bill requires the Federal Government to give 60 days written notice when confiscating private property.

Under the bill, a person would also be entitled to the immediate release of seized property if continued possession by the government would cause substantial hardship, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless.

Moreover, the bill provides financial damages to be paid for the destruction, injury or loss of goods or merchandise while forfeited property is in the government's possession.

As was pointed out during the hearing in the Committee on Rules hearing, this bill is sponsored by the members of the Committee on the Judiciary on both sides of the aisle who often represent divergent points of view. The fact that they are in concert regarding this measure favorably commends it to the House.

Mr. Speaker, I reserve the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Arkansas (Mr. HUTCHINSON), a member of the Committee on the Judiciary.

Mr. HUTCHINSON. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I want to express my support for this rule which allows consideration of the base bill, but also a substitute bill that has been offered by myself, the gentleman from New York (Mr. WEINER) and the gentleman from New York (Mr. SWEENEY). This substitute that is being offered is drawn from the provisions of a bill that passed out of the Committee on the Judiciary last year that was supported by both the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary, and the gentleman from Michigan (Mr. CONYERS), the ranking member of that committee, and the Justice Department.

□ 1400

It was a compromise proposal that accomplished significant reform, but also did not do damage to the legitimate interests of law enforcement. So that is the essence of the substitute that will be considered under this rule.

I want to take this opportunity to extend my appreciation to the gentleman from Illinois (Chairman HYDE) for his leadership on this critical issue. Certainly in our society we know there is need for reform, so he has led the fight on that. This substitute I believe improves on the effort that he is trying to accomplish in a way that is consistent and balances the interests of law enforcement.

Some of the things provided in the substitute include very similar provisions to the base bill in terms of protecting our citizens. It includes eliminating the cost bond, it includes reimbursing claimants for damage the government might do to an innocent person's property. Most importantly, it shifts the burden of proof to the government in an asset forfeiture case, and it also provides paying of interest on assets that are returned.

So there are many similarities and significant reform, accomplished both in the substitute and the base bill. But there are some significant differences as well.

The first one and probably the most significant is the burden of proof. The substitute that is offered continues to ensure that the government bears the burden of proving that the property has been used in illegal activity, but maintains the same standard of proof as in all civil cases, which is a preponderance of the evidence.

Let us examine the distinction, here. If the standard of proof is clear and convincing, then there will be cases in which the government can show by the weight of the evidence that the money was used in criminal activity, but yet the criminal will be able to maintain those assets. I believe that is fundamentally wrong.

The greatest problem with the high standard of proof, clear and convincing standard, is whenever there is that sophisticated international money laundering on behalf of the south American drug cartels. Such schemes invariably involve shadowy transactions through bank secrecy jurisdictions conducted by shell corporations claiming to be in the travel, import-export, or money remitting businesses.

Most of these cases are dependent upon circumstantial evidence, so it would be difficult to prosecute to obtain those assets with such a standard that is unusual in ordinary civil cases.

The American people certainly want fairness in their forfeiture laws, but they do not want to grant extraordinary protections to the financial henchmen of the drug lord. So that is the distinction.

Another one is in reference to appointment of counsel. The Department of Justice undertakes 30,000 seizures a year, most of them in drug and alien smuggling cases. The base bill authorized the appointment of counsel in all of those cases, at taxpayers' expense. For anyone who asserts an interest in the seized property, the potential for abuse is clearly there.

The substitute continues to allow for the appointment of counsel, but with greater safeguards to eliminate that abuse.

There are other distinctions in there. The innocent owner defense is somewhat different in the substitute language. The base bill provides that when

there is an innocent owner, and there are de facto innocent owners who are bona fide purchasers, and those also who receive the property through probate. We see that as a problem. The substitute maintains that innocent owner defense but ensures that the provision will not be used by criminals to shield their property through sham transactions.

For example, the probate provision would allow a drug dealer to amass a large fortune, and then to transfer that by his will to his criminal cohorts or his mistress, and upon his death, if he has died in a shootout or an arrest, then it would transfer without being able to to be seized, even though it is clearly the result of drug trafficking. So that is fundamentally wrong, and the substitute would correct that problem.

There are a number of other distinctions, Mr. Speaker, in the base bill and the substitute that is being offered, but we believe that the rule is fair that allows this. It would allow a fair debate on this.

I will point out that law enforcement has expressed concern in the base bill, from the Drug Enforcement Administration to the International Association of Chiefs of Police. So I would ask my colleagues to support the rule.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I thank the gentlewoman for New York for yielding time to me.

Mr. Speaker, I rise to indicate that on our side we support the rule, a modified open rule, and urge its support by all the Members. We want to try to proceed to general debate and the amendments, and hope that this measure may terminate and be concluded in final passage by this evening.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me reiterate that the criteria does nothing to undermine laws that allow for the confiscation of property in the case of a convicted criminal. Instead, the bill focuses on the potential abuse under civil forfeiture laws when a property owner may not be accused of any crime or wrongdoing.

The reforms in the bill protect the rights of innocent citizens to basic due process. The bill has the support of numerous organizations who span the ideological spectrum, but if my colleagues do not share the views of this broad coalition, they are free to offer amendments under this fair rule.

Every Member of the House should support this rule, which provides for a full and fair debate on civil asset forfeiture reform in the interest of restoring fairness to our system of justice. I urge a yes vote on the rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material in the RECORD on H.R. 1658.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

## CIVIL ASSET FORFEITURE REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 216 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1658.

□ 1406

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, about 6 years ago I was reading a newspaper and I read an op ed article in the Chicago Tribune explaining a process that goes on in our country, and I must tell the Members, I could not believe it. I thought that over 200 years we had ironed out what due process meant, what equal protection under the law meant. But I found out that there are corners in our legal proceedings into which light needs to be shed. One of them concerns civil asset forfeiture.

There are two kinds of forfeiture, criminal asset forfeiture and civil asset forfeiture. What is the difference? The difference is in criminal asset forfeiture you must be indicted and convicted. Once that happens, the government then may seize your property if your property was used, however indirectly, in facilitating the crime for which you have been convicted.

You are a criminal, you are convicted, and they seize your property. I have no problem with that. I think that is useful in deterring drug deals and extortionists and terrorists. I have no problem with criminal asset forfeiture.

But the other type is civil asset forfeiture. That is a horse of a different color. In civil asset forfeiture, the government, the police, the gendarmes, can seize your property upon the weakest, most flimsy, diaphenous charge, probable cause. Probable cause will let you execute a search warrant or maybe frisk somebody, but no, they use probable cause as the basis to seize your property. I do not just mean your roller skates, they can take your business, they can take your home, they can take your farm, they can take your airplane. They take anything and everything premised on the weakest of criminal charges, probable cause.

What is also unbelievable is that unless you take action in court, you cannot get your property back. They do not have to convict you, they do not have to even charge you with a crime, but they have your property because they allege probable cause.

How do you get your business back, your home back? You go to court, you hire a lawyer, you post a bond, and then you have to prove within 10 days, you have 10 days to do all this, you have to prove that your property was not involved in a crime. In other words, you prove a negative.

I do not know how you do that. I have been a lawyer since 1950, and I do not know how you prove that something did not happen. But nonetheless, that is the burden now. Under our jurisprudence, the burden of proof should be with the government. If you are guilty of anything, then prove it. The standard is beyond a reasonable doubt in a criminal case.

So what we are asking is to turn justice right side up, to switch the burden of proof from the poor victim, who has been deprived of his property and not convicted of anything, to the government, who has seized this property.

Now, may I suggest there are some incentives for some police organizations not to do this, because they share in the proceeds of the seized property. It is like the speed trap along the rural highway where the sheriff waits for us, takes us to a magistrate, and his salary is paid out of the fines he levies against us. We do not have a very great chance at equal justice.

That is the situation here. Civil asset forfeiture as allowed in our country today is a throwback to the old Soviet Union, where justice is the justice of the government and the citizen did not have a chance.

So I suggest we remedy this, and that is what we are trying to do.

The bill before us makes eight changes. First, the burden of proof goes to the government, where it belongs.

Secondly, the standard is clear and convincing. The reason it is not a mere, simple preponderance is that this is quasi-criminal. They are punishing

you when they have taken charge of your assets and of your property.

The next thing it does, it permits the judge to release the property pending the disposition in case a hardship exists and you are out of business or you have no place to live.

The third thing is the court can, in an appropriate case, appoint counsel. That is important if you are broke, if they have taken your property. You need help, you cannot afford a lawyer. The reason some organizations resist appointing counsel is because if you cannot get a lawyer, you cannot file a claim, so the forfeiture stands. You have a disincentive, you are discouraged from filing a claim because you cannot pay for a lawyer.

We also eliminate the bond, and I am happy to see that the gentleman from Arkansas (Mr. HUTCHINSON) eliminates the bond, too.

Our bill provides an innocent owner defense which is uniform across the country. If you own something and somebody else performed a crime in it or with it, and you are perfectly innocent and that can be established, that is a defense. You can sue the government under my bill if they destroy your property, and you can get interest if they have held your cash, and you can have 30 days to file your claim, not 10 or 20.

Lastly, let me just say this. This bill puts civil liberties and due process back in our criminal justice system. I am so delighted at the sponsors of this bill, both Democrats and Republicans, liberals and conservatives.

I am also delighted at the organizations that have endorsed it: The American Bar Association, the National Rifle Association, the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, Americans for Tax Reform, the National Association of Realtors, the Credit Union National Association, the American Bankers Association, National Association of Home Builders, and on and on; the U.S. Chamber of Commerce. There is the widest possible spectrum of support for this reformation of our civil asset forfeiture laws.

I beg Members to listen carefully and join me in this essential reform.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the Members of the House of Representatives, I would like Members to understand that there is wide, wide support not only in the committee but among organizations for reforming civil asset forfeiture.

□ 1415

When we bring together the gentleman from Illinois (Mr. HYDE), chairman of Committee on Judiciary, myself, the ranking member, the distinguished gentleman from Massachusetts (Mr. FRANK), and the gentleman from California (Mr. FARR), then we have a combination that covers, I think, the entire political philosophical spectrum of the Congress.

When we bring also the American Civil Liberties Union, the Criminal Defense Lawyers, the United States Chamber of Commerce, the Cato Institute, and the National Rifle Association, we have a combination of organizations that I think they come together every 10 years on a legislative agreement.

But it is wide, it is deserved, it is merited only because we have now found a process that is so abominable that it must be corrected, and we are very proud to have this wide array of philosophical views joining behind the Civil Asset Forfeiture Act, H.R. 1658.

Would my colleagues believe that, under current law, the government can confiscate an individual's private property on a mere showing of probable cause and then, even though the person may never have been convicted of a crime, require the person to file an action in Federal court to prove that the property is not subject to forfeiture in order to get the property back.

Well, that is the state of the law. There is no question that forfeiture laws, as Congress has intended to serve legitimate law enforcement purposes, and in the greater instances, they do, but they are currently susceptible to abuse and abuse that this measure proposes to correct.

There is also a problem for racial minorities. For example, a 10-month Pittsburgh Press investigation of drug law seizure and forfeiture included an examination of court records on 121 sole suspected drug courier stops, where money was seized and no drugs were discovered.

The Pittsburgh Press found that African-American, Latino, and Asian persons accounted for 77 percent of these arrests. So this bill before us today, the Civil Asset Forfeiture Act, seeks to change this and to make Federal civil forfeiture laws more equitable in a number of ways.

First of all, we change the burden of proof. Very few places in our law other than this, if any, require that the person coming in carry the burden of proof. Well, not so in forfeiture law. So if a property owner challenges a seizure, we want the government to prove by clear and convincing evidence that the property is subject to forfeiture. There cannot be any problems with that.

Now it is just the reverse. The government comes in, and the person seized has to prove that the property should not have been seized. This provision that we correct places the burden of proof where it historically belongs under United States jurisprudence within the government agency that performed the seizure. It protects individuals from the difficult task of proving a negative, in other words, that their property was not subject to forfeiture, which may be pretty hard to prove.

Secondly, I think it is important that the bill provide for the appointment of legal counsel if the person challenging the forfeiture is indigent or cannot otherwise afford proper legal counsel. What this provision does is simply recognize that legal representation is appropriate, indeed necessary, to defend against this type of deprivation of property.

Now, in determining whether or not to appoint counsel, the court must consider whether the claim appears to be made in good faith. Because if it is, they should get counsel. If it is not, they should not be provided counsel.

Third, the bill permits a court to provisionally return the seized property to the owner before the final adjudication is complete if the claimant can prove and demonstrate substantial hardship. Now this could occur, for example, if the forfeiture crippled the functioning of a business, which oftentimes is the case, prevented an individual from working, or left an individual homeless in the case of where homes are seized. Individuals lives and livelihoods should not be in peril during the course of a legal challenge to a seizure.

The next thing we do that I think commends the bill to the Members of the House of Representatives is that we create a uniform innocent owner defense against forfeiture to prevent people from losing their property because of the wrongdoing of others.

The presumption of innocence is fundamental to the American criminal justice system and should be in the case of civil asset forfeiture. This basic tenet, however, is seriously compromised whenever assets are confiscated, as they are now often seized under these forfeiture statutes without proof of wrongdoing by the owner.

The next thing that we do that I think should attract the attention and support of the Members is that we permit individuals who prevail in their forfeiture challenges to be able to sue the government if their property was destroyed or damaged, what could be more fair than that, while it was in government custody. It makes little sense to grant the right to reclaim the property only to find that it has lost all or half of its value.

The next item that is in this bill that I commend to the Members' attention is the requirement that the government pay successful claimant post-judgment interest as well as prejudgment interest on currency. This provision prevents the government from gaining a windfall on improperly seized property and puts the property owner in the position he or she would have been if the property had not been seized in the first instance.

The next thing that we do is eliminate the current requirement that a claimant must file a bond before challenging a forfeiture. This lifts a financial hurdle to filing a forfeiture challenge.

Finally, we expand the time to file a forfeiture challenge by 10 days from 20 to 30 days, giving additional persons time to learn about their rights and

file a claim. We believe that this measure is long overdue in coming.

We have had a very thorough and fair hearing in the Committee on the Judiciary. Everybody is pleased about it. But I should warn my colleagues that a substitute may be offered that would expand the categories of crime, that would worsen the measure that is before us, expanding categories of crime subject to a civil forfeit, and includes a seize now, fish for evidence later provision that allows the government to hold the property with no evidence, and then use their powerful Federal civil discovery tools to seek more evidence to try to build their case.

So I would like to put our colleagues on notice that there is a substitute that would completely reverse the benefits of this bill. I urge Members, both Democratic and Republican, to join us in the bill that has the widest support both in and out of the House.

Mr. Chairman, I include the following document, entitled ''The Need for H.R. 1658: Recent Cases of Civil Asset Forfeiture Abuses of Innocent, Legitimate Businesspeople and Entities'' as follows:

THE NEED FOR H.R. 1658

RECENT CASES OF CIVIL ASSET FORFEITURE ABUSES OF INNOCENT, LEGITIMATE BUSINESSPEOPLE AND ENTITIES

*Houston, Texas: Red Carpet Motel—Raise Your Prices or Else!*

February 17, 1998, the U.S. Attorney's Office in Houston seized a Red Carpet Motel in a high-crime area of the city. The government's action was based on a negligence theory—that the motel owners, GWJ Enterprises Inc. and Hop Enterprises Inc., had somehow ''tacitly approved'' alleged drug activity in the motel's rooms by some of its overnight guests.

There were no allegations that the hotel owners participated in any crimes. Indeed, motel personnel called the police to the establishment dozens of times to report suspected drug-related activity. U.S. Attorney James DeAtley readily bragged to the press that he envisioned using current civil asset forfeiture laws in the same fashion against similar types of legitimate commercial enterprises, such as apartment complexes.

The government claimed the hotel deserved to be seized and forfeited because it had ''failed'' to implement all of the ''security measures'' dictated by law enforcement officials. This failure to agree with law enforcement about what security measures were affordable and wise from a legitimate business-operating standpoint was deemed to be the ''tacit approval'' of illegality cited by the prosecutors, subjecting the motel to forfeiture action.

One of the government's ''recommendations'' refused by the motel owners was to raise room rates. A Houston Chronicle editorial pointed to the absurdity and danger of this government forfeiture theory against legitimate business: ''Perhaps another time, the advice will be to close up shop altogether.'' The editorial went on to make these additional, excellent points:

''The prosecution's action in this case is contrary not only to the reasonable exercise of government, but it contradicts government-supported enticements to businesses that locate in areas where high crime rates have thwarted development. Good people should not have to fear property seizure because they operate business in high-crime areas. Nor should they forfeit their property because they have failed to do the work of law enforcement. . . . *This case demonstrates clearly the need for lawmakers to make a close-re-examination of federal drug forfeiture laws.*'' . . . (emphasis added)

After more bad publicity all over Texas, in July 1998, the government finally released the motel back to the owners and dropped its forfeiture proceedings. It exacted a face-saving, written ''agreement'' with the motel owners. The agreement, however, in fact only put into words the security measures and goals the owners had already undertaken and those which it had always strived to meet.

The motel owners had lost their business establishment to the government's seizure for several months, suffered a significant loss of good business reputation, and were forced to spend substantial amounts of time and money on hiring an attorney and defending against the government's forfeiture action, which should never have been undertaken in the first place.

[Source: Houston Chronicle, Mar. 12, 1998 editorial and 1998 articles Dallas Morning News, 1998 articles (unreported case)]

*San Jose, California: Aquarius Systems, Inc—Your Buyer, Your Assets!*

October 28, 1998, a federal judge in San Jose, California finally granted summary judgment against the government in a civil forfeiture action, ruling that the government must return to Los Angeles-based Aquarius Systems, Inc. (aka CAF Technologies Inc.) the $296,000 it had seized from it 6 years ago. Aquarius and 4 other computer chip dealer companies had been accused of marketing stolen chips. Federal agents, who participated in this ''sting'' operation, then seized $1.6 million of the companies' chip-buying, operating money.

Unknown to Aquarius Systems, Inc., the buyer used by the company had been operating for his own profit, by purchasing chips for $50.00 each while reporting to his supervisors at the company a unit cost of $296.00 (which at the time was a reasonable price). (The buyer ultimately served a short sentence of conspiracy to buy stolen property.)

In his ruling ordering the government to return to Aquarius $296,000 of its seized operating money, U.S. District Court Judge Jeremy Fogel blamed the government for dragging its feet on due process, by tying up the company's operating assets for so many years. Ruled the Court: ''It is incumbent upon the government to institute civil forfeiture proceedings expeditiously.'' The judge then denied the government's motion for summary judgment against the company, and granted the company's motion for summary judgment against the government. The Court held that Aquarius Systems knew nothing about what its buyer was doing. As the judge noted, the company was unusual in its ability to stave off ruin from the government's seizure and forfeiture action, and in its ability ''to fight [it] for six years.''

[Source: The (California) Recorder, Nov. 17, 1998 article (unreported case)]

*Chicago, Illinois: Family-Owned and Operated Congress Pizzeria—Restaurant+Money+3 Handguns=Forfeiture?*

September 3, 1997, Anthony Lombardo, owner and proprietor of the family business, Congress Pizeria of Chicago, was finally returned over $500,000 in currency improperly seized from his restaurant in early 1993. It took him over four years, and much expensive litigation, all the way to the federal court of appeals for the Seventh Circuit, before former U.S. Attorney and Chief Judge Bauer and his colleagues on the Court ordered the government to return Mr. Lombardo's money.

Based on the ''confidential informant'' testimony of Josue Torres, the Chicago Police Department conducted a search of Congress Pizzeria. Torres, a crack addict, had been employed as a truck driver for the restaurant up until a few months before he told his story to the police. He told the police that he regularly fenced stolen property at various places in Chicago in order to feed his crack cocaine habit, and that Congress Pizzeria was one of the places in which he did so.

On this, a warrant was issued to authorize police to search the pizzeria and to seize a camera, a snowblower, a television, and three VCRs, which are items the informant said he had sold to the sons at the restaurant. None of these items were found. During the search, however, the police did ''find'' and seize three unregistered guns, and $506,076 in U.S. currency.

The money was in a make-shift safe in the family-owned restaurant—a forty-four gallon barrel located inside either a boarded-up elevator or a dumb-water shaft (the record was somewhat unclear). It was wrapped in plastic bags and consisted of mostly small bills—such as might be expected from transactions by a pizzeria.

The owner's son, Frank Lombardo, was present at the time of the search. He was arrested and charged with possessing unregistered firearms (the guns at the restaurant). At the state court proceeding, the guns case thrown out, because ''it was not apparent that the guns were contraband per se'' and ''the guns were seized prior to the establishment of probable cause to seize them.'' No other state or federal criminal case was every investigated or charged against the Lombardos or their pizzeria.

The federal government nonetheless moved to seize and forfeit the $500,000 ''found'' in the pizzeria, under current civil asset forfeiture drug laws. The government's theory of why this money was forfeitable as ''drug money'' was this: The owner's son, Frank Lombardo, was said to have been ''extremely distraught'' and ''visibly shaken when he was told that the money was being seized'' from his family's restaurant; and, said the government, he had ''offered no explanation for the cash horde.'' (Later, Frank went to the police station to explain that the money belonged to his father, the owner of the pizzeria, who was then in Florida.)

Drug-sniffing dogs were also brought to the police station (not in the pizzeria), to check out the money for the presence of drugs. A narcotics canine named Rambo was instructed to ''fetch dope'' and he grabbed on bundle of money from the table and ripped the packaging apart. To the amazement of the court of appeals, this behavior apparently indicated to the officers the presence of drugs on the money.

At best, as the Court noted, the dog only identified narcotics on one bundle of the seized currency even though the officers seized 31,392 separate bills in multiple bundles. And, even the government admitted that no one can place much stock in the results of dog sniffs because at least ⅓ of all the currency circulating in the United States, and perhaps as much as 90–96%, is known to be contaminated with cocaine. (Indeed, as the court of appeals noted, even Attorney General Reno's purse was found by a dog sniff to contain such contaminated currency.)

On this non-evidence of any nexus between the money and drugs, the government kept the money of Mr. Lombardo and his family Pizzeria for 4 years—until the 7th Circuit finally ruled that it must be returned, in late 1998. The Court held that the government had in fact failed to establish even the cursory burden that it is supposed to shoulder

under current law—the establishment of ''probable cause'' to seize property in the first place.

None of the supposed ''suspicious factors'' cited by the government had ''any bearing on the probable cause determination. The existence of any sum of money, standing alone, is not enough to establish probable cause to believe the money is forfeitable.'' Nor, for the reasons discussed above, was the police-station, drug-sniffing dog episode enough for probable cause. And, ''putting to one side the fact that the state court suppressed the guns as evidence against Frank Lombardo, [there is] no reason to believe that the presence of handguns should necessarily implicate narcotics activity or that their presence need be seen as anything other than protection in a small business setting.''

In conclusion, the Court wrote: ''We believe the government's conduct in forfeiture cases leaves much to be desired. We are certainly not the first court to be 'enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.''' (Quoting *US* v. *All Assets of Statewide Auto Parts, Inc.*, 971 F.2d 896, 905 (2d Cir. 1992))

[Source: *U.S.* v. *$506,231 in U.S. Currency*, 125 F. 3d 442 (7th Cir. 1997) (Bauer, J.).]

*North Dakota and Daytona Beach, Florida: Customs versus Bob's Space Racers—Who's Amusement?*

In 1997, on a routine business trip, a large number of circus employees of the Bob's Space Racers Company, of Daytona Beach, Florida, were traveling to Canada. Bob's Space Racers, a privately held company, is one of the leading providers of amusement park games. The company also provides entertainment at traveling circuses.

As normal, the employees had been provided with their salary and traveling expenses for the project in cash. Thus, each of the 14 employees had several hundred dollars in his or her pockets when the group attempted to cross the border into Canada from North Dakota.

Customs agents at the North Dakota border seized all their money on the theory that, when the Customs agents aggregated all the money carried by each of the 14 employees, the total came to just over $10,000—the amount of money triggering the regulations about ''declaring'' and filing Customs' ''cash reporting'' forms (Form 4790).

Customs had no basis for ''aggregating'' the money of the employees. And there was no reason to believe the employees were part of any conspiracy to smuggle money out of the country without filing the appropriate Customs forms. Indeed, the company informed Customs that the money was legitimate traveling expenses.

Into 1998, at least, the company was still trying to get Customs to remit the employee travel expenses seized.

[Source: National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair David B. Smith, Alexandria, Virginia (unreported case)]

*Haleyville, Alabama: Doctor, Beware Your Banker?*

In 1996, after many years and much costly litigation, Dr. Richard Lowe of the small northwest Alabama town of Haleyville, was finally returned his wrongfully seized life savings of almost $3 million, when the 11th Circuit Court of Federal Appeals ordered the government to return it.

Dr. Lowe, MD, is something of a throwback. He's a country doctor in small-town America, who still charged $5.00 for an office visit in 1997. He drives a used car and lives in a very modest home.

When he was a small child in the Depression, he lost $4.52 in savings when the local bank failed in his home town in rural Alabama. His parents lost all of their savings when that bank collapsed. Because of that experience, he has always hoarded cash. He'd empty his pockets at night into shoe boxes in a closet at home. Over the years, he had accumulated several boxes of cash in the back of a closet in his home.

In 1988, he consolidated his savings in the First Bank of Roanoke, Alabama—in order to set up a charitable account for a small private K–12 school in his hometown that was about to fail. He transferred all of his life savings into the consolidated account. At the time the government first wrongfully seized his account, in June 1991, Dr. Lowe had given the school over $900,000, had saved it from collapse, and was still contributing to it.

In the fall of 1990, his wife was urging him to do something about the boxes of money in the closet. The Doctor said OK, you count it and we'll put it in the school's account. It came to $316,911 in denominations of ones, fives, tens and twenties. Some of the bills were as much as 20 years old. Dr. Lowe took the money to the bank and gave it to the bank president, who was a longtime friend and former neighbor of Dr. Lowe's.

This is the first cash that had ever been placed in the bank account. All the other money had been transferred by check from other banks when CD's matured.

The bank president knew the Doctor was obsessive about anonymity; he did not want to be known as a ''rich doctor.'' So, instead of depositing the money to the account, the bank president just put the money in the bank vault. He gave the Doctor a receipt for the deposit, but he chose to simply put the money in the bank's vault. Then, with some of the money over the next 6 weeks, the bank president went to neighboring banks in the vicinity of Roanoke, and bought $6,000, $7,000, and $8,000 cashier's checks, and then credited it to Dr. Lowe's account.

When some of the other banks thought it was peculiar that the Roanoke bank president was doing this, they made a report to authorities. When FBI agents came to interview the bank president, he told them exactly what he had done and why. He told them that it was his idea and not Dr. Lowe's. And he told them that as he understood the reporting laws, he had done nothing wrong.

Still, the FBI and U.S. Attorney decided to seize Dr. Lowe's account. They did not just seize the $316,000 in cash deposits. They seized his entire account—his entire life savings of some $2.5 million, at the time.

The bank president and his son, who was vice president, were both indicted. The bank president later made a deal with the government to plead guilt to structuring/reporting violations, in exchange for the government's dismissal of charges against his son. And, a full two years after the seizure and attempted forfeiture of the Doctor's accounts, during which time all of his money was held by the government, the government decided to indict Dr. Lowe as well, for the alleged reporting transgressions of his banker.

It is, however, not violation of law, and certainly no crime, for a bank to send cash to another domestic financial institution. That is not within the definition of illegal ''structuring.'' In short, there was no offense here, by even the banker, let alone the totally innocent, ignorant bank customer, Dr. Lowe.

Prosecutors kept pursuing their case against the Doctor anyway. With just one more week to go before his trial was to start, the prosecutors balked at taking their shoddy case to a jury. The government, to save face, offer the Doctor a ''pretrial diversion'' rather than simply dismissing the case, as they should have done. Under the diversion, the Doctor had to agree to stay out of trouble for one year and the case would be dismissed. Of course, the Doctor had no trouble staying out of trouble, as he had never done anything wrong to begin with, or in his entire life.

Still, even then, the U.S. Attorney General's office in Birmingham refused to drop its civil asset forfeiture action against Dr. Lowe's life savings account—clinging to the fact that, under current law, the burden remained on the Doctor to prove his money innocent!

While prosecutors now understood there was no ''structuring'' violation by anyone, as they had initially asserted they changed their theory to this Alice in Wonderland claim: Dr. Lowe's account was forfeitable under civil asset forfeiture laws because the bank had failed to file with the government the required regulatory reporting form, a Cash Transaction Report (CRT), upon receipt of Dr. Lowe's $300,000 in currency. At best, this was a violation by the bank, not the customer. Yet, the government deemed this enough to proceed in a civil forfeiture action against the Doctor's life savings—to force him to meet his burden of proof under current law, or else lose his property permanently.

The federal district court judge did rule that there was nothing wrong with the underlying account until the $300,000 cash deposit. And thus, he held that these monies should be returned to the Doctor. This was 3 years after the government's initial seizure—for 3 years, Dr. Lowe was denied access to any of his life savings.

The federal district court judge erred in ruling for the government on the $300,000 in currency, ''finding'' without any evidence that the Doctor ''must have exhorted'' the bank president (his words) not to file the technical CTR with the government, even though the government itself had never even noticed that a CRT had not been filed when it started its action against Dr. Lowe, the bank president and his son.

Dr. Lowe somehow had the wherewithal to continue his long fight against the government's wrongful taking of his money, and appealed to the 11th Circuit Court of Appeals. Finally, in late 1996, the court of appeals vindicated Dr. Lowe. It reversed the lower court's erroneous ruling, holding that, even under current, distorted civil asset forfeiture law, the Doctor had shown by evidence clear beyond a preponderance that he knew nothing of the banker's actions.

Meanwhile, though, he was without access to any of his seized life savings for 3 years, and without access to $300,000 of his accounts (which he had donated to the private school) for 6 years. He faced a wrongful indictment and threat of criminal trial. And he endured the financial, physical and emotional devastation of lengthy, costly litigation against a U.S. Attorneys Office blindly pursuing his assets, no matter the shoddy nature of its case.

Perhaps the government thought it could simply sear ''the old man'' out? The impact of this experience on him was so severe that Dr. Lowe had to hospitalized at least once for stress and high blood pressure. Very few victims of such governmental abuse would have been able to keep fighting to win, as did the extraordinary Dr. Lowe.

[Source: Hearing before the U.S. House Judiciary Committee, on H.R. 1835 (105th Congress), June 11, 1997 (Testimony of National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair E.E. Edwards III, Nashville, Tennessee) (unpublished case)]

*Kent, Washington: Maya's Restaurant—The Sins of the Brother?*

In 1993, in the Seattle suburb of Kent, Washington, police officers stormed Maya's

Mexican food restaurant in the middle of business hours, ordering customers out of the establishment, and telling the patrons that the restaurant was being forfeited because ''the owners were drug dealers.'' Local newspapers prominently publicized that Maya's restaurant had been closed and seized by the government for ''drug dealing.''

Exequiel Soltero is the president and sole stockholder in Soltero Corp., the small business owner of the restaurant. The actual allegation was that his brother had sold a few grams of cocaine in the men's restroom of the restaurant at some point.

Exequiel Soltero and the Soltero Corporation Inc. were completely innocent of any wrongdoing and had no knowledge whatsover of the brother's suspected drug sale inside the restaurant. According to the informant relied upon by the law enforcement officers, the brother had told him that he was part owner of the restaurant. This was not true. It was nothing but puffery from the brother. The officers never made any attempt to check it out. If they had, they would have easily learned that Exequiel Soltero was the sole owner of the Soltero Corp., Inc., and Maya's.

There was no notice or any opportunity for Mr. Soltero to be heard before the well-publicized, business-ruining raid and seizure of his restaurant. Fortunately, Mr. Soltero was able to hire a lawyer to contest the government's seizure and forfeiture action, but not until his restaurant had already been raided and his business had suffered an onslaught of negative media attention about being seized for ''drug dealing.'' Further his restaurant was shut down for 5 days before his lawyer was able to get it re-opened.

Finally, when Mr. Soltero volunteered to take, and passed, a polygraph test conducted by a police polygraph examiner, the case was dismissed. However the reckless raid, seizure and forfeiture quest by the authorities cost him thousands of dollars in lost profits for the several days his restaurant was shut down, as well as significant, lingering damages to his good business reputation. And he suffered the loss of substantial legal fees fighting the seizure of his business.

[Source: National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair Richard Troberman, Seattle, Washington (unreported case)]

NOTES ON RECENT CASES AND HYDE/CONYERS ASSET FORFEITURE REFORM ACT, H.R. 1658

Each of the above cases demonstrates the importance of the Hyde/Conyers Asset Forfeiture Reform Act. Several features of the legislation would deter governmental abuse of innocent Americans and legitimate business under the civil asset forfeiture laws.

Placing the burden of proof where it belongs, on the government—to prove its takings of private property are justified, by a clear and convincing standard of evidence—should curb reckless seizures and forfeiture actions like those described above. Now, the government can seize and pursue forfeiture against private property without any regard to its evidence, or lack thereof, without any burden of proof. The burden is borne by the citizen or business, to prove the negative, that the property seized is in fact innocent.

The clarification of a uniform innocent owner defense will also protect businesses and other property owners and stakeholders from wrongful seizures and forfeiture actions, based now on nothing more than a ''negligence'' theory of civil asset forfeiture liability. The uniform innocent owner provision will protect all innocent owners, no matter which particular federal civil asset forfeiture provision is invoked against their property.

The Hyde/Conyers Asset Forfeiture Reform Act will also place a time-clock on forfeiture actions by the government, akin to the Speedy Trial Act, which protects persons accused of crime. This will prevent the type of post-seizure, foot-dragging in civil forfeiture cases like those above, in which the government can simply wear down and bankrupt innocent individuals and businesses, who cannot withstand the loss of operating assets and lengthy litigation against the government.

The court-appointed counsel provision will ensure a fair fight against the government's forfeiture actions—even for those with less financial resources than the individuals and businesses described above. This is especially important to those the government can otherwise render indigent, and unable to afford counsel, simply by seizing all of their assets.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The Committee will rise informally.

The Speaker pro tempore (Mr. BRYANT) assumed the chair.

## SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

## CIVIL ASSET FORFEITURE REFORM ACT

The Committee resumed its sitting.

Mr. HYDE. Mr. Chairman, may I inquire of the Chair how much time I have remaining.

The CHAIRMAN. The gentleman from Illinois (Mr. HYDE) has 22½ minutes remaining.

Mr. HYDE. Mr. Chairman, I am pleased to yield 6 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Chairman, I thank the gentleman from Illinois (Mr. HYDE) for yielding this time to me. It is with great respect that I rise in opposition to the underlying bill and urge my colleagues to support the Hutchinson substitute.

The gentleman from Illinois (Mr. HYDE) and I have been together on many issues, and actually we are not that far apart on this one. The Hyde-Conyers bill, in many ways, has the same provisions that the Hutchinson substitute has, but I think the substitute makes some very important improvements to the bill.

I do not think there is any question that this bill is good. The Hyde-Conyers bill needs to be passed into the law, at least some form of it does. It is time that we have the reform in the area of asset forfeiture that that bill speaks directly to.

It is very important in this country, I think, that we begin to address the due process involved in property rights. Those are very important issues, and I am proud to be a part of this. I just think that the bill, as it is written, while well constructed and well thought out and certainly well intended, needs some fine tuning, if you will, some changes to it, I think, to strike a more reasonable balance.

Before, things were out of balance one way, and I want to be careful, as I urge the adoption of the Hutchinson substitute, that we do not take it too far out of balance the other way.

There are a number of law enforcement, some 19 major law enforcement groups that support the Hutchinson substitute, among those, the Drug Enforcement Administration, the DEA, the Fraternal Order of Police, the National Troopers Association, the National Sheriff's Association, the National Association of Chiefs of Police, and many others.

The reason they support this is because, as we all agree here today, we need to be able to seize the ill-gotten gains of criminals, seize that property, and use that, convert that over and use that to fight more crime. I think that is very important. We agree on that.

Now, I would like to see this go a little further on the other end, and I have asked that report language be put into this bill that there be a little bit more accountability on the use of these funds.

I know in my area back in Western Tennessee, this is a very important issue right now, is what happens to these funds once they get into the hands of law enforcement. I would like to see some very broad community-based, through a government agency, through the mayor, the county mayor, city mayor, oversight of these funds, with all due respect to the necessity sometimes in police work that they have flexibility and secrecy in using some of these funds. But at least there will be some accountability on the end of where it is used to fight crime as it is supposed to be done.

But in the Hutchinson substitute, we have brought the Hyde-Conyers bill, I think, back to a better balance. Rather than requiring that law enforcement prove by a clear and convincing bit of evidence that this money was ill-gotten and as a result of crime, we use the normal, the customary standard in civil cases, which is what this is, and that is a preponderance of the evidence. I am sure we have people that agree with that.

We also talk about furnishing some lawyers to people for free. Now, in the civil context, that is not typically done in any case. There are hardship cases where it is rarely done, and certainly that would apply here given the circumstances of the particular forfeiture, the amount of money involved, the needs of the people. That can be done. But on a routine required basis that the underlying bill would require, I do not think we need that.

□ 1430

I think that would be very, very expensive and probably result in much more litigation than we really need.

Also, the hardship provision is addressed in the Hutchinson amendment, and it refines that language. Certainly there are circumstances where I think the court should have the authority if it creates a hardship and the property can be protected, that that ought to happen; that the person ought to have that property returned pending the trial. But in many cases it has been shown that evidence, money, or whatever might be seized disappears, along with people sometimes. So if we can assure that there is adequate protection there to ensure that this will be there when the trial comes up, that the property will still be there and the property owner will still be there, then certainly if that is a hardship situation, that can be addressed.

So I would respectfully disagree with my colleague from Michigan (Mr. CONYERS) that we are miles apart on this. I think we are very close on many of the issues, and if we can just work through a couple more of these issues and agree to these, which, again, I think the Hyde-Conyers bill is good but can be made better, then I think we would be better served.

Let me clear up one thing, too, that the gentleman from Michigan (Mr. CONYERS) said in terms of the percentages being high of people being caught with money but no drugs. The way the system works in this is when there are couriers, they do not have them both at the same time. They either have the money or they have the drugs, but they do not have them both. They carry the money to point X to get the drugs to bring back to point Y. So we either find drugs on the person or money on the person, depending which way they are going.

So it is not unusual in that context for there to be a seizure of money without finding any drugs on the person, because we are usually dealing with a mule, a courier, somebody whose job it is to go to a drug source city and bring the drugs back and pay for it as they go down. So that is not anything out of the ordinary.

I think this is a very good cause we are working for. I think we are all trying to achieve the same results, and I just simply ask that we go back to the normal standards that we have in a civil case, preponderance of evidence, no appointed counsel, and work closer on the hardship situations to ensure that the money, the evidence, and the defendant will be there at trial.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

The problem with the assertions of the gentleman from Tennessee (Mr. BRYANT) that a drug courier is either carrying money or drugs is quite correct. But the problem is, unless they are drug couriers, we could end up with a person with large amounts of money on them that they have to then prove where and how they got the money, which is a little bit out of line. And if they are carrying drugs, that is patently illegal, too, so they will be arrested.

Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts (Mr. DELAHUNT), a law enforcement prosecutor of many years and a valued member of the Committee on the Judiciary.

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of Hyde-Conyers bill and in opposition to the substitute proffered by the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from New York (Mr. WEINER).

Mr. Chairman, a few days from now the sun will finally set on the Independent Counsel Act that has come to embody for many Americans all the evils of prosecutorial excess. But the problems illustrated by the Independent Counsel Act are not unique to special prosecutors, nor are they confined to cases involving Presidents and high civil officials.

The potential for abuse and excess is inherent in a system of justice which delegates such enormous power and discretion to every prosecutor. Now, most prosecutors exercise these awesome responsibilities with decency and restraint. But, unfortunately, there are a few who do not, and they bring the entire system of justice into disrepute, and they encourage, by their actions, public cynicism and, unfortunately, erode respect for the rule of law.

Now, the Hyde-Conyers bill recognizes that asset forfeiture is an extraordinarily powerful tool in the hands of a prosecutor, a tool that is so potent, and under current law so easy to apply, that it is also highly prone to abuse. And, in fact, there is a growing litany of cases documenting that abuse occurs. This bill recognizes that the time has come to impose reasonable, and let me underscore reasonable, restraints on this power so as to maintain public confidence in the fundamental fairness and integrity of our criminal justice system that is so essential in a democracy.

And let us be clear. This bill would not hamper the ability of law enforcement to go after the bad folks, the drug kingpins and racketeers who are the proper targets of forfeiture laws. What it would do is to prevent law enforcement officials from abusing these laws to the detriment of ordinary innocent citizens. It would ensure that when prosecutors wrongfully seize, wrongfully seize the property of owners who are innocent of any crime, the owners have the ability to recover their property and make themselves whole.

And make no mistake, we are not talking about a few marginal cases. Some 80 percent of the people whose property is seized are never even charged with a crime. Think of that, Mr. Chairman, 80 percent of those whose property is seized are never even charged with a crime.

Now, let me put forth some examples; like the traveler whose property was seized at the Detroit airport because he was carrying a large amount of cash and simply happened to fit a profile of a drug courier. No arrest, no conviction; or the 33 tenants in a New York apartment building who were evicted by the government because the building had previously been home to a drug ring, which none of the tenants were connected with and had no knowledge of, yet they were evicted; or the hotel owner in Houston whose hotel was seized by Federal agents after patrons were accused of drug trafficking; or how about the 72-year-old woman in Washington, D.C., right here in the Nation's Capital, whose home and personal effects were seized by the FBI because her nephew, her nephew, who was staying in the house overnight, was suspected of selling drugs from the porch. Suspected of selling drugs from her porch. A 72-year-old woman.

The irony is that all of these people would have been entitled to some due process if they had been charged with a crime. If they had been charged criminally, they would have had a shot. But under the civil forfeiture laws, the government can seize the property of innocent owners without even triggering basic minimal due process requirements. That is not, I daresay, what most of us think about when we think of the American system of justice.

Supreme Court Justice Clarence Thomas has likened this situation to, and I am quoting now, ''a roulette wheel employed to raise revenue from innocent but hapless owners whose property is unforeseeably misused,'' rather than a tool for ensuring that justice is done.

In 1997, the Court of Appeals for the 7th Circuit confessed itself to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.

We cannot allow, I submit, such a situation to continue, Mr. Chairman, and I urge my colleagues to support Hyde-Conyers and defeat the substitute.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the gentleman from South Carolina (Mr. GRAHAM).

Mr. GRAHAM. Mr. Chairman, I thank the gentleman for yielding me this time, and I, too, rise in support of the Hyde-Conyers Civil Asset Forfeiture Reform Act of 1999, and I would ask the Members listening to the debate to focus their attention on the title and see if it lives up to its billing: Reform Act. What are we trying to do; and is it an act in need of reform; and do the measures envisioned in this bill create some reform.

I would point the Members' attention to the burden of proof. There is a dramatic change in this bill from existing law, and I believe it justifies the title of reform and is very much a necessary measure in terms of reforming the law.

Imagine this: An individual has a piece of property, an innocent owner. At least they want to claim that status. And that individual winds up facing their government after a seizure

has occurred through a mere probable cause analysis, and they now have to prove by a preponderance of evidence that they are innocent and that the forfeiture should never have occurred. I think that is appalling. I do not believe in America any citizen should have to go into a court and fight the government and prove that they are innocent in terms of their connection to their property. While it may not be depriving them of a liberty interest, it certainly is depriving them of a property interest.

This bill, quite rightly, corrects that measure, and it does reform the burden of proof because it places upon the government the duty to prove that the assets seized should be taken and denied to the rightful owner by a clear and convincing evidence standard.

The substitute changes the burden, which I think is an acknowledgment that the basic law is very much off base. It is a matter of what standard we would like to place upon the government before people are denied their property. In my opinion, the standard should be more rather than less; that when we are facing the government, they should have a strong burden before they can take our property forever from us. And the clear and convincing evidence standard in civil law, I think, is the appropriate remedy, and the preponderance of evidence standard that the substitute bill has is an inappropriate remedy.

The innocent owner defense. Most of us cannot imagine a situation where we find ourselves before a Federal court, losing our property because of someone else's misdeeds, but it happens every day in this country. As my friend from Massachusetts (Mr. DELAHUNT) indicated, 80 percent of the people affected by this law are never prosecuted. What if an individual owned an asset or were a joint titled owner of a car, and somebody in the family or some friend chooses to engage in criminal activity with that individual's vehicle without their knowledge or without their permission. Under the current law that individual has to go and prove they are innocent before they lose their property.

We have talked about changing the burden. Before an individual's property could be taken under what the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) have done, they have to make a compelling case that that individual was involved, that that individual had knowledge. And what this law does, Mr. Chairman, is it brings uniformity across the board in civil asset forfeiture statutes under the Federal law, bringing uniformity to the innocent owner defense. In civil forfeiture cases involving illegal gambling activities, there is no such innocent owner defense, and I think that is appalling.

So the good thing about this bill, in my opinion, is it brings uniformity and it establishes a standard that makes a lot of common sense; that the government has to prove at the time of the instance in question that an individual did not know of the conduct giving rise to the forfeiture, because if someone does not know of the conduct and was not involved, they should not lose their property because someone intends to violate the law or does violate the law, because that individual has done nothing wrong.

Upon learning of the conduct, if a person does all that is reasonably expected under the circumstances to terminate such use of the property, the law should not allow the taking of a person's property because they acted in a responsible manner.

This bill brings uniformity to the law. It is a haphazard catch-as-you-can series of statutes, and now is the time to correct that as we go into the next century.

□ 1445

An appointment of counsel. This bill I believe remedies a very big problem. A lot of people are subject to losing their assets under this law, and when it comes time to have their day in court and they are an indigent person or without the means to have counsel, for whatever reasons, they are facing the Government alone. That is no place to be when their property is taken from them by the Government.

It is true we normally do not appoint counsels in civil matters because civil matters are usually between two citizens litigating over some property interest. This is different, Mr. Chairman. This is a person fighting the Government for their property. I believe it is only right and fitting that we appoint counsel under those circumstances.

I ask my colleagues to support this measure.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to my friend, the gentleman from New York (Mr. WEINER.)

Mr. WEINER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Hutchinson amendment and with deep reservations about the base bill, the Hyde-Conyers bill.

There is a great deal, frankly, that we agree about in this debate. My good friend from Massachusetts read a litany of concerns about the present civil forfeiture dynamic. It is broken. It is broken. I believe that the Hyde effort is one that is laudable and goes a long way towards trying to fix the problem. But there also seems to be emerging in this House a fundamental debate about whether or not we should have civil forfeiture at all. And I would argue that we should, and I would argue that it has been a tool that has been very helpful.

I would argue that law enforcement agencies all around this country have rallied to the cause of trying to preserve civil asset forfeiture because it is vitally necessary to continue the downward trend in crime that we have seen. That is why sheriff's associations around the country have supported the Hutchinson–Weiner-Sweeney substitute. That is why the City of New York and Los Angeles and other places have all supported the idea of making it important that the Government prove its case but just have a reasonable standard.

Now, since we have heard so many horror stories about what is wrong with civil forfeiture, I think it is important that we understand that there are many times where it is used in ways that I think we all agree it is important, like a crack house in the Middle District of Tennessee that over and over again was the subject of criminal activity. The owner of the house was not the person who was doing the criminal activity, but it was allowed to go on there. The children, the spouse, people in the community were selling drugs out of that home. Finally that problem, which was right next to a church, was solved by using this civil asset forfeiture.

There are frequently times that the criminal statutes do not allow us to fully sink our teeth into what some of these problems are. I believe that the main difference between the Hyde-Conyers bill and the Hutchinson–Weiner-Sweeney substitute are the burden of proof that we set. We do not make it a burden of proof that is so difficult that localities who are now making this argument will never be able to use civil asset forfeiture laws again.

We make it a reasonable test. The Government still has to prove its case. They cannot seize their property and keep it wantonly. They are going to have a tough test. We are going to have provisions in the amendment that provide for counsel. But we also make sure that these forfeiture laws remain intact so we can continue to confiscate contraband, drugs, obscene matters, explosives, counterfeit money and seize the instrumentalities of crime, crack houses, handguns, and cash.

We have to recognize that there are times that there is not the direct connection between the person and the criminal activity and the fact that we know with some certitude that that is an instrument of crime.

The Hutchinson–Weiner amendment will allow us to get at the crime problem while dealing with many of the abuses that the gentleman from Illinois (Mr. HYDE) has correctly pointed out.

Mr. HYDE. Mr. Chairman, I am pleased to yield 5 minutes to the distinguished gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, I thank the distinguished gentleman from Illinois (Mr. HYDE) the chairman of the Committee on the Judiciary not only for his work in bringing this important piece of legislation to the floor today but over the course of many years for his championing the rights of our citizens both on the law enforcement side of the equation as well as on the civilian side.

The chairman of the Committee on the Judiciary has been a tireless champion in support of our Constitution, all of our Constitution, in this regard.

Mr. Chairman, when we look at asset forfeiture, we have to be struck by the fact that what was originally intended to be an extraordinary remedy to be used in only those most serious of criminal cases has become a commonplace tool of law enforcement. Unfortunately, Mr. Chairman, not only has it become a common tool of law enforcement, but in many jurisdictions, not all, but in far too many it has become the monetary tail wagging the law enforcement dog.

Mr. Chairman, as more and more offenses over the last several years have been added to the predicates on which asset forfeiture seizures and forfeitures can take place, it becomes more and more incumbent on us to take a very close look, a comprehensive look, at exactly where we stand in America with regard to this awesome power the Government has.

It is our responsibility, which we are exercising today under the leadership of the chairman of the Committee on the Judiciary, to bring back into focus this power the Government has that we all believe Government needs to have but to bring it back into proper focus. And that means balancing the important needs of law enforcement to strike at the criminal element where it really hurts, and that is in their pocketbook, but not with a blunderbuss, not to the extent that we also rope into that power the civil rights, the individual rights, the constitutional rights of law-abiding citizens.

Many who are opposed for example, Mr. Chairman, say that the sky will fall if we dare reform asset forfeiture laws. That is not the case. I say that, Mr. Chairman, from the standpoint of both having been a United States Attorney and having exercised in the Northern District of Georgia the tremendous power of asset seizure and forfeiture, but also from the civilian side of the bar.

Let us be perfectly clear, Mr. Chairman. H.R. 1658 does not and will not eviscerate asset forfeiture power. It reforms it. It does not kill it. We need also only to look, Mr. Chairman, to the experiences in recent years of some States which have grappled with the issue of reforming their own asset forfeiture laws to make them more mindful and reflective of individuals' rights to see that despite the naysayers and the Chicken Little sometimes running around saying the sky is going to fall if we dare reform this particular process, that in fact it has not.

I would cite to our colleagues the case of California, which just a few years ago addressed the issue of asset forfeiture reform, changed the process, changed the burdens. Many in law enforcement in California were very concerned that, in fact, those changes to the laws where they shifted the burden and brought a little bit more balance to the process would eviscerate the ability of California law enforcement authorities and prosecutors to truly go after and seize legitimate criminal assets of the criminal element.

In fact, Mr. Chairman, as over the last few years, that reform system in California has worked its way through the system, people have become used to it, the system has brought itself back into balance. Even the prosecutors, one of whom I spoke with just yesterday here in Washington who is currently still with the Attorney General's Office in California, says there has in fact been no precipitous drop-off, as a matter of fact, overall no drop-off in the ability and the amounts of seizures and forfeitures that have, in fact, taken place.

When we look also, for example, Mr. Chairman, at the specifics of this legislation, as the distinguished gentleman from South Carolina (Mr. GRAHAM) just got through talking about, if we look at what this legislation, that is H.R. 1658, does, it is fairness, it is the embodiment of fairness and constitutional due process.

It places the burden where it ought to be, on the Government, to prove by clear and convincing evidence, which is a standard burden that is placed on the Government, in many cases on private parties, in many cases on States in many civil cases, to prove by substantial evidence that the property has in fact been used for the furtherance of criminal activity. It really is hard, Mr. Chairman, to imagine why anybody would object to that.

As a matter of fact, the power of the Government, when they focus on the problem of asset forfeiture honestly in this way, they will recognize that this simply may create just a slight burden, a temporary burden, on law enforcement, but it will force them to pay closer attention to what they are doing.

The gentleman from South Carolina (Mr. GRAHAM) also properly noted several other specific aspects of this legislation that I believe lend itself to strong support for H.R. 1658 and against the substitute proposal, which does not reform the system in any meaningful way.

Mr. Chairman, some who are opposed to civil asset forfeiture reform would have us believe the sky will fall if we dare reform these laws. As someone who has served on both sides of the bar, first as a federal prosecutor, and later as a private attorney, I can tell you this is simply not the case. But don't take my word for it. Let's get to specifics. What exactly does our legislation do? And, what doesn't it do?

First, let's be perfectly clear, H.R. 1658 does not and will not eviscerate asset forfeiture power; it reforms, but it does not kill.

Secondly, it addresses basic procedures, not underlying authority. For example, H.R. 1658 requires the government to prove by clear and convincing evidence that the property being seized has been used in criminal conduct. This goes back to a very basic principle: innocent until proven guilty. We should all be able to agree on that. Otherwise, we end up with justice according to the Queen in Alice in Wonderland, ''[s]entence first—verdict afterwards.''

Thirdly, our legislation would allow judges to release seized property, pending final adjudication, in order to prevent the property holder from suffering substantial hardship. This would allow judges, for example, to exercise their discretion to prevent a person who has not been convicted for any crime from losing their job because the police have seized the car they use to travel to work.

Again, no sensible person can argue that our legal system will collapse if we trust judges to make this simple judgement call.

Additionally, our legislation eliminates the requirement that an owner file a 10 percent cost bond in order to defend against the seizure of their property. Remember, under current law, if the government simply thinks you're guilty, it can take your property; and then, in addition, require you to post a bond simply for the privilege of walking into a courtroom and arguing your innocence. To make matters worse, the very fact that your assets have been seized, may very well make it impossible for you to post the bond. This kind of treatment is simply not acceptable in a country that purports to balance individual and property rights against necessary law enforcement powers.

Finally, our reform legislation provides the owners of seized property with a reasonable time period within which to contest the seizure in court. Strict and very limited time limits in current law frequently slam the doors of justice shut before the target of a seizure even has a fair opportunity to pass through them into court.

Those who oppose these common sense changes say the government cannot fight crime unless asset forfeiture laws remain dramatically tilted in its favor. However, as the 65,000 member Law Enforcement Alliance of America—which supports our legislation—knows, effective law enforcement depends ultimately on citizens having confidence in its fairness and honesty. Our current asset forfeiture laws undermine this confidence by treating some citizens unfairly, and sending others a message that our legal system is arbitrary, capricious, and motivated by profit rather than principle.

Unfortunately, the substitute being offered today does not address the fundamental problems inherent in the current system. It does not level the playing field, and it does not improve the access to our legal system by innocent citizens whose property has been seized. The substitute resembles rejected legislation from the last Congress; a proposal that was opposed by groups as diverse as the National Rifle Association and the National Association of Criminal Defense Lawyers.

Few, if any in this House, oppose law enforcement having the necessary and appropriate tools with which to fight crime; I certainly don't. One of these appropriate tools is asset forfeiture; but it must be fair and reasonable asset forfeiture; and it must not be allowed to be abused as some jurisdictions now do.

In fact, our legislation preserves assets forfeiture, placing only very reasonable limits on its use; it restores the balance intended in the original legislation. This was done just a few years ago in California; where, despite

naysayers predicting the collapse of asset forfeitures, state prosecutors and law enforcement in fact adjusted to the new requirements and continued to seize and forfeit assets.

A vote for the Civil Asset Forfeiture Act is a vote for returning to our law the basic principle that each of us is innocent until proven guilty. Remember, this Act in no way restricts the ability of law enforcement to seize the assets of someone who has been convicted of a crime under criminal asset forfeiture laws. It applies only to civil asset forfeiture provisions, which are used to seize property based not on a guilty verdict or plea—that is, proof beyond a reasonable doubt—but on a much, much lower standard.

Simply put, a vote for the substitute amendment is a vote to presume that an individual citizen is a criminal, and that the government can take their car, cash, or home simply because it harbors reasonable suspicious doubt. This is wrong. We all know it is wrong. Let's take this opportunity to change it.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from Massachusetts for yielding me the time.

Mr. Chairman, I come to this debate with a slightly different perspective, some that the Members may have coming from local government and being in the local government arena when the civil asset forfeiture law was, in fact, passed by this body.

I have worked with a number of law enforcement agencies. I have worked with communities, particularly when many of our inner city communities, many of our rural communities suburban communities were under siege with the bad behavior, the bad actors of drug running, drug activity.

I know neighborhoods in my community where crack took over in some of the older neighborhoods. Many times we would find senior citizens still living amongst houses that had been abandoned or the owner had left, or it was a rental property and the crack dealers or crack possessors, the crack sellers would take over.

So some years ago, as this legislation was passed, it became a godsend for our local law enforcement, our sheriffs, our police departments, our constables to protect our neighborhoods. And at the same time, I remember, as a member of city council, those well-needed funds used appropriately added extra resources for clean parks and new equipment for our children.

So I would like to at least acknowledge that we have had good uses, good intentions of this legislation. And I would hope that our law enforcement community would recognize, prosecutors included, that we are supportive of their efforts to still be able to use these tools to effectively fight crime.

We do not want the crack dealers, cocaine dealers, any kind of dealers setting up and getting rich over these criminal activities. We do not want to see the elderly dispossessed from their neighborhoods. We do not want to see young families not able to allow their children to be out playing because these activities have been going on. We do not want the fraudulent activities of money laundering to result in the wealth of individuals while others are suffering.

At the same time, I support the strategies of the Hyde-Conyers amendment because I think there have been a number of abuses that, keeping with the Constitution and property rights, we frankly should address. We should not be frightened to balance the needs of law enforcement along with the needs of citizens to protect their property rights.

In particular, I think it is worth noting, as my colleague noted, there is some 80 percent of those who have had their property civilly taken because they are related to or they are thought to be associated with and have been found to be criminally associated with and have never been prosecuted. For that reason, I think we have a problem. This is a huge number, 80 percent.

Who could that be? Spouses, sisters, brothers, relatives of any kind? Who could that be who have lost their property because they have been associated with someone who has done the wrong thing?

I believe that this is a good balance to take law enforcement needs and consideration into account along with those who have suffered and lost property. I would hope that we would have an opportunity, however, Mr. Chairman, to look at some other aspects of concern that I have.

I had a number of amendments. The substitute includes one of them. But I think, regardless of what happens to the substitute, we should have further discussion as to whether or not the clear and convincing evidence standard is the right balance for law enforcement versus the preponderance of evidence.

I think we should also discuss, Mr. Chairman, the issue as to the district court of a claimant reviewing the district court of a claimant for substantial hardship to render decision on that hardship issue within 10 days. I am concerned that we would have a problem there.

Mr. Chairman, I have another one on 10 days with respect to notice and another one with the Attorney General with respect to 30 days to a motion regarding the claimant's cause.

Mr. HYDE. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I think the gentlewoman has raised some very significant issues worthy of study. And I pledge that, should this legislation pass and reach conference, that her concerns will be fully considered and debated and, hopefully, we can do something about them.

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming my time, I appreciate the fact that we will be engaged in this issue, because it is a balance between property rights and law enforcement.

The one point that I would like to end on, I certainly would like innocent individuals to know early who has their property if it has been seized and I would like to make sure that we bring that time frame down under the 60-day time frame.

Mr. Chairman, I am in support of this bill which calls for civil assets forfeiture reform. Your leadership on this issue is to be commended. This is a good bipartisan bill which now shifts the burden of proof to the government to prove by clear and convincing evidence when seizing property and permits the appointment of counsel for indigent claimants while protecting innocent owners. I believe however in conference we might consider the burden of the government being a preponderance of the evidence.

Unlike criminal forfeiture, civil forfeiture requires no due process before a property owner is required to surrender their property.

Studies suggest that minorities are acutely affected by civil asset forfeitures. As we are well aware by now, racial profiling by the police has alarmingly increased the number of cases of minorities involved in traffic stops, airport searches and drug arrests. These cases afford the government, sometimes justifiably, with the opportunity to seize property. Since 1985, the Justice Department's asset forfeiture fund increased from $27 million to $338 million.

Since a deprivation of liberty is not implicated in a civil forfeiture, the government is not bound by the constitutional safeguards of criminal prosecution. The government needs only show probable cause that the property is subject to forfeiture. The burden shifts to property owner to prove that the property is not subject to forfeiture.

The property owner may exhaust his or her financial assets in attorney's fees to fight for the return of property. If the financial burden of attorney's fees is not crushing enough, the owner has to post a bond worth 10 percent of the value of the property, before contesting the forfeiture. Indigent owners are not entitled to legal counsel.

Interestingly enough, persons charged in criminal cases are entitled to a hearing in court and the assistance of counsel. The government need not charge a property owner with a crime when seizing property under civil laws. The result is that an innocent person, or a person not charged with a crime, has fewer rights than the accused criminal. This anomaly must end.

Reform of civil asset forfeiture laws is long overdue. I have several amendments regarding a sooner notice for property owners whose property as seized—I also hope we can present this in conference. My constituents' property rights must be protected.

I urge you to support this bill to ensure that innocent owners are provided some measure of due process before their property is seized.

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Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the substitute seems to me to be based on one premise which I reject, that is, that having the government take your property but calling it civil somehow is different than if the government takes your property and says it is criminal. In either case, you lost the property. In either case, you are stigmatized. In either case, the reason for the loss of the property is that you are considered to have done something wrong.

We have already conceded a great deal, it seems to me, in saying that the government, which must prove beyond a reasonable doubt to fine you criminally, need only meet the lesser standard of clear and convincing evidence to fine you civilly. But to go below that to the preponderance of the evidence is to engage the fiction, indulge the fiction that losing your home because someone did something wrong there, a member of your family, is somehow not as serious a penalty as being fined $10,000. We acknowledge the value of what you are losing through this procedure could far exceed what you might be hit with a criminal fine. Indeed, there is no proportionality here, so that you might lose much more through this civil procedure than through the criminal procedure. If, in fact, your property is taken, it is probably going to be known, so that the obloquy is there, so the question then is, does the legal fiction of calling this a civil asset forfeiture when it looks, smells, talks, acts and operates like a criminal penalty justify making it easier for the government to take it away from you, because that is what we are talking about.

The government takes something away from you because you did something wrong. Or because somebody else did something wrong and you did not try hard enough to stop it, in the judgment of the government. Why should the government have a lower standard of proof in that situation than in another situation where the penalty might be less? While imprisonment obviously is more, criminal fines could be less than the amount of the civil forfeiture, but we make it easier for the government to do the one than the other for no good reason.

I must say it has been my experience when I meet with people in this regard that when they ask to have this explained, they are incredulous that the government does this.

I also want to say, I am a great supporter of law enforcement. In the substitute that the gentleman from Michigan put forward to the juvenile justice bill, there was a bill that I had cosponsored with some of my Massachusetts colleagues to renew the COPS program and to allow law enforcement to continue to pay cops who were originally federally paid. I want to provide more money for law enforcement, but I want to do that through the rational process of appropriations. The notion that we should give law enforcement differential incentives by saying that if they enforce this law they are direct financial beneficiaries but not if they enforce that law seems to me a terrible idea. We should not put our police officers on a bounty system. We ought to fund them better than we now fund them but through the regular process.

I congratulate the gentleman from Illinois for the hard work he has done in bringing this forward. He has already, I think, been judicious in his compromises, and there is no reason to indulge the continuing legal fiction that suffering the penalty of the loss of your property through a civil asset forfeiture is somehow less damaging to you than losing it through a criminal conviction. In every real way, the impact is the same on the individual, and thus by dealing with a clear and convincing standard, we have already lowered the bar for government. To lower it further as this substitute requires is to lower too low the protections that a citizen ought to enjoy vis-a-vis the government.

I hope that we will proceed to considering defeating the substitute and passing the legislation as proposed by the gentleman from Illinois.

Mr. Chairman, I yield back the balance of my time.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding me this time.

Clearly we are all supportive of reform. I think that that has been clear from the debate today. I want to respond to the gentleman from Massachusetts concerning the difference in standard of proof. If a student is sued to collect on a defaulted government loan, the government must prove it by a preponderance of the evidence. But if you go against a drug dealer, it has to be a much higher standard of proof, and I think that is unfair. If the government goes after a doctor or a hospital for overcharging on Medicare, you have a lower standard of proof than if you are going after a drug dealer. I think that is fundamentally unfair. And so I think there is a rational reason for keeping the standard of proof the same.

There have been some complaints about the uses of the forfeiture money. Neither the base bill nor the substitute addresses whether it goes through the appropriation process. That is not addressed in these bills. But we have to acknowledge there have been some very beneficial uses, victims assistance programs, safety equipment for law enforcement officers, helping our local law enforcement communities. This would be severely undermined if we cannot go after the drug dealer's assets.

In East St. Louis, Illinois, $350,000 was used of federally forfeited money for a water park that assisted a community. And then in regards to the appointment of counsel, I think there are certain instances in which that would be appropriate, but you have to have adequate safeguards.

If you have a car transporting drugs from New York to Florida, there is an arrest made and there is $60,000 in there, you could have potentially four different people, from the person in New York to the recipient in Florida, to the individuals in the vehicle that would be claiming that money. Would they all be entitled to have appointed counsel? How much is this going to cost the taxpayers? And so I think that we are for reform.

The gentleman from Illinois has done such an extraordinary job with the gentleman from Michigan and others. We are together on this. But I do believe that the substitute offers some improvements that will continue this as a useful tool for law enforcement. And so I think that we need to consider that as we move forward into the debate.

Mr. HYDE. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from Illinois is recognized for 4½ minutes.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I want to thank my friends on both sides of the aisle for the enlightening debate on this issue and I would like to respond briefly to my friend from Arkansas. He keeps saying going after a drug dealer. When did he become a drug dealer? You have filed a probable cause. You have not convicted him of anything. But you have confiscated his property, you have put him out of business, you have put him out of house and home. You persist in calling him a drug dealer, but he has not been convicted of anything. He is innocent until proven guilty, unless we follow the perverse logic of our civil asset forfeiture laws.

Now, we want to give some poor guy who has been wiped out by the government on probable cause a lawyer. You say, ''Okay, we'll give you a lawyer, but let the government cross-examine him first, extensively, about anything and everything.'' My God, then he does not need a lawyer. You have held him up to the light and shaken him. You have cross-examined him. Is that the hurdle he has to mount and surmount to get a lawyer? That is really not so.

The preponderance of evidence is fine in a civil suit and the highest standard is beyond all reasonable doubt. We suggest a middle standard, clear and convincing. Why? Because it is not a civil suit. It is a quasi-criminal suit and it is punishment. The Supreme Court has said when they confiscate your property, that is punishment. And so you ought to meet a little higher standard than preponderance and that is the standard of clear and convincing.

The gentleman's bill, his substitute, expands incrementally, exponentially the field of civil asset forfeiture. That may be a good idea, but not in this bill. This is a reform of the process. This is

not a bill to broaden the concept of civil asset forfeiture. I am interested in it. If he wants to prepare a bill and file it, I will give him very good hearings and quick hearings. But this bill is to reform the process and ought not to be diluted or diverted into issues over which we have had no hearings.

Now, all I want to do is give the average citizen who is not a sheriff, who does not have a relative in the city council, I want to give him due process of law. That means the government, King Louis XIV, does not confiscate your property on probable cause. That is all. You prove, Mr. Government, that you ought to have that property, that some crime has been committed and it is connected to the defendant and that is fine. I am all for it. I will open the door for you. But on an affidavit of probable cause to inflict drastic punishment on somebody and make them prove they are not guilty is not, in my humble opinion, the American way.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

The amendment in the nature of a substitute consisting of the bill, modified by the amendments printed in the bill, shall be considered by sections as an original bill for the purpose of amendment and, pursuant to the rule, each section is considered read.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in House Report 106–193 if offered by the gentleman from Illinois (Mr. HYDE) or his designee. That amendment shall be considered read and may amend portions of the bill not yet read for amendment.

No further amendment to the amendment in the nature of a substitute is in order except those printed in the appropriate portion of the CONGRESSIONAL RECORD. Those amendments shall be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider the amendment printed in House Report 106–193.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE:

Page 11, strike line 3 and all that follows through line 3 on page 12 and redesignate sections 4, 5, and 6 as sections 3, 4, and 5, respectively.

Page 12, line 17, strike ''forfeiture'' and insert ''forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 13, beginning in line 20 strike ''under any Act of Congress'' and insert ''under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 13, line 25, strike ''pre-judgment interest'' and insert ''for pre-judgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 14, line 17, strike ''any intangible benefits'' and insert ''any intangible benefits in a proceeding under any provision of Federal law (than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Mr. HYDE. Mr. Chairman, it was always the intent to modify the procedures for Federal civil asset forfeitures. This is a purely technical amendment which clarifies in the few cases where the bill may be unclear that we are talking about civil asset forfeiture and not criminal asset forfeiture. I move its adoption.

Mr. FRANK of Massachusetts. Mr. Chairman, I agree with the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. HYDE).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate section 1.

The text of section 1 is 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 ''Civil Asset Forfeiture Reform Act''.

The CHAIRMAN. Are there any amendments to section 1?

AMENDMENT NO. 25 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mr. HUTCHINSON. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 25 in the nature of a substitute offered by Mr. HUTCHINSON:

Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the ''Civil Asset Forfeiture Reform Act''.

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

Sec. 1. Short title and table of contents.
Sec. 2. Creation of general rules relating to civil forfeiture proceedings.
Sec. 3. Compensation for damage to seized property.
Sec. 4. Prejudgment and postjudgment interest.
Sec. 5. Applicability.

**SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.**

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting the following new section after section 982:

**''§ 983. Civil forfeiture procedures**

''(a) ADMINISTRATIVE FORFEITURES.—(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must send written notice of the seizure under section 607(a) of the Tariff Act of 1930 (19 U.S.C. 1607(a)), such notice together with information on the applicable procedures shall be sent not later than 60 days after the seizure to each party known to the seizing agency at the time of the seizure to have an ownership or possessory interest, including a lienholder's interest, in the seized article. If a party's identity or interest is not determined until after the seizure but is determined before a declaration of forfeiture is entered, such written notice and information shall be sent to such interested party not later than 60 days after the seizing agency's determination of the identity of the party or the party's interest.

''(B) If the Government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property pending the giving of such notice.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1)(A). Such an extension shall be granted based on a showing of good cause.

''(3) A person with an ownership or possessory interest in the seized article who failed to file a claim within the time period prescribed in subsection (b) may, on motion made not later than 2 years after the date of final publication of notice of seizure of the property, move to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609). Such motion shall be granted if—

''(A) the Government failed to take reasonable steps to provide the claimant with notice of the forfeiture; and

''(B) the person otherwise had no actual notice of the seizure within sufficient time to enable the person to file a timely claim under subsection (b).

''(4) If the court grants a motion made under paragraph (3), it shall set aside the declaration of forfeiture as to the moving party's interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

''(5) If, at the time a motion under this subsection is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under paragraph (4). The property which will be the subject of the forfeiture proceedings instituted under paragraph (4) shall be a sum of money equal to the value of the forfeited property at the time it was disposed of plus interest.

''(6) The institution of forfeiture proceedings under paragraph (4) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was completed before the expiration of such limitations period.

''(7) A motion made under this subsection shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

''(b) FILING A CLAIM.—(1) Any person claiming such seized property may file a claim with the appropriate official after the seizure.

''(2) A claim under paragraph (1) may not be filed later than 30 days after—

''(A) the date of final publication of notice of seizure; or

''(B) in the case of a person receiving written notice, the date that such notice is received.

''(3) The claim shall set forth the nature and extent of the claimant's interest in the property.

''(4) Any person may bring a direct claim under subsection (b) without posting bond with respect to the property which is the subject of the claim.

''(c) FILING A COMPLAINT.—(1) In cases where property has been seized or restrained by the Government and a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims not later than 90 days after the claim was filed, or return the property pending the filing of a complaint. By mutual agreement between the Government and the claimants, the 90-day filing requirement may be waived.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1). Such an extension shall be granted based on a showing of good cause.

''(3) Upon the filing of a civil complaint, the claimant shall file a claim and answer in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims.

''(d) APPOINTMENT OF COUNSEL.—(1) If the person filing a claim is financially unable to obtain representation by counsel and requests that counsel be appointed, the court may appoint counsel to represent that person with respect to the claim. In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account—

''(A) the nature and value of the property subject to forfeiture, including the hardship to the claimant from the loss of the property seized, compared to the expense of appointing counsel;

''(B) the claimant's standing to contest the forfeiture; and

''(C) whether the claim appears to be made in good faith or to be frivolous.

''(2) The court shall set the compensation for that representation, which shall be the equivalent to that provided for court-appointed representation under section 3006A of this title, and to pay such cost, there are authorized to be appropriated such sums as are necessary as an addition to the funds otherwise appropriated for the appointment of counsel under such section.

''(3) The determination of whether to appoint counsel under this subsection shall be made following a hearing at which the Government shall have an opportunity to present evidence and examine the claimant. The testimony of the claimant at such hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the admissibility of testimony adduced in a hearing on a motion to suppress evidence. Nothing in this paragraph shall be construed to prohibit the admission of any evidence that may be obtained in the course of civil discovery in the forfeiture proceeding or through any other lawful investigative means.

''(e) BURDEN OF PROOF.—In all suits or actions brought for the civil forfeiture of any property, the burden of proof at trial is on the United States to establish, by a preponderance of the evidence, that the property is subject to forfeiture. If the Government proves that the property is subject to forfeiture, the claimant shall have the burden of establishing any affirmative defense by a preponderance of the evidence.

''(f) INNOCENT OWNERS.—(1) An innocent owner's interest in property shall not be forfeited in any civil forfeiture action.

''(2) With respect to a property interest in existence at the time the illegal conduct giving rise to the forfeiture took place, the term 'innocent owner' means an owner who—

''(A) did not know of the conduct giving rise to the forfeiture; or

''(B) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

''(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property, was a bona fide purchaser for value and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture.

''(B) Except as provided in paragraph (4), where the property subject to forfeiture is real property, and the claimant uses the property as his or her primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

''(i) in the case of a spouse, through dissolution of marriage or by operation of law, or

''(ii) in the case of a minor child, as an inheritance upon the death of a parent,

and not through a purchase. However, the claimant must establish, in accordance with subparagraph (A), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture, and was an owner of the property, as defined in paragraph (6).

''(4) Notwithstanding any provision of this section, no person may assert an ownership interest under this section—

''(A) in contraband or other property that it is illegal to possess; or

''(B) in the illegal proceeds of a criminal act unless such person was a bona fide purchaser for value who was reasonably without cause to believe that the property was subject to forfeiture.

''(5) For the purposes of paragraph (2) of this subsection a person does all that reasonably can be expected if the person takes all steps that a reasonable person would take in the circumstances to prevent or terminate the illegal use of the person's property. There is a rebuttable presumption that a property owner took all the steps that a reasonable person would take if the property owner—

''(A) gave timely notice to an appropriate law enforcement agency of information that led to the claimant to know the conduct giving rise to a forfeiture would occur or has occurred; and

''(B) in a timely fashion, revoked permission for those engaging in such conduct to use the property or took reasonable steps in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

The person is not required to take extraordinary steps that the person reasonably believes would be likely to subject the person to physical danger.

''(6) As used in this subsection—

''(A) the term 'civil forfeiture statute' means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

''(B) the term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

''(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

''(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

''(iii) a nominee who exercises no dominion or control over the property;

''(C) a person shall be considered to have known that the person's property was being used or was likely to be used in the commission of an illegal act if the person was willfully blind.

''(7) If the court determines, in accordance with this subsection, that an innocent owner had a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court shall enter an appropriate order—

''(A) severing the property;

''(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

''(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government, to the extent of the forfeitable interest in the property, that will permit the Government to realize its forfeitable interest if the property is transferred to another person.

To effectuate the purposes of this subsection, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of state law.

''(8) An innocent owner defense under this subsection is an affirmative defense.

''(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At any time after a claim and answer are filed in a judicial forfeiture proceeding, a claimant with standing to contest the seizure of the property may move to suppress the fruits of the seizure in accordance with the normal rules regarding the suppression of illegally seized evidence. If the claimant prevails on such motion, the fruits of the seizure shall not be admitted into evidence as to that claimant at the forfeiture trial. However, a finding that evidence should be suppressed shall not bar the forfeiture of the property based on evidence obtained independently before or after the seizure.

''(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—At any pre-trial hearing under this section in which the governing standard is probable cause, the court may accept and consider hearsay otherwise inadmissible under the Federal Rules of Evidence.

''(i) STIPULATIONS.—Notwithstanding the claimant's offer to stipulate to the forfeitability of the property, the Government shall be entitled to present evidence to the finder of fact on that issue before the claimant presents any evidence in support of any affirmative defense.

''(j) PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE.—The court, before or after the filing of a forfeiture complaint and on the application of the Government, may—

''(1) enter any restraining order or injunction in the manner set forth in section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e));

''(2) require the execution of satisfactory performance bonds;

''(3) create receiverships;

''(4) appoint conservators, custodians, appraisers, accountants or trustees; or

''(5) take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this section.

''(k) EXCESSIVE FINES.—(1) At the conclusion of the trial and following the entry of a verdict of forfeiture, or upon the entry of summary judgment for the Government as to the forfeitability of the property, the claimant may petition the court to determine whether the excessive fines clause of the Eighth Amendment applies, and if so, whether forfeiture is excessive. The claimant shall have the burden of establishing that a forfeiture is excessive by a preponderance of the evidence at a hearing conducted in the manner provided in Rule 43(e), Federal Rules of Civil Procedure, by the Court without a jury. If the court determines that the forfeiture is excessive, it shall adjust the forfeiture to the extent necessary to avoid the Constitutional violation.

''(2) The claimant may not object to the forfeiture on Eighth Amendment grounds other than as set forth in paragraph (1), except that a claimant may, at any time, file a motion for summary judgment asserting that even if the property is subject to forfeiture, the forfeiture would be excessive. The court shall rule on such motion for summary judgment only after the Government has had an opportunity—

''(A) to conduct full discovery on the Eighth Amendment issue; and

''(B) to place such evidence as may be relevant to the excessive fines determination before the court in affidavits or at an evidentiary hearing.

''(l) PRE-DISCOVERY STANDARD.—In a judicial proceeding on the forfeiture of property, the Government shall not be required to establish the forfeitability of the property before the completion of discovery pursuant to the Federal Rules of Civil Procedure, particularly Rule 56(f) as may be ordered by the court or if no discovery is ordered before trial.

''(m) APPLICABILITY.—The procedures set forth in this section apply to any civil forfeiture action brought under any provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act.''.

(b) RELEASE OF PROPERTY.—Chapter 46 of title 18, United States Code, is amended to add the following section after section 984:

**''§ 985. Release of property to avoid hardship**

''(a) A person who has filed a claim under section 983 is entitled to release pursuant to subsection (b) of seized property pending trial if—

''(1) the claimant has a possessory interest in the property sufficient to establish standing to contest forfeiture and has filed a nonfrivolous claim on the merits of the forfeiture action;

''(2) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

''(3) the continued possession by the United States Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the claimant from working, leaving the claimant homeless, or preventing the functioning of a business;

''(4) the claimant's hardship outweighs the risk that the property will be destroyed, damaged, lost, concealed, diminished in value or transferred if it is returned to the claimant during the pendency of the proceeding; and

''(5) none of the conditions set forth in subsection (c) applies;

''(b)(1) The claimant may make a request for the release of property under this subsection at any time after the claim is filed. If, at the time the request is made, the seizing agency has not yet referred the claim to a United States Attorney pursuant to section 608 of the Tariff Act of 1930 (19 U.S.C. 1608), the request may be filed with the seizing agency; otherwise the request must be filed with the United States Attorney to whom the claim was referred. In either case, the request must set forth the basis on which the requirements of subsection (a)(1) are met.

''(2) If the seizing agency, or the United States Attorney, as the case may be, denies the request or fails to act on the request within 20 days, the claimant may file the request as a motion for the return of seized property in the district court for the district represented by the United States Attorney to whom the claim was referred, or if the claim has not yet been referred, in the district court that issued the seizure warrant for the property, or if no warrant was issued, in any district court that would have jurisdiction to consider a motion for the return of seized property under Rule 41(e), Federal Rules of Criminal Procedure. The motion must set forth the basis on which the requirements of subsection (a) have been met and the steps the claimant has taken to secure the release of the property from the appropriate official.

''(3) The district court must act on a motion made pursuant to this subsection within 30 days or as soon thereafter as practicable, and must grant the motion if the claimant establishes that the requirements of subsection (a) have been met. If the court grants the motion, the court must enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including permitting the inspection, photographing and inventory of the property, and the court may take action in accordance with Rule E of the Supplemental Rules for Certain Admiralty and Maritime Cases. The Government is authorized to place a lien against the property or to file a lis pendens to ensure that it is not transferred to another person.

''(4) If property returned to the claimant under this section is lost, stolen, or diminished in value, any insurance proceeds shall be paid to the United States and such proceeds shall be subject to forfeiture in place of the property originally seized.

''(c) This section shall not apply if the seized property—

''(1) is contraband, currency or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a business which has been seized,

''(2) is evidence of a violation of the law,

''(3) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

''(4) is likely to be used to commit additional criminal acts if returned to the claimant.''

''(d) Once a motion for the release of property under this section is filed, the person filing the motion may request that the motion be transferred to another district where venue for the forfeiture action would lie under section 1355(b) of title 28 pursuant to the change of venue provisions in section 1404 of title 28.''.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 46 of title 18, United States Code, is amended—

(1) by inserting after the item relating to section 982 the following:

''983. Civil forfeiture procedures''; and

(2) by inserting after the item relating to section 984 the following:

''985. Release of property to avoid hardship''.

(f) CIVIL FORFEITURE OF PROCEEDS.—Section 981(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (C) by inserting before the period the following: ''or any offense constituting 'specified unlawful activity' as defined in section 1956(c)(7) of this title or a conspiracy to commit such offense''; and

(2) by striking subparagraph (E).

(d) UNIFORM DEFINITION OF PROCEEDS.—Section 981(a) of title 18, United States Code, as amended by subsection (c), is amended—

(A) in paragraph (1), by striking ''gross receipts'' and ''gross proceeds'' wherever those terms appear and inserting ''proceeds''; and

(B) by adding the following after paragraph (1):

''(2) For purposes of paragraph (1), the term 'proceeds' means property of any kind obtained, directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the commission of the offense. In a case involving the forfeiture of proceeds of a fraud or false claim under paragraph (1)(C) involving billing for goods or services part of which are legitimate and part of which are not legitimate, the court shall allow the claimant a deduction from the forfeiture for the amount obtained in exchange for the legitimate goods or services. In a case involving goods or services provided by a health care provider, such goods or services are not 'legitimate' if they were unnecessary.

''(3) For purposes of the provisions of subparagraphs (B) through (H) of paragraph (1) which provide for the forfeiture of proceeds of an offense or property traceable thereto, where the proceeds have been commingled with or invested in real or personal property, only the portion of such property derived from the proceeds shall be regarded as property traceable to the forfeitable proceeds. Where the proceeds of the offense have been invested in real or personal property that has appreciated in value, whether the relationship of the property to the proceeds is too attenuated to support the forfeiture of such property shall be determined in accordance with the excessive fines clause of the Eighth Amendment.''

**SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.**

(a) TORT CLAIMS ACT.—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking ''law-enforcement'' and inserting ''law enforcement''; and

(2) by inserting before the period the following: '', except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than $50,000 in any case, a claim for damage to, or loss of,

privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

**SEC. 4. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

Section 2465 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Upon''; and

(2) adding at the end the following:

''(b) INTEREST.—

''(1) POST-JUDGMENT.—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

''(2) PRE-JUDGMENT.—The United States shall not be liable for prejudgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

''(A) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

''(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

''(3) LIMITATION ON OTHER PAYMENTS.—The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.''.

**SEC. 5. APPLICABILITY.**

Unless otherwise specified in this Act, the amendments made by this Act apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

Mr. HUTCHINSON. Mr. Chairman, it was Ronald Reagan who understood how to fight and win the war on drugs. It was President Reagan who knew that you had to seize the drug dealers' cars, boats, airplanes and cash that were used to carry on the drug business in order to hit them where it hurts.

Asset forfeiture has proven without any doubt to be an effective weapon in the war on drugs. This is not the time to disarm our soldiers and to demoralize our police on the front line and it is certainly not the right time to send the signal to the drug dealers that we are weakening our resolve.

For that reason, I, along with the gentleman from New York (Mr. WEINER) and the gentleman from New York (Mr. SWEENEY) have offered a substitute to H.R. 1658 which would accomplish the reform that the gentleman from Illinois has worked so valiantly for but at the same time our substitute will not cripple our drug enforcement agents who put their lives on the line every day.

I agree that no innocent citizen should have to prove his or her innocence to the government in order to protect their property from government seizure. It should not be probable cause as the gentleman from Illinois pointed out. This substitute includes the identical provisions in the base bill on shifting the burden of proof to the government, eliminating the necessity of a cost bond, providing a means to recovery for citizens who have their property damaged, and it pays interest on assets returned. We can all be for protection of our citizens and for reform while also going after the drug dealers. And so there are some corrections in the substitute that provides balance to this legislation.

For example, the drug trafficker who unloads shiploads of cocaine upon our Nation's youth should not be afforded more protection than a student who defaults on his loan. The government has to prove the case by a preponderance against the student, but there is a higher standard when going after the assets of drug dealers by clear and convincing evidence.

□ 1515

Now, as pointed out, that we do not know they are a drug dealer. Eighty percent of the cases there is an arrest or a charge against the individual. But in some instances we will have assets are abandoned by people who are clearly engaging in drug trafficking, but they will go across the border. We will have someone who is not prosecutable because we do not have good extradition laws, and so we can still seize their assets under those circumstances. This makes sense, and the substitute corrects the problem.

Now, if there was a medal of honor to be given to someone in the war on drugs, it would be to Tom Constantine, the DEA Administrator. Listen to what he has to say:

> Drug trafficking is not a crime of passion, but one of greed. The DEA and the law enforcement community know that to dissolve a drug trafficking organization we must eliminate the financial base and profit. The enactment of H.R. 1658 would severely limit DEA's ability to use its effective law enforcement tool.

He goes on to say that the broad brush of H.R. 1658 would destroy or severely limit the ability of law enforcement to attack drug traffickers and other criminal elements.

This is the DEA Administrator.

I think we have to be consistent here in this Congress. How does disarming law enforcement fit into the war on drugs? We push other countries to adopt laws that allow seizure of assets; we push them to do that, and then we back off from our own commitment to take drug dealers' assets. We form a Speaker's Task Force for a Drug-free America. We want to de-certify Mexico. We get upset about the lack of commitment from other countries. Then we throw up our hands and say that we want to overreact and back off from our support of law enforcement.

We need to ask ourselves how can we weaken the forfeiture laws to such an extent that we discourage law enforcement. We are telling them that we do not have the resolve. We are telling the DEA that we are not going to help them. We cannot demoralize the courageous law enforcement men and women who are trying to save the lives of our teenagers and the next generation.

The bill of the gentleman from Illinois (Mr. HYDE) does extraordinary good to what we are trying to accomplish in making sure citizens are protected, but the reasonable Hutchinson–Weiner-Sweeney amendment makes it a balance so that we do not hamper the legitimate efforts of law enforcement.

So I would ask my colleagues to support this substitute that is offered that would bring reason to the appointment of attorneys, that would make sure that it is not simply retroactive in application, it does not affect pending cases, as the base bill does. Our bill would say it would apply after the date of enactment. It is much a more commonsense approach to the enactment of a bill. Whenever it comes to the hardship cases, we make it clear that there is a difference between the cash and those things that are used for drug crimes during the pendency of an action versus otherwise, and so I ask my colleagues to support this reasonable substitute.

Mr. WEINER. Mr. Chairman, I rise in support of the Hutchinson amendment.

Mr. Chairman, the gentleman from Arkansas (Mr. HUTCHINSON) has outlined for us in great detail how we are simply seeking to make the civil asset forfeiture law, make it a little bit more fair and to make it so it can be used by law enforcement authorities. But there has been some argument here about whether or not we should have civil asset forfeiture at all, and I would like to spend a moment or two just reviewing some of the circumstances that perhaps my colleagues have not considered where civil asset forfeiture is the only way to really get at the root of crime, and it is the reason why we have had such great results against crime in many localities around the country.

First of all, criminal forfeiture, which is something that my colleague from Massachusetts has argued in support of, and frankly I believe we all believe that criminal forfeiture where it is written into the law is the most important tool that should be used against a criminal is useless if the criminal is either dead or fugitive from the law. If someone leaves the scene of a crime, if we are in pursuit of them and they leave behind a sack of money and drugs, under the argument that has been made here we would not be able to seize that unless, of course, we

are able to reach a much higher standard than presently exists.

Secondly, criminal forfeiture is limited to the property of the defendant, and just as I said earlier, there are very frequently times, especially in the locality that I am from in New York City where we have homes, where we have apartments, where we have houses that are used for illegal activity and sometimes even used for illegal activity with the knowledge of the occupant. But since the occupant or the owner is not the person that does that criminal activity, civil asset forfeiture is frequently the only way that we can get it. If an airplane that is used for drug smuggling, for example, belongs to the wife of the defendant or belongs to a corporation or to his partner, this is a way that we can get at that article of crime.

Also, civil forfeiture is the only way to seize drug money that is carried by a courier when there is no way to know exactly which drug dealer it belongs to. Eighty-five percent of such civil forfeiture cases are uncontested. Without civil forfeiture this money would have to be released to the courier.

Again civil forfeiture is the only way to shut down a crack house or a property. Civil forfeiture is needed when we do not, we are not, when we are seizing something under federal law when the crime has happened under State law.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. WEINER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. He said, and I thank the gentleman for yielding; he said that some of the 85 percent of them were uncontested. Is the gentleman telling us that one could not meet the standard of clear and convincing in an uncontested case?

Mr. WEINER. If I can reclaim my time, what I am arguing to the gentleman from Massachusetts is that there are some people who have looked on and listened to the debate and said why is it that we should have civil forfeiture statutes at all? Why is it necessary that they exist in the law?

The gentleman from Illinois, the distinguished chairman, raised a very interesting question about whether it is indeed an un-American thing to do, and what I am trying to do is lay out the ways in the real world law enforcement authorities all across this country who from A to Z have lined up in favor of the Hutchinson–Weiner-Sweeney amendment are using it.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield again?

Mr. WEINER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I understand, but the amendment is to a bill which leaves civil forfeiture in place, and the gentleman just cited as an argument for the amendment, presumably, that many, many of these are uncontested.

Now the underlying bill says they just have to meet the clear and convincing standard, and I am arguing that in an uncontested case one does not have to be a crack lawyer to meet the standard of clear and convincing, so that is an irrelevancy on the question of the amendment versus the underlying bill.

Mr. WEINER. As I reclaim my time, I guess I understand from that question and that argument that the gentleman from Massachusetts supports civil forfeiture in those cases.

Mr. FRANK of Massachusetts. If the gentleman would yield, I congratulate the gentleman on getting me to acknowledge what has been my policy for years and what is the Chairman's policy. The gentleman is flailing away at a straw man. I do not see anything on here that totally abolishes civil forfeiture anywhere.

Mr. WEINER. In fact, I would say to the gentleman from Massachusetts, the straw man here is the argument that these abuses represent the true state of civil forfeiture law in this country. In fact, these things that I am listing are how indeed law enforcement authorities every day are using the civil forfeiture statute. The abuses that exist, and they do, they represent the straw man in this debate because indeed we all want to do away with the abuses.

The question becomes do we then say by doing away with these abuses do we obviate all civil forfeiture statutes? The gentleman from Illinois, the very distinguished chairman, argued on the well of this House that it was un-American in some way, and all I am trying to delineate for the American people and for the folks in this Chamber; the fundamental argument has emerged: Should we have civil forfeiture, and I believe we should.

Mr. HYDE. Mr. Chairman, I move to strike the last word.

As my colleagues know, we a have a lot of fevered debate around here by well-meaning people, and that is fine, that is what this place is all about. So I just want to say a few things about the amendment offered by my good friend, the gentleman from Arkansas (Mr. HUTCHINSON), the gentleman from New York (Mr. SWEENEY), and the gentleman from New York (Mr. WEINER). It is so unfair, it is unfair.

Mr. Chairman, I will tell my colleagues why it is unfair. The bill, the underlying bill, guarantees a property owner is considered an innocent owner and receives protection from forfeiture if he or she notifies the police of the unauthorized illegal use of his or her property by others and revokes their permission to use the property. That is the innocent owner defense. Is that fair? Well, I think it is, but it is not in their bill. They do not permit an innocent owner who has gone to the police and said, ''Some of my tenants are selling dope, and I have tried to evict them, and they threw a knife at me.'' Well, he loses his building because they do not have an innocent owner defense in their substitute.

Now, they do not protect innocent heirs. Somebody inherits something, and 10 years ago it was used in a crime, he does not know about it, totally innocent; he loses his property. I know the police like that; they like those assets. I understand that. The substitute does not require the government to establish the forfeitability of the property before completion of discovery. As the gentleman from Michigan (Mr. CONYERS) said, seize now and prove later. That is a wonderful idea; that is very fair.

The substitute dramatically expands the field of civil asset forfeiture; no hearings on that at all. It weakens almost all of our reforms. The burden of proof belongs with the government when they are punishing someone, and this is punishment. It has been held to be punishment, quasi criminal, and therefore their standard ought to be, ought to be, clear and convincing.

Now, Mr. Constantine had an interesting quote there, and I have nothing but admiration for people who are fighting the drug battle, but I did not hear a peep out of those people while all of these abuses were going on, while people had their property confiscated on probable cause. I would think more of their essential fairness had they brought this to our attention and not some newspaper man.

Mr. WEINER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. WEINER. Mr. Chairman, first of all just a point of correction on a couple of points.

We do indeed have an innocent owner defense in the Sweeney-Hutchinson–Weiner substitute, and as to the point that there were not hearings on the bill, this virtually identical bill passed by 26 to 1 last year in the Committee on the Judiciary of this House.

Mr. HYDE. Mr. Chairman, I did not hear the gentleman.

Mr. WEINER. Our substitute passed 26 to 1 last year in the Committee on the Judiciary of this House.

Mr. HYDE. Last year I tried to compromise with the Justice Department. I bent over backwards trying to accommodate everybody, and the more their bill grew and was distorted into areas where I did not want it to go, I lost support, and finally I had a nice shell of nothing. So I decided to get pure and go back to the original bill, and that is what we are doing.

Mr. WEINER. I just want a clarification on the notion that there was no hearings because indeed there were.

Mr. HYDE. There were no hearings on the burden of proof and things like that, and the gentleman from New York was not here.

Mrs. MEEK of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The gentlewoman's amendment can be considered during a later section in the bill.

Mrs. MEEK of Florida. That is true, but I amended both of them. I amended

this particular bill as well as the later bill.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if there were to be unanimous consent for it to be offered now since it might not get too far along, would that be in order, to ask for unanimous consent that the gentlewoman be allowed to offer it now?

The CHAIRMAN. Does the gentlewoman from Florida have an amendment to this amendment?

Mrs. MEEK of Florida. Yes, I do.

The CHAIRMAN. Would she present it to the Clerk?

Mrs. MEEK of Florida. Yes, it has been presented, and it is preprinted in the CONGRESSIONAL RECORD.

□ 1530

AMENDMENT OFFERED BY MRS. MEEK OF FLORIDA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mrs. MEEK of Florida. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

1Amendment offered by Mrs. MEEK of Florida to the amendment in the nature of a substitute offered by Mr. HUTCHINSON:

At the end add the following:

**SEC. 5. FORFEITURE FOR ALIEN SMUGGLING.**

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(l)(1) Any conveyance, including any vessel, vehicle, or aircraft which has been used or is being used in commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); and

''(2) Any property, real or personal that—

''(A) constitutes, is derived from, or is traceable to the proceeds obtained, directly or indirectly, from the commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); or

''(B) is used to facilitate, or is intended to be used to facilitate, the commission of a violation of such section.

Mrs. MEEK of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Mrs. MEEK of Florida. Mr. Chairman, my amendment addresses the pernicious practice of alien smuggling which is so often experienced in my area of south Florida. It is a huge problem there, especially those who bring passengers in from Haiti and Cuba to south Florida, frequently on unsafe and rickety boats, and many times under dangerous conditions, and many times with the loss of life.

For example, in March of this year, Mr. Chairman, an alien smuggler's boat sank off the coast of West Palm Beach, Florida, and depending upon whether or not the Coast Guard or press reports of this horrendous tragedy, whether those reports are correct, there were some 15 to 40 Haitian passengers who drowned because of that illegal smuggling act of bringing these poor and disadvantaged people from Haiti.

These heartless and inhumane alien smugglers are really parasites. They are making huge sums of money from these poor people who are fleeing from very bad conditions in their own countries. They seek to come to this country by any means because of their desperate condition, and they become easy prey for the smugglers, and they want to come to the United States.

We must provide law enforcement with some available remedies to assure that the smugglers cannot continue to exploit vulnerable communities such as the Haitians and the Cubans. Unfortunately, the existing civil asset forfeiture provisions for alien smuggling, they are far more limited than those available to address drug offenses, and there is a considerable need here for stronger, stricter regulations on these alien smugglers.

Current law authorizes the forfeiture of vehicles, vessels, and aircraft used to commit alien smuggling offenses. This has proven to be a very good law enforcement tool that the INS uses more than 12,000 times a year. But the law itself has some very glaring loopholes. We know that there are other types of property other than vessels and vehicles and aircraft that will facilitate the kind of illegal stuff that the smugglers are doing. But this type of property right now is not subject to civil asset forfeiture.

To give just one example of that, alien smugglers use electronic gear to monitor law enforcement activity directed against alien smuggling. The smugglers also use very large and well-equipped warehouses where vehicles, vessels and even human beings, many times, are stashed to avoid detection by the Coast Guard or the Border Patrol. Yet these other types of property currently are not subject to civil asset forfeiture.

Suffice it to say, Mr. Chairman, that there is an arena where current laws do not cover what is going on with these people who are dealing in human cargo. So my amendment seeks to correct these deficiencies by expanding the scope of permissible civil asset forfeiture in alien smuggling.

Law enforcement should have the ability to reach any property that is owned by the smugglers. Right now they do not. There is no logical reason why they cannot.

I thank the distinguished chairman, and I thank the people who are offering this substitute amendment, Mr. Chairman, for expressing their willingness to address this major problem that I have brought up between now and conference.

Mr. Chairman, based upon their statements and upon my understanding of what they have said, that they will address this later, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I rise in support of the substitute presently before us, and I urge my colleagues to support it as well. It is a carefully drawn proposal with the input of the Department of Justice and the law enforcement community. It, too, has an innocent owner defense. It also works to make certain that the defense will not be used by any criminals to shield their property.

The underlying Hyde bill is opposed by the DEA, the International Association of Chiefs of Police, by the New York State Police, the New York attorneys general, the New York State District Attorneys Association, the National Sheriffs Association, the Fraternal Order of Police, the national drug enforcement officers, among just a few in our law enforcement community. These are the frontline forces in our fight against illicit drugs and crime. We should heed their sound advice and be wary of anything that can make their already difficult job any harder.

Our superintendent of the New York State Police, an outstanding and dedicated police officer, and who once served in my district, put this whole debate in proper perspective when he wrote me on June 18 stating, and I quote, we are aware of no instance since the inception of the Federal equitable forfeiture sharing program of any case involving this agency whereby a hardship was endured by any innocent owner, close quote.

Let us not throw out the baby with the bath water while we try to reform asset forfeiture. Accordingly, I urge a vote for the Hutchinson-Weiner-Sweeney substitute. I think it is a well-crafted and well-thought-out compromise that was developed last year with the input of those who have been fighting the scourge of drugs and crime each and every day all across our Nation.

Mr. Chairman, I insert the following correspondence for the RECORD:

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
*New York, NY, June 23, 1999.*

Hon. BENJAMIN A. GILMAN,
*U.S. House of Representatives, Rayburn Office Building, Washington, DC.*

DEAR CONGRESSMAN GILMAN: I take this opportunity to express New York State's concern with regard to H.R. 1658 which is imminently scheduled to come before the full House of Representatives for vote. Passage of H.R. 1658 will seriously impair law enforcement's ability to seize assets of criminal enterprises. As such, when Congressman Hyde offers H.R. 1658 to address criminal asset forfeitures, I strongly urge members to support the substitute amendment being offered by Congressman Sweeney, Weiner and Hutchinson.

One of the most potent weapons in our efforts to combat illegal drugs and other organized criminal activity has been comprehensive Federal forfeiture statutes that strip criminal enterprises of their accumulated wealth and distribute it to state and local law enforcement agencies. The forfeited assets are then utilized by law enforcement agencies to augment their capacity to combat a broad array of criminal activity.

New York has been the major recipient of these shared forfeited assets. Indeed, since inception of this program in 1985, New York State law enforcement agencies have received over $380 million in forfeited assets, more than three times the amount of any other state. The New York State Police, alone, have received in excess of $100 million, enabling the agency to build a new $25 million Forensic Investigation Center funded entirely by forfeited assets returned to New York State. State and local police and prosecutors throughout the State received over $28 million in federally forfeited criminal proceeds in 1998 alone.

Unfortunately, this very laudable and effective program is threatened by H.R. 1658 as introduced by Congressman Hyde which, in my view, has the potential of decimating the forfeited asset sharing program in New York and across the nation.

Under the legitimate guise of protecting the rights of ''innocent'' owners, the bill unfortunately goes far beyond what is reasonably necessary to accomplish that goal and restructures the Federal forfeiture law in a manner that tips the scale sharply in favor of the criminal. The unrealistically high burdens of proof the Hyde language places upon police officers and the government, its provisions that eliminate cost bonds, permit transfer of assets to relatives, and permit the utilization of seized assets for legal fees will, I believe, hasten the demise of an outstanding program, and result in millions of dollars of tainted criminal assets being retained by organized criminal enterprises. It is, therefore, no surprise that H.R. 1658 is strongly opposed by virtually every law enforcement organization in the country, as sell as the United States Department of Justice.

Fortunately, to the extent that minor corrective measures are needed with regard to Federal forfeiture, there are realistic alternatives to H.R. 1658 which deserve your consideration and support. The substitute amendment being offered by Congressmen Sweeney, Hutchinson, and Weiner, strengthens the procedures that protect truly innocent owners, while preserving the inherent integrity of the forfeiture laws.

I respectfully request that you vote against H.R. 1658, unless the Sweeney/Weiner/Hutchinson amendment passes.

Please contact me if I can provide further information. Thank you for your assistance.

Sincerely,

KATHERINE N. LAPP.

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NEW YORK STATE POLICE,
STATE CAMPUS,
*Albany, NY, June 18, 1999.*

Hon. BENJAMIN A. GILMAN,
*Member of Congress, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.*

*Re: H.R. 1658.*

DEAR CONGRESSMAN GILMAN: As you know, I have expressed our strong opposition to the above-referenced measure. As a result of follow-up discussions by counsel from our respective offices, I would like to reiterate one particular point that has surfaced in relationship to this bill.

We are aware of no instance, since the inception of the federal equitable forfeiture sharing program, of any case involving this agency whereby a hardship was endured by a truly innocent owner.

It is not the intention of this agency, nor, in my opinion, the intention of law enforcement in general, to deprive truly innocent owners of property due to the illegal use of the property by criminals.

I would have no difficulty supporting a measure that protects legitimate innocent owners such as bona-fide purchasers or parents who have no involvement of knowledge of the criminal activity. I do believe however, that the above-referenced measure goes too far in permitting the divestiture of property to others in order to avoid forfeiture.

Thank you for your assistance.

Sincerely,

JAMES W. MCMAHON,
*Superintendent.*

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to speak on the amendment. I say that because not all of the conversation we have had was on the amendment. My colleague from New York brilliantly argued against a nonexistent proposition, at least existent in the current context; namely, that we should do away with civil asset forfeiture. There was an agreement that we should have it.

The questions are several. One, should the standard that the government has to meet to take someone's property because that person has either committed a crime or not prevented a crime, should the standard be the lowest possible, preponderance of the evidence, or should it be the intermediate standard of clear and convincing?

We are in an ironic situation now, and we will be even after the bill is passed, as I hope it will be, because I do not think it should be changed from that; it is now harder to prove that one is guilty of the crime than to take away one's property, even though the property may be more. In fact, we have this situation: One may be punished here substantially by the loss of one's property not for committing a crime, but for failing to prevent a crime from being committed. One forfeits one's innocent-owner defense if one has not taken steps to prevent the crime from being committed.

Now, the government need only prove, according to the amendment to the amendment, by a preponderance of the evidence that one failed to prevent the crime from being committed, and it can take one's property. That seems to me to be quite astonishing, that there is a lower standard for punishing someone for simply not stopping someone else from committing a crime than from committing the crime. It seems to me one is more culpable if one commits the crime, but it is easier to go after someone in the other circumstance.

Again, I want to stress, the notion that there is some division between losing one's property in a civil forfeiture and losing it in a criminal proceeding exists in very few minds and in no reality. There is no difference between having one's property taken.

The debate here is clear and convincing versus preponderance. The gentleman from New York said, in 85 percent of the cases, they are uncontested. Well, I submit that in 85 percent of the cases, if they are uncontested, establishing this to occur under a clear and convincing standard would not be that hard. One cannot lose, it seems to me, an uncontested case simply because the standard of truth is too high. We could probably meet beyond a reasonable doubt. We could probably meet absolute certainty, but we could certainly meet clear and convincing. So in those cases which are uncontested, the amendment is, of course, irrelevant. In those cases which are uncontested, there is no dispute, and one could easily win.

Mr. WEINER. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from New York.

Mr. WEINER. Mr. Chairman, we seem to have a problem about the premise. The gentleman seems to believe that the premise of civil asset forfeiture is always to be punitive, to penalize someone. In fact, the way it is most often used, as I described in the examples, is if there is a crack house in the middle of a block that is by being there, that is by its very existence, because someone fails to take action, what the Fed, in cooperation with the city and State authorities, are seeking to do, is take that crack house out of circulation.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, the gentleman is off the point, and I am not going to let him get off the point in my time.

The question was, should they have to meet the standard of clear and convincing or beyond reasonable doubt. I was quoting the gentleman where he said, in 85 percent of the cases they are uncontested. And my point, which I thought would be uncontested, is that an uncontested case, it is not that hard to meet the standard of clear and convincing, so the gentleman's crack houses would, in fact, be closed down.

But the notion that it is not punitive I would have to reject. It is always punitive for the government to come and take away one's property. The notion that there is this nonpunitive confiscation is what is at the heart of this. The notion that one is found by the government to have done something terrible, and, as a result of that, one is going to lose one's property, and one is, therefore, not punished does not make any sense.

There are a couple of other arguments I want to make. One, the gentleman said that he dislikes this because it covers pending cases. If the gentleman agrees that the current system is unfair, as they say they have, why do we not want to cover pending cases? Is the government entitled to a remaining quota of unfairness? How can one agree that the current system is wrong and needs changing and then

say, oh, but all of the poor guys who got caught in this current one, we do not help them. I would think that is a rather contradictory argument.

The final point is the business about a lawyer. Again, we ought to stress, opponents of the bill, supporters of the amendment keep talking about the drug dealer. We are not here talking about drug dealers. We are talking about people who have been accused either of being drug dealers or of not stopping other people from being drug dealers. And the question is not how do we punish acknowledged drug dealers, the question is, by what procedure does the government determine whether or not one is a drug dealer or someone who aided a drug dealer. That is why the underlying bill is so much better than the amendment.

Mr. SWEENEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Hutchinson–Weiner-Sweeney substitute. This substitute will provide meaningful reform to asset forfeiture without removing the teeth from the most valuable tool in what seems to be a losing war against drugs.

I have been here most of the afternoon listening to the debate, and I recognize that well-meaning people on both sides of this issue, including our chairman, the gentleman from Massachusetts (Mr. FRANK), and the gentleman from Michigan (Mr. CONYERS), have attempted to define and seek what is the balance between protecting the private property rights of innocent individuals, and also, at the same time, give law enforcement the tools they need to combat criminal enterprises.

What we seek in offering this substitute is to define and find those fine points, because we recognize that we are losing ground on the war on drugs, and now, I believe, unfortunately, H.R. 1658 will take us a step backwards when we really should be moving forward, Mr. Chairman.

H.R. 1658, while it protects the rights of law-abiding property owners, and that is its intention, and that is in part what it does do, it also protects lawbreaking property owners as well. Is this what we want in the crosshairs in the middle of the battle on drugs? I do not think so.

Mr. Chairman, H.R. 1658 rewards criminals by allowing them to challenge every forfeiture action, regardless of merit, and provides a free lawyer to do so, inundating the already overburdened Federal court system with frivolous claims. I have heard the Chairman argue that these folks are not criminals because they have not been proven guilty, but as the gentleman from New York (Mr. WEINER) pointed out, in 85 percent of the cases, claims are not made. The Supreme Court has ruled on 11 different forfeiture cases upholding virtually in every one that the constitutional rights of individuals that have broad claims have not been violated.

We seek balance here. Can we not strike a balance between free enterprise and criminal enterprise? I think we can, and I think this substitute achieves that.

The Hutchinson–Weiner-Sweeney substitute is a rational alternative providing rational reform and uniform standards without crippling and tying the hands of law enforcement in the war against drugs.

Now, moving from the rational to the excessive, the most outrageous aspect, in my view, of H.R. 1658 is a provision that allows heirs to inherit drug fortunes. We have a hard enough time as it is in this country allowing legitimate estates to pass to legitimate heirs without making it easier for criminals to literally take the money and run, and that is what we attempt to close here in this substitute.

The loophole in H.R. 1658 would allow drug kingpins and other criminals who have amassed illegal fortunes to pass their wealth to their heirs, not just wives and children, but also friends, mistresses and business associates.

Mr. Chairman, this substitute protects legitimate, innocent owners such as bona fide purchasers, or parents who have no involvement in or knowledge of criminal activity, without undercutting the ability of law enforcement to forfeit property from drug dealers, terrorists, alien smugglers and other criminals.

At a time when the street price of heroin has dropped dramatically and the supply has increased, we must not weaken law enforcement's ability to fight drugs. I rise, therefore, in strong support of this substitute because it brings about balanced reforms to civil asset forfeiture without compromising law enforcement's ability to seize the assets of drug dealers and racketeers. When the heroin market rivals the stock market, why would we want to scale back the efforts of our police?

□ 1545

Law enforcement officers risk their lives every day to keep our neighborhoods safe. They patrol the dark ally, raid the drug dens and meth labs, and they patrol the borders in the dark of night. Many men and women do these things every day, risking their lives to make our neighborhoods safer.

I am not prepared to undercut the good work of law enforcement, Mr. Chairman. That is why I support this substitute, and strongly urge my colleagues to do the same.

If Members seek safer streets, support this substitute. If they believe that we ought to be tougher on criminals than on innocent people, support the Hutchinson–Weiner-Sweeney substitute. If Members support the good work of law enforcement, they should support this substitute. If they seek to do the right thing for America, support this substitute.

Mr. Chairman, I urge my colleagues to do that.

AMENDMENT NO. 15 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. PAUL AS A SUBSTITUTE FOR AMENDMENT NO. 25 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mr. PAUL. Mr. Chairman, I offer an amendment in the nature of a substiute as a substitute for amendment the in the nature of a substitute.

The Clerk read as follows:

Amendment No. 15 in the nature of a substitute offered by Mr. PAUL as a substitute for amendment No. 25 in the nature of a substitute offered by Mr. HUTCHINSON:

Strike all after the enacting clause and insert the following:

**SECTION 1. FORFEITURE CONDITION.**

No property may be forfeited under any civil asset forfeiture law unless the property's owner has first been convicted of the criminal offense that makes the property subject to forfeiture. The term ''civil forfeiture law'' refers to any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. Mr. Chairman, I rise to offer a substitute amendment for the Hutchinson amendment. My understanding is that the Hyde amendment would improve current situations very much when it comes to seizure and forfeiture, and I strongly endorse the motivation of the gentleman from Illinois (Mr. HYDE) in his bill. I have a suggestion in my amendment to make this somewhat better.

But I rise in strong opposition to the Hutchinson amendment, because not only do I believe that the Hutchinson amendment would undo everything that the gentleman from Illinois (Mr. HYDE) is trying to do, but I sincerely believe that the Hutchinson amendment would make current law worse. I think it is very important that we make a decision here on whether or not we want to continue the effort to build an armed police force out of Washington, D.C.

The trends have been very negative over the last 20 or 30 years. It has to do a lot with the exuberance we show with our drug laws. I know they are all well-intended, but since 1976, when I recall the first criminal law that we passed here, they always pass nearly unanimously. Everyone is for law and order. But I think this is a perfect example of unintended consequences, the problems that we are dealing with today, because it is not the guilty that suffer. So often it is the innocent who suffer.

I guess if Members are for a powerful national police and they want to be casual about the civil liberties of innocent people, I imagine they could go along and ruin this bill by passing the Hutchinson amendment.

I think it is very important to consider another alternative. Mine addresses this, because in spite of how the gentleman from Illinois (Mr. HYDE) addresses this, which is in a very positive way, I really would like to go one step further. My bill, my substitute

amendment, says this: ''No property may be forfeited under any Federal civil asset forfeiture law unless the property owner has first been convicted of the criminal offense that makes the property subject to forfeiture.''

Is that too much to ask in America, that we do not take people's property if they are not even convicted of a crime? That seems to be a rather modest request. That is the way it used to be. We used to never even deal with laws like this at the national level. It is only recently that we decided we had to take away the State's right and obligation to enforce criminal law.

I think it is time we thought about going in another direction. That is why I am very, very pleased with this bill on the floor today in moving in this direction. I do not think we should have a nationalized police force. I think that we should be very cautious in everything that we do as we promote law.

This bill of the gentleman from Illinois (Mr. HYDE) could be strengthened with my amendment by saying that no forfeiture should occur, but the Hutchinson amendment makes it just the preponderance of evidence that they can take property. This is not right. This is not what America is all about. We are supposed to be innocent until proven guilty, but property is being taken from the American people with no charge of crime.

They lose their property and they never get it back. They cannot afford to fight the courts, and there is a lot of frustration in this country today over this. This is why this bill is on this floor today. I am delighted it is here on this floor.

I ask people to vote for my amendment, which would even make this a better bill, but certainly I think it would be wise not to vote for the Hutchinson amendment to make it much worse. I certainly think that on final passage, we certainly should support the Hyde bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate the spirit of the gentleman from Texas. I think it goes further than it ought to. I do not think we ought to restrict this only to cases where there was a criminal conviction, but the gentleman does highlight once again the importance of fundamental reform.

There is one aspect of the issue that I wanted to go into further. That is, in the substitute offered by the gentleman from Arkansas and the two gentlemen from New York, one of the things that seems to me most egregious was this notion that yes, we will appoint you a lawyer, but before we will appoint you a lawyer our lawyer gets to question you. It really is quite an extraordinary notion.

The current situation is one in which people, in some cases who have been convicted of nothing whatsoever, and who may, remember, only be accused, and again, let us be clear about this because of the innocent owner issue, they may be accused not of doing anything wrong, but of not sufficiently working to stop someone else. The someone else may be a very dangerous person.

So one of the things we need to calibrate here is that if other armed people, dangerous people, bad people are doing something wrong and someone knows about it, and maybe they are using their property, you have to calibrate how much risk you have to take to stop it. You may be accused of not having done enough because you may have tried to do something anonymously, and you may not have wanted to acknowledge that.

Mr. HUTCHINSON. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Arkansas.

Mr. HUTCHINSON. Mr. Chairman, I just wanted to ask the gentleman from Massachusetts, in reference to the statement that you can question a claimant who seeks an appointment of attorney, there is a provision in the substitute that says the testimony of the claimant at such a hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the testimony.

So it is excluded, it would appear to me. That was the intent.

Mr. FRANK of Massachusetts. I understand that. The gentleman is correct. One can only further terrify this unsophisticated and impoverished individual whose property you have taken, and you cannot use that in certain circumstances.

Again, I want to go back to where I was. We are talking about someone here who is not even accused of a crime. We are talking about someone who is accused of not having been sufficiently enterprising in stopping someone else who may have been a very dangerous person or persons from committing a crime.

The person who failed to be enough of an aggressive stopper has property taken. And because that property is taken, and this individual now has to prove that he or she is innocent to get the property back, the person who is accused of not having been vigorous enough in stopping a crime has his or her property taken. He or she then has to prove that they were innocent and that they really did try to stop it to get the property back. And they cannot afford a lawyer, and probably because the property which they maybe would have used to pay a lawyer has been seized and is held by the government, to get the property back, first of all they have to prove that the property that was seized is worth enough compared to what a lawyer might cost. That seems to me outrageous.

Secondly, they can then be questioned by the people who seized their property. So they set up this extraordinarily intimidating situation and say, do not worry, we took your property because we did not think you worked hard enough to stop somebody dangerous from doing something bad, and we know you cannot afford a lawyer. Maybe we will appoint you a lawyer, but first, the people who took your property are going to question you about things. But do not worry, they will not use it against you.

That is a statement that is less likely to be believed, and we can in fact chill people out of the effective exercise of their rights.

Mr. HUTCHINSON. If the gentleman will yield further, Mr. Chairman, the gentleman made the statement that this person would not be under indictment. A person under indictment could also be subject to a seizure of assets and there could be a hearing. This person very well would be under criminal indictment.

Mr. FRANK of Massachusetts. I would say two things to the gentleman. First of all, I invite him to read the RECORD. I have poor diction, but I never said indictment. I never used that. I don't know where it came from. That is not what I said.

I am talking about someone who would not even be indictable because under the gentleman's innocent owner defense, he is talking about someone, again, and we are making the law for everybody, we are talking about people who are not even accused of a crime. They are accused of, and my friend, the gentleman from New York, cited these people, they own a piece of property that was being used by someone else for a crime, and the people using it might not be the nicest people in the world. They might be people who are a little intimidating. You could lose your property if you were not sufficiently vigorous in trying to stop them.

What if you tried to stop them through an anonymous phone call because you did not want to have your name used, and they did not know you made the anonymous phone call? You would then have this difficult situation.

Mr. RAMSTAD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the substitute amendment offered by my colleague, the gentleman from Arkansas (Mr. HUTCHINSON).

Let me say first that I have the deepest respect and admiration for the author of the underlying bill, the gentleman from Illinois (Chairman HYDE). During my 4 years on the Committee on the Judiciary, I saw firsthand his absolute integrity and effective leadership, and as I have said hundreds of times before, nobody in this body represents more integrity or greater character than our beloved gentleman from Illinois (Chairman HYDE).

However, that does not mean he is always right. As chair of the House Law Enforcement Caucus, I have serious concerns about the effect that the Civil Asset Forfeiture Reform Act would have on the law enforcement community's antidrug efforts.

As Hennepin County Sheriff Pat McGowan, Hennapin County in Minnesota, in my district, Sheriff Pat McGowan told me recently, this legislation would absolutely gut the most important tool of law enforcement in the war against drugs. Make no mistake about it, this forfeiture law as it currently exists is the most important tool of law enforcement in fighting the war on drugs on the supply side.

The clear and convincing standard would deprive law enforcement officers of a crucial deterrent, as was explained to me by Sheriff McGowan and others, while the substantial hardship exemption in the underlying bill would let drug dealers hide their assets before trial and allow them to continue dealing drugs pending trial.

Also, frivolous claims would be encouraged by this legislation, and would further damage enforcement of drug laws. According to many law enforcement officers with whom I have spoken about this legislation, the so-called buy money to enforce drug laws would essentially dry up, because much if not most of the buy money comes from forfeiture of these assets.

I think Congress needs to listen to the men and women of the Fraternal Order of Police who put their lives on the line every day in fighting the drug war. We need to help the police and not hurt them by adopting the preponderance of the evidence standard of proof in the Hutchinson amendment, which is eminently reasonable, and eliminating some of the other extreme restrictions on law enforcement in the underlying bill.

As a former Criminal Justice Act attorney, Mr. Speaker, a former adjunct professor of civil rights and liberties, certainly, like every Member of this body, I support individual rights under our Bill of Rights.

However, the current law has consistently been upheld as constitutional. Furthermore, Congress should not aid and abet drug dealers so they can profit from their illegal actions by weakening this important law.

Yes, there have been some abuses under current law. We all know that. But several unfortunate anecdotal experiences do not justify legislation that would turn back the clock in the war against drugs.

Let us be smarter than that. Let us support our police officers and other drug enforcement officers on the front lines every day in this battle. Support the Hutchinson amendment, that represents the original compromise. Let us not tie the hands of law enforcement. Let us not make their difficult and dangerous jobs even harder. Vote for the Hutchinson substitute.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I just want to express the fact that I heartily disagree with the statement that we are helping drug dealers. The gentleman is assuming a fact that is not in evidence.

□ 1600

The civil asset forfeiture involves no drug dealers. It involves people who are accused of something at the level of probable cause, and it is punishing them before they have been adjudicated guilty by confiscating their property. That is the Soviet Union's way of justice, not America, where one should be, even if one is accused of being a drug dealer, innocent until one is proven guilty. It is quasi criminal. It is punishment. The Supreme Court has said that, and that is why we need clear and convincing rather than preponderance.

Mr. RAMSTAD. Mr. Chairman, reclaiming whatever time might remain, the current law, I am sure the gentleman will agree, has been upheld consistently as constitutional and not violative of the First, Fourth, Fifth, Sixth, Eighth or Fourteenth Amendments, any of the amendments in the Bill of Rights that give us our precious civil rights and liberties.

Virtually every police officer with whom I have spoken, both in Minnesota and nationally, as well as FBI Director Freeh, have stressed the urgency of retaining present law here. That is what I mean by weakening law enforcement's efforts by tying their hands. Let us not do that. Let us accept the Hutchinson amendment.

Mr. BARR of Georgia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, with regard to the last speaker, I would cite a recent case just in the last year by the Supreme Court, United States versus Bajakhaian, whatever in the heck that is pronounced, B-A-J-A-K-H-A-I-A-N. Its significance lies, not in its spelling, but in holding that there is a specific amendment to the Constitution, the Eighth Amendment, that indeed was the basis just last year in an opinion by Justice Clarence Thomas of the United States Supreme Court that struck down forfeiture on Eighth Amendment excessiveness grounds.

So there is very strong judicial authority for the proposal underlying H.R. 1658 as put forward by myself, the gentleman from Massachusetts (Mr. FRANK), the gentleman from Michigan (Mr. CONYERS), the gentleman from Illinois (Mr. HYDE), and others that, indeed, our civil forfeiture laws do need to be reformed. Reform is what we are trying to do here. But let us again be very clear.

Yes, as the gentleman from Illinois (Mr. HYDE) has stated, if H.R. 1658 is passed by the House, passed by the Senate, and signed by the President, there will be some slight crimping in the style of law enforcement in terms of proceeding civilly against seized assets in order to forfeit them. But it will not in any way, shape, or form stop or take away the important tool that law enforcement has and needs.

H.R. 1658 reforms, it does not eviscerate, it does not kill, it does not repeal, and it will not result in the repeal, the killing, or the gutting of civil asset forfeiture as a tool for Federal prosecutors.

Of course, remember also, Mr. Chairman, that this does not reach State forfeitures. We are only talking about Federal civil asset forfeitures here.

This proposal, H.R. 1658 reforms it. It does not do away with it. If, however, somebody likes civil asset forfeiture reform, then they will love the Hutchinson amendment, because the Hutchinson amendment, in addition to not truly reforming civil asset forfeiture at its core, vastly, vastly, Mr. Chairman, expands the scope of civil asset forfeiture powers of this government.

Let me repeat that. The Hutchinson amendment vastly expands the scope, the jurisdiction, the reach of the Federal Government's current civil asset forfeiture power. The power, the scope currently that the Federal Government enjoys is already extensive. We are not arguing that today. It is extensive. It reaches many different provisions of title 18, which is the Criminal Code.

If, however, one makes even a cursory reading, Mr. Chairman, of the Hutchinson amendment, they will see very readily that it expands exponentially, as the Chairman said previously in his remarks, the scope, the power, the jurisdiction of the Federal Government to civilly seize and forfeit assets.

At pages 772 and 773 of the Federal Criminal Code and Rules, published by the West Group, one can see very clearly, I could hold this up, but the Chairman could not read it, because the writing, the printing of the United States Criminal Code is indeed very small. Yet, the list of the additional predicates or that is base offenses for which civil asset forfeiture rely cover almost two pages, almost two full columns of the United States Criminal Code listing line after line after line after line after line after line of additional offenses for which the government can use civil asset forfeiture powers.

Therefore, let me repeat this, the Hutchinson amendment, for anybody who wishes to reform, reign in, and refocus back to its original purpose, which was an extraordinary remedy for law enforcement, the civil asset forfeiture powers of the government, they must vote against the Hutchinson amendment, because the Hutchinson amendment vastly expands the asset forfeiture power of the government. There is no way getting around that. It is crystal clear on its face, and that is a defect in addition to the others that the Chairman and others have already pointed out reasons why this amendment proposed in the nature of a substitute to H.R. 1658 must be rejected in favor of the underlying bill, H.R. 1658, which does indeed reform, but does not take away the ability of our Federal prosecutors and law enforcement to seize truly those aspects of criminal endeavor, the assets that are truly used in furtherance of criminal activity.

I urge rejection of the proposed amendment in the nature of a substitute, and adoption of the underlying bill, H.R. 1658.

Mr. CANADY of Florida. Mr. Chairman I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute which has been offered by the gentleman from Arkansas (Mr. HUTCHINSON). I want to begin by thanking the gentleman from Illinois (Mr. HYDE) for his outstanding leadership on this important issue. This is the sort of issue that the Committee on the Judiciary should be very much concerned about, and I am very pleased that the Chairman has made this issue a priority.

I also want to thank my constituent, Mr. David Pobjecky, who brought to my attention a case that highlights the need for the legislation of the gentleman from Illinois (Mr. HYDE) and the importance of not weakening the legislation that the gentleman from Illinois (Mr. HYDE) has brought to the floor.

Mr. Pobjecky, my constituent, is an attorney who has represented the Jones family of Glades County, Florida, whose property was seized by the Federal Government. It took that family 6 years to gain control of their property even though they were innocent of any wrongdoing.

In September of 1988, the United States Government seized 4,346 acres of the Jones family ranchland and filed a civil forfeiture action against the ranch based on a plane crash that occurred 2½ years earlier and on property a quarter of a mile from their ranch.

The government alleged that the property was intended to be used as a landing site for cocaine smugglers. The Jones family denied any knowledge, consent, or participation in the alleged wrongful acts.

The case went to trial 5 years later in October of 1993. In May of 1994, the U.S. District Court for the Southern District of Florida found for the owners of the ranch. The court ruled that the case presented by the claimants is so clear, and the response by the United States is sufficiently wanting, that the court has determined that the claimants are, indeed, innocent owners entitled to the remedy and return of their property.

Judge Hoover who wrote for the court noted that fundamental rights of ownership and the loss of those rights were the core of this case and concluded with this caution, ''in the understandable zeal to enforce the criminal laws, constant vigilance must be exercised to protect the rights of all, especially those who may be caught up in a net loosely thrown around those who are guilty.''

The same court subsequently awarded attorneys' fees and costs to the Jones family for their claim filed Under the Equal Access to Justice Act. The court found that the United States did not have a reasonable basis in law or fact for bringing the case to trial and should have concluded that the owners of the ranch could establish an innocent owner defense.

The legislation we are considering today would have ensured that the Jones family would not have suffered this injustice at the hands of the government. The bill would change the standard of proof to be satisfied by the government from probable cause to clear and convincing evidence, as we have been discussing here. The bill would require the government to prove its case and would eliminate the requirement that a property owner prove his innocence.

The seizure of the Jones family ranch never would have been approved if the United States had been required to prove by clear and convincing evidence that the ranch was subject to forfeiture.

In 1994 when he finally decided for the Jones family, Judge Hoover said that it is questionable whether this forfeiture action ever really had a valid basis. That is the kind of cases that are being brought. Those are the kind of cases where people are having their property tied up for year after year after year, and it is not right.

Now, this bill would also allow a property owner who prevails in a forfeiture action to sue the government for any destruction or damage to his property. I go back to the Jones case. The Jones family was unable to maintain their land, more than 4,000 acres of their ranch from September of 1988 to May of 1994. This resulted in significant damage to the property, since ranchland needs to be constantly maintained.

Under current law, the Jones family can sue the United States for damage to their land. The bill before the House today would provide the Jones family with at least the possibility of recovering compensation for resulting damage to their property.

The case of the Jones family is only one example of innocent Americans who have had to undergo lengthy and costly battles to regain their property. No one in the United States of America should have to go through a legal nightmare like this. No one in America should be treated this way by the government of the United States. No one in America should be subjected to such an arbitrary and destructive use of governmental power.

Now, I want to conclude by urging the rejection of the substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON). I believe that the gentleman has a proposal here that falls short of solving the problem with current law and in some respects actually makes the problem worse. I understand he is operating under the best of intentions, but I think his proposal does fall short in those respects.

I would also urge the rejection of the amendment offered by the gentleman from Texas (Mr. PAUL). I believe that there is a proper place for civil asset forfeiture, and his amendment should be rejected, and the Hyde proposal should be adopted.

Mr. FRANK of Massachusetts. Mr. Chairman, having consulted with various parties, I ask unanimous consent that debate on this substitute and all amendments thereto end at 4:45 p.m., with the remaining time to be divided equally between the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from Illinois (Mr. HYDE), chairman of the committee.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. Under the terms of the unanimous consent agreement, the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from Illinois (Mr. HYDE) each will control 15 minutes. Debate will conclude at 4:45 p.m.

Mr. HUTCHINSON. Mr. Chairman, I yield 4 minutes to the gentleman from Florida (Mr. MICA).

Mr. MICA. Mr. Chairman, I thank the gentleman from Arkansas for yielding to me.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas (Mr. PAUL) in support of the amendment offered by the gentleman from Arkansas (Mr. HUTCHINSON) in opposition to H.R. 1658.

I think the good Lord knows that, any time we have the distinguished gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary, as an advocate in alliance with the distinguished gentleman from Massachusetts (Mr. FRANK), and the gentleman from Georgia (Mr. BARR), we have formidable proponents for any proposition. I reluctantly rise in opposition to their proposal, H.R. 1658.

I chair the Subcommittee on Criminal Justice, Drug Policy, and Human Resources dealing with illegal narcotics. I can only say that I have never been so inundated in the past number of months on any issue as much as in opposition to H.R. 1658 than by those in our law enforcement community. So I am reluctant to rise in opposition, but let me make a few comments.

Asset forfeiture is a very critical tool in law enforcement. It allows law enforcement to take the profit out of crime and pay restitution to victims of crime. Forfeiture is a critical element in the fight against drug trafficking, and it literally ensures that crime does not pay.

In the vast majority of cases, the asset forfeiture laws, as we have heard, have been very fairly applied and effectively applied for the benefit of both law enforcement and the public and our citizens. Forfeiture is an essential component on the war on drugs today. Weakening the laws or placing any unnecessary procedural hurdles in the paths of prosecutors could undercut these law enforcement efforts and could provide a windfall to criminal organizations that commit crime for profit.

These are not just my words. This is what is being said about this proposed legislation, H.R. 1658, to me by those in the law enforcement community.

□ 1615

They say that the burden of proof is too high; that H.R. 1658 forces the government to prove its case by clear and convincing evidence. The usual standard for civil enforcement actions involving property is the preponderance of evidence. Thus, 1658 makes the government's burden in drug cases higher than it does in cases involving bank fraud, health care fraud or procurement fraud, giving, in this instance, those who deal in drugs more protection than bankers, doctors and defense contractors.

Again, this is what is being said to me by the law enforcement community.

They also charge that this proposal could encourage the filing of thousands of frivolous claims by criminals, their families, their friends and associates. They also are telling me, again, that H.R. 1658 lets criminals abscond potentially with cash, vehicles and airplanes. The Hutchinson amendment, I might say, addresses each of these concerns that have been raised by the law enforcement community.

Also, they say that H.R. 1658 allows drug dealers to pass drug profits on to their heirs, and this provision is eliminated by the Hutchinson proposal. And, finally, they are telling me that this could provide a windfall to criminals that we should eliminate.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time. I think this is important because we continue to hear about the issue of the burden of proof being a preponderance of the evidence. Well, that is true in most civil litigation. But this is not purely civil litigation, and I think it is important that my colleagues and the American public understand that.

In asset forfeiture cases it has been clearly described by the United States Supreme Court as quasi-criminal in nature. This is a decision that was promulgated by the United States Supreme Court. And I daresay to equate the customary civil litigation that is transacted daily in our Federal courts with the kind of proceeding that we are discussing here today on the floor of the House, asset forfeiture, is absolutely incorrect. It is inaccurate. It is quasi-criminal in nature.

To suggest that a standard of proof of clear and convincing is a burden that cannot be met by prosecutors, I daresay, is not an argument that holds water. Because in the vast majority of these cases the seizure of the asset is done in conjunction with a criminal investigation, and hopefully, hopefully, that investigation will produce an indictment which will meet an even higher standard, proof beyond a reasonable doubt.

So I have to conclude that clear and convincing is an acceptable burden of proof in these cases.

Mr. MCCOLLUM. Mr. Chairman, I wish to make just a few points.

First, I want to salute Chairman HYDE's commitment to reforming asset forfeiture. He has long been guided by a principled commitment to civil liberties for all citizens and a genuine concern that our forfeiture laws not be abused. He has been a leader in pursuing needed reforms of our forfeiture laws, and I want to commend his efforts to bring this bill to the floor. I share Chairman HYDE's concerns. We may disagree on some of the specifics, but I support his goal and the core reforms contained in H.R. 1658.

Second, I want to note that H.R. 1658 is actually part of a larger trend to reform asset forfeiture that has been underway for most of this decade. Indeed, over the last 7 years the U.S. Supreme Court has handed down 11 asset forfeiture cases, that, taken together, have led to substantial reforms of our asset forfeiture laws and increased the due process protections afforded individuals. These cases, in turn, have led the Departments of Justice and Treasury to substantially revise their seizure and forfeiture policies.

Because of these shifts over the last 7 years, it is now the case that under current law, property owners have a right to a jury trial in civil forfeiture cases; real property may not be seized without prior notice and a hearing; and all forfeitures must be proportional to the gravity of the underlying criminal offense. In other words: the law has been evolving to reflect more and more the concerns of Mr. HYDE. Changes to the law have anticipated his criticism.

Mr. Chairman, now more than ever, asset forfeiture is a vital law enforcement tool. In my home state of Florida it may well be the single most important weapon that Federal, State and local law enforcement use in their heroic efforts to combat the illegal drug trade.

And that, Mr. Chairman, continues to be my principal concern when we talk about reforming asset forfeiture: Will our ability to effectively combat the flood of illegal drugs into our country be unduly hampered by the proposed reforms?

Heroin and cocaine continue to pour into the United States from abroad, endangering the future of our children and spreading fear through countless neighborhoods and communities. Clandestine methamphetamine labs are now operating throughout the entire country, pumping out their poison that destroys people and pollutes our environment.

Today, on the streets of our country drug quantity is up, drug purity is at all-time highs and the price is down. We shouldn't be surprised then to learn that drug use among our children is skyrocketing. Indeed, there is a drug crisis engulfing our young people today. The numbers are simply shocking. From 1992–1997, drug use among youth aged 12 to 17 has more than doubled. It's up 120%! That's an increase of 27% in the last year alone. For kids aged 12 to 17, first-time heroin use has increased 875% from 1991 to 1996! From 1992 to 1996, marijuana use increased by 253 percent among eighth-graders, 151 percent among tenth-graders, and 84 percent among twelfth-graders. Overall, among kids aged 12 to 17, marijuana smoking has jumped 125% from 1991 to 1997!

Mr. Chairman, I believe this is unacceptable. We owe our children every effort to rid our streets and schools of drugs and the violence that accompany the drug trade. We must rededicate ourselves to a drug-free America.

And that means we must take care when we seek to reform our forfeiture laws that we do not render them ineffective.

Last Congress, I supported the compromise forfeiture bill that Mr. HYDE steered through the Judiciary Committee by a vote of 26 to 1. That bill contained the core reforms that are in H.R. 1658. It also won the support of the law enforcement community as a balanced set of reforms that left forfeiture a viable tool. I continue to support the provisions from that bill, and for that reason, I will be supporting the Hutchinson amendment which reflects the key provisions of that compromise bill. I believe that H.R. 1658, as amended by the Hutchinson amendment, reforms our forfeiture laws while leaving them still useful in our nation's counter-drug efforts.

Mr. PICKERING. Mr. Chairman, I rise in support of Mr. HUTCHINSON'S substitute to H.R. 1658, the Asset Forfeiture Bill.

We all agree the fundamental principle of fairness should play a central role in asset forfeiture proceedings: the burden of proof should be on the government; the government should not hold property without probable cause; a property owner should have an early opportunity to challenge a seizure of assets and innocent owners should be protected.

These examples of fairness are already important features of current asset forfeiture law, and are advanced in the Hutchinson substitute without undermining the important role asset forfeiture law plays in modern law enforcement.

Today in my district, State and Local Law Enforcement officials confront sophisticated criminals and criminal enterprises in possession of illegal property, and in many circumstances, controlling vast ill-gotten resources. Asset forfeiture law allows State and Local law enforcement officials to separate these criminals and enterprises from their illegal resources, denying them the use of these resources to continue their criminal businesses or defend themselves from personal criminal charges. Any modification in asset forfeiture law should preserve this important effect of asset forfeiture on criminals.

While reform of asset forfeiture law to reduce the already infrequent, occasional unfair outcome for a particular individual is appropriate, criminals should not benefit from the modifications designed to improve and bolster the rights of innocent property owners and law abiding citizens.

The Hutchinson substitute produces this sensible reform without removing from our local law enforcement officials one of their most important and effective tools against criminals and their crack houses, drug money, drug vehicles and the myriad of other resources and property criminals possess.

It is important to remember the focus of asset forfeiture law is the illegal property. The illegal property itself, be it drug money or its proceeds in the form of cars, or planes or houses, is subject to forfeiture because it constitutes the bounty of a criminal enterprise, and thus is illegal. It is illegal in and of itself, like heroin itself, or cocaine, and thus similarly

subject to forfeiture. Insofar as a person unconnected to the criminal enterprise has a legal property interest in the property, he or she may state their claim and reclaim their property.

Under current law, criminals and those with illegal interests in the property are distinguished from those with legal interests by procedures in the law which the Substitute preserves. Unlike the bill advanced by the respected Chairman of the Judiciary Committee, the substitute strengthens this distinction, protecting the innocent while disentitling the criminal. I urge passage of the Hutchinson substitute.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

Mr. HUTCHINSON. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. PAUL) as a substitute for the amendment in the nature of a substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON).

The amendment in the nature of a substitute offered as a substitute for the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HUTCHINSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 268, not voting 11, as follows:

[Roll No. 254]

AYES—155

Allen
Andrews
Bachus
Baird
Ballenger
Barcia
Barrett (WI)
Barton
Bateman
Bilbray
Blagojevich
Blumenauer
Blunt
Boehlert
Bonior
Boswell
Boyd
Brady (TX)
Bryant
Buyer
Calvert
Capps
Cardin
Castle
Chambliss
Coburn
Collins
Condit
Cooksey
Cramer
Crowley
Cubin
Deal
Deutsch
Dickey
Dixon
Doggett
Dooley
Dunn
Edwards
Ehlers
Ehrlich
Etheridge
Fowler
Frelinghuysen
Gekas
Gilman
Gordon
Goss
Green (WI)
Greenwood
Gutierrez
Hayes
Herger
Hill (IN)
Hilleary
Hoeffel
Holden
Holt
Hooley
Horn
Houghton
Hoyer
Hulshof
Hutchinson
Inslee
Isakson
John
Johnson (CT)
Jones (NC)
Jones (OH)
Kildee
Kind (WI)
Kleczka
Knollenberg
Kuykendall
Larson
Latham
Leach
Levin
Lowey
Luther
Maloney (CT)
Maloney (NY)
McCarthy (NY)
McCollum
McCrery
McDermott
McHugh
McIntyre
McNulty
Mica
Miller (FL)
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Norwood
Nussle
Ose
Oxley
Pallone
Pascrell
Peterson (MN)
Pickering
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Ramstad
Regula
Reyes
Reynolds
Rogers
Ros-Lehtinen
Rothman
Roukema
Salmon
Sanchez
Saxton
Shaw
Shays
Sherman
Shows
Sisisky
Slaughter
Smith (WA)
Souder
Stabenow
Stearns
Stupak
Sweeney
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Turner
Visclosky
Vitter
Walden
Walsh
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weygand
Whitfield
Wolf
Wu
Young (FL)

NOES—268

Abercrombie
Ackerman
Aderholt
Archer
Armey
Baker
Baldacci
Baldwin
Barr
Barrett (NE)
Bartlett
Bass
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Bliley
Boehner
Bonilla
Bono
Borski
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Burr
Burton
Callahan
Camp
Campbell
Canady
Cannon
Capuano
Carson
Chabot
Chenoweth
Clay
Clayton
Clement
Clyburn
Coble
Combest
Conyers
Cook
Cox
Coyne
Crane
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Diaz-Balart
Dicks
Dingell
Doolittle
Doyle
Dreier
Duncan
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (NJ)
Frost
Gallegly
Ganske
Gejdenson
Gephardt
Gibbons
Gillmor
Gonzalez
Goode
Goodlatte
Goodling
Graham
Granger
Green (TX)
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hill (MT)
Hilliard
Hinchey
Hinojosa
Hobson
Hoekstra
Hostettler
Hunter
Hyde
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Johnson, Sam
Kanjorski
Kaptur
Kelly
Kennedy
Kilpatrick
King (NY)
Kingston
Klink
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
LaTourette
Lee
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McGovern
McIntosh
McKeon
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Millender-McDonald
Miller, Gary
Miller, George
Minge
Mink
Moakley
Murtha
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Oberstar
Obey
Olver
Ortiz
Owens
Pastor
Paul
Payne
Pease
Pelosi
Peterson (PA)
Petri
Phelps
Pickett
Pitts
Pombo
Price (NC)
Radanovich
Rahall
Rangel
Riley
Rivers
Rodriguez
Roemer
Rogan
Rohrabacher
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanders
Sandlin
Sanford
Sawyer
Scarborough
Schaffer
Schakowsky
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Sherwood
Shimkus
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Spence
Spratt
Stark
Stenholm
Strickland
Stump
Sununu
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Thompson (MS)
Tiahrt
Tierney
Toomey
Towns
Traficant
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Weller
Wexler
Wicker
Wilson
Woolsey
Wynn
Young (AK)

NOT VOTING—11

Berman
Brown (CA)
Costello
Gilchrest
Kasich
Largent
Lazio
McInnis
Mollohan
Packard
Wise

□ 1643

Ms. JACKSON-LEE of Texas, Ms. MCKINNEY, and Messrs. LAFALCE, NEY, ROGAN, KINGSTON, BURTON of Indiana, FORBES, HUNTER, and BARTLETT of Maryland changed their vote from ''aye'' to ''no.''

Ms. SLAUGHTER and Messrs. VITTER, BARCIA, BONIOR, EHLERS, WELDON of Pennsylvania, and MORAN of Kansas changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the remainder of the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

**SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.**

Section 981 of title 18, United States Code, is amended—

(1) by inserting after subsection (i) the following:

''(j)(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must give written notice to interested parties, such notice shall be given as soon as practicable and in no case more than 60 days after the later of the date of the seizure or the date the identity of the interested party is first known or discovered by the agency, except that the court may extend the period for filing a notice for good cause shown.

''(B) A person entitled to written notice in such proceeding to whom written notice is not given may on motion void the forfeiture with respect to that person's interest in the property, unless the agency shows—

''(i) good cause for the failure to give notice to that person; or

''(ii) that the person otherwise had actual notice of the seizure.

''(C) If the government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property and may not take any further action to effect the forfeiture of such property.

''(2)(A) Any person claiming property seized in a nonjudicial forfeiture proceeding may file a claim with the appropriate official after the seizure.

''(B) A claim under subparagraph (A) may not be filed later than 30 days after—

''(i) the date of final publication of notice of seizure; or

''(ii) in the case of a person entitled to written notice, the date that notice is received.

''(C) The claim shall state the claimant's interest in the property.

''(D) Not later than 90 days after a claim has been filed, the Attorney General shall

file a complaint for forfeiture in the appropriate court or return the property, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

''(E) If the government does not file a complaint for forfeiture of property in accordance with subparagraph (D), it shall return the property and may not take any further action to effect the forfeiture of such property.

''(F) Any person may bring a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

''(3)(A) In any case where the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property within 30 days of service of the Government's complaint or, where applicable, within 30 days of alternative publication notice.

''(B) A person asserting an interest in seized property in accordance with subparagraph (A) shall file an answer to the Government's complaint for forfeiture within 20 days of the filing of the claim.

''(4)(A) If the person filing a claim is financially unable to obtain representation by counsel, the court may appoint counsel to represent that person with respect to the claim.

''(B) In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account such factors as—

''(i) the claimant's standing to contest the forfeiture; and

''(ii) whether the claim appears to be made in good faith or to be frivolous.

''(C) The court shall set the compensation for that representation, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title, and to pay such cost there are authorized to be appropriated such sums as are necessary as an addition to the funds otherwise appropriated for the appointment of counsel under such section.

''(5) In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the United States Government to establish, by clear and convincing evidence, that the property is subject to forfeiture.

''(6)(A) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.

''(B) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

''(i) did not know of the conduct giving rise to forfeiture; or

''(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

''(C) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property, was—

''(i)(I) a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); or

''(II) a person who *acquired* an interest in property through probate *or inheritance*; and

''(ii) at the time of the purchase or *acquisition* reasonably without cause to believe that the property was subject to forfeiture.

''(D) Where the property subject to forfeiture is real property, and the claimant uses the property as the claimant's primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

''(i) in the case of a spouse, through dissolution of marriage or by operation of law, or

''(ii) in the case of a minor child, as an inheritance upon the death of a parent,

and not through a purchase. However, the claimant must establish, in accordance with subparagraph (C), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture.

''(7) For the purposes of paragraph (6)—

''(A) ways in which a person may show that such person did all that reasonably can be expected may include demonstrating that such person, to the extent permitted by law—

''(i) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

''(ii) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property; and

''(B) in order to do all that can reasonably be expected, a person is not required to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

''(8) As used in this subsection:

''(1) The term 'civil forfeiture statute' means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

''(2) The term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

''(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

''(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

''(iii) a nominee who exercises no dominion or control over the property.

''(k)(1) A claimant under subsection (j) is entitled to immediate release of seized property if—

''(A) the claimant has a possessory interest in the property;

''(B) the continued possession by the United States Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless; and

''(C) the claimant's likely hardship from the continued possession by the United States Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding.

''(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

''(3) If within 10 days after the date of the request the property has not been released, the claimant may file a motion or complaint in any district court that would have jurisdiction of forfeiture proceedings relating to the property setting forth—

''(A) the basis on which the requirements of paragraph (1) are met; and

''(B) the steps the claimant has taken to secure release of the property from the appropriate official.

''(4) If a motion or complaint is filed under paragraph (3), the district court shall order that the property be returned to the claimant, pending completion of proceedings by the United States Government to obtain forfeiture of the property, if the claimant shows that the requirements of paragraph (1) have been met. The court may place such conditions on release of the property as it finds are appropriate to preserve the availability of the property or its equivalent for forfeiture.

''(5) The district court shall render a decision on a motion or complaint filed under paragraph (3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.''; and

(2) by redesignating existing subsection (j) as subsection (l).

**SEC. 3. *AMENDMENT* TO THE CONTROLLED SUBSTANCES ACT.**

Section 518 of the Controlled Substances Act (21 U.S.C. 888) is repealed.

**SEC. 4. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.**

(a) TORT CLAIMS ACT.—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking ''law-enforcement'' and inserting ''law enforcement''; and

(2) by inserting before the period the following: '', except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture but the interest of the claimant is not forfeited''.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than $50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

**SEC. 5. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

Section 2465 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Upon''; and

(2) adding at the end the following:

''(b) INTEREST.—

''(1) POST-JUDGMENT.—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any Act of Congress, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

''(2) PRE-JUDGMENT.—The United States shall not be liable for prejudgment interest, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

''(A) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

''(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

''(3) LIMITATION ON OTHER PAYMENTS.—The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.''.

**SEC. 6. APPLICABILITY.**

(a) IN GENERAL.—Unless otherwise specified in this Act, the amendments made by this Act apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The standard for the required burden of proof set forth in section 981 of title 18, United States Code, as amended by section 2, shall apply in cases pending on the date of the enactment of this Act.

(2) The amendment made by section 5 shall apply to any judgment entered after the date of enactment of this Act.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

□ 1645

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HEFLEY) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes, pursuant to House Resolution 216, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HYDE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 375, noes 48, not voting 11, as follows:

[Roll No. 255]

AYES—375

Abercrombie
Ackerman
Aderholt
Allen
Archer
Armey
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chenoweth
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Combest
Conyers
Cook
Cooksey
Cox
Coyne
Cramer
Crane
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gephardt
Gibbons
Gillmor
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy
Kildee
Kilpatrick
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Moran (KS)
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Oxley
Pallone
Pastor
Paul
Payne
Pease
Pelosi
Peterson (PA)
Petri
Phelps
Pickett
Pitts
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Rangel
Regula
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Schakowsky
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Sherman
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Vitter
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—48

Andrews
Bachus
Barrett (WI)
Bilbray
Blumenauer
Boswell
Boyd
Bryant
Chambliss
Collins
Condit
Crowley
Cubin
Deutsch
Gekas
Gilman
Hayes
Hill (IN)
Houghton
Hutchinson
John
Johnson (CT)
Jones (NC)
Kind (WI)
Latham
Maloney (CT)
McCrery
Mica
Moore
Myrick
Pascrell
Peterson (MN)
Pickering
Portman
Ramstad
Reyes
Reynolds
Roukema
Shays
Shows
Souder
Sweeney
Taylor (MS)
Thompson (CA)
Turner
Visclosky
Weiner
Weldon (FL)

NOT VOTING—11

Berman
Brown (CA)
Costello
Gilchrest
Kasich
Lazio
McInnis
Mollohan
Packard
Waters
Wise

□ 1705

Mr. HOUGHTON changed his vote from ''aye'' to ''no.''

Mr. ADERHOLT and Mr. HOLT changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. PACKARD. Mr. Speaker, I was unavoidably detained for Rollcall 255, which was final passage of H.R. 1658, the Civil Asset Forfeiture Reform Act. I am a cosponsor of this legislation. Had I been present, I would have voted "aye."

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on final passage of H.R. 1658, the Civil Asset Forfeiture Reform Act. Had I been present, I would have voted "aye."

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 222 AND H.R. 1145

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor from H.R. 222 and H.R. 1145.

The SPEAKER pro tempore (Mr. HEFLEY). Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

## COMMUNICATION FROM DISTRICT AIDE OF HON. TERRY EVERETT, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Joe Williams, District Aide of the Honorable TERRY EVERETT, Member of Congress:

*Washington, DC, June 18, 1999.*

Hon. DENNIS J. HASTERT,
*Speaker, House of Representatives,*
*Washington, DC.*

DEAR MR. SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a trial subpoena (for testimony) issued by the Circuit Court for Houston County, Alabama in the case of *Floyd* v. *Floyd*, No. DR–1998–000040.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JOE WILLIAMS,
*District Aide.*

## SALUTE TO PAYNE STEWART

(Mr. BLUNT asked and was given permission to address the House for 1 minute.)

Mr. BLUNT. Mr. Speaker, on an evening when our rivalries on the floor are transferred to the baseball diamond, I want to talk for a minute about sports.

Seldom are we allowed to see deep into a person's mind, but last week in Springfield, Missouri, native Payne Stewart let us see deep into his. Standing on the green of the 72nd hole of the U.S. Open, Stewart needed to make a 15 foot putt to win the championship.

Despite the enormous pressure involved and knowing that the world was watching, Stewart stepped to the ball and sank the seemingly impossible putt for the tenth PGA Tour victory of his career. As the rain fell, Stewart and his caddy celebrated with a jumping embrace on the 18th green in Pinehurst, North Carolina. With this win, Stewart also earned himself a spot on the U.S. Ryder Cup team. However Payne Stewart says that no other tournament he ever wins will be bigger than the 1982 Quad Cities Open championship. That was the only tournament victory his father, a golf pro in Springfield who taught him to play golf, ever saw him win. So on Father's Day 1999, with his wife at his side and his children watching from home, Payne Stewart proved not only to be a great golfer, but also someone with strong family values. These are the attributes we should all strive to maintain no matter what profession we choose to pursue.

A hearty congratulations is in order to Payne Stewart for the winning of his second U.S. open and third PGA major of his career. I thank Payne for setting a good example for families across America. Fellow southwest Missourians are proud of him.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1802, FOSTER CARE INDEPENDENCE ACT OF 1999

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 106–199) on the resolution (H. Res. 221) providing for consideration of the bill (H.R. 1802) to amend part E of title IV of the Social Security Act to provide States with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## PROTOCOL AMENDING THE AGREEMENT FOR COOPERATION CONCERNING CIVIL USES OF ATOMIC ENERGY BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF CANADA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b) and (d)), the text of a proposed Protocol Amending the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada signed at Washington on June 15, 1955, as amended. I am also pleased to transmit my written approval, authorization, and determination concerning the Protocol, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Protocol. (In accordance with section 123 of the Act, as amended by Title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277), I have submitted to the Congress under separate cover a classified annex to the NPAS, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information.) The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed.

The proposed Protocol has been negotiated in accordance with the Atomic Energy Act of 1954, as amended, and other applicable law. In my judgment, it meets all statutory requirements and will advance the nonproliferation and other foreign policy interests of the United States.

The Protocol amends the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada in two respects:

1. It extends the Agreement, which would otherwise expire by its terms on January 1, 2000, for an additional period of 30 years, with the provision for automatic extensions thereafter in increments of 5 years each unless either Party gives timely notice to terminate the Agreement; and

2. It updates certain provisions of the Agreement relating to the physical protection of materials subject to the Agreement.

The Agreement itself was last amended on April 23, 1980, to bring it into conformity with all requirements of the Atomic Energy Act and the Nuclear Non-Proliferation Act of 1978. As amended by the proposed Protocol, it will continue to meet all requirements of U.S. law.

Canada ranks among the closest and most important U.S. partners in civil nuclear cooperation, with ties dating back to the early days of the Atoms for Peace program. Canada is also in the forefront of countries supporting international efforts to prevent the spread of nuclear weapons to additional countries. It is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and has an agreement with the IAEA for the application of full-scope safeguards to its nuclear program. It also subscribes to the Nuclear Supplier Group (NSG) Guidelines, which set forth standards for the responsible export of nuclear commodities for peaceful use, and to the Zangger (NPT Exporters) Committee Guidelines, which oblige members to require the application of IAEA safeguards on nuclear exports to nonnuclear weapon states. It is a party to the Convention on the

Physical Protection of Nuclear Material, whereby it has agreed to apply international standards of physical protection to the storage and transport of nuclear material under its jurisdiction or control.

Continued close cooperation with Canada in the peaceful uses of nuclear energy, under the long-term extension of the U.S.-Canada Agreement for Cooperation provided for in the proposed Protocol, will serve important U.S. national security, foreign policy, and commercial interests.

I have considered the views and recommendations of the interested agencies in reviewing the proposed Protocol and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the Protocol and authorized its execution and urge that the Congress give it favorable consideration.

This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. My Administration is prepared to begin immediate consultations with the Senate Foreign Relations and House International Relations Committees as provided in section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 24, 1999.*

## REPORT ON NATIONAL EMERGENCY CAUSED BY LAPSE OF EXPORT ADMINISTRATION ACT OF 1979—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

As required by section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)) and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), I transmit herewith a 6-month periodic report on the national emergency declared by Executive Order 12924 of August 19, 1994, to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 24, 1999.*

## IN OPPOSITION TO WORLD BANK LOAN TO CHINA

(Mr. GILMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous material.)

Mr. GILMAN. Mr. Speaker, today the World Bank is about to decide whether to give China a loan to help in its efforts to colonize occupied Tibet with Chinese. Beijing's scheme with the Bank's approval would use $160 million to pay for the relocation of poor Chinese farmers onto the Tibetan Plateau.

Editorials in the Washington Post, the Washington Times and the New York Times have urged the Bank not to go through with this project. I request that copies of these editorials be included in the RECORD.

The U.S. Treasury announced on Tuesday that it is going to oppose the loan. Chinese officials have demarched embassies in Beijing with threats of economic repercussions if member states vote to oppose the loan. Twelve bank board members have cosigned a letter to President Wolfensohn expressing opposition to this project. Activists and parliamentarians from around the globe have deluged the World Bank with letters and e-mail messages opposing the loan. Over 60 Members of this Chamber signed a letter to the President of the Bank urging him to reject the loan.

For Tibetans this is not development or poverty alleviation, it is cultural genocide. This project will lead to increased ethnic tension and conflict over access to scarce natural resources. I ask my colleagues to join in opposition to this loan.

Mr. Speaker, today the World Bank will decide whether or not to give China a loan to help it in its efforts to colonize occupied Tibet with Chinese. Beijing's scheme with the Bank's approval would use 160 million dollars to pay for the relocation of poor Chinese farmers onto the Tibetan Plateau.

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China's population transfer program is a long-standing effort to resettle Chinese in Tibet to increase its assimilation.

The World Bank loan would be the first time international financing, including U.S. dollars would be funding population transfer.

For Tibetans, it is not development or poverty alleviation, it is cultural genocide.

The World Bank, in violation of World Bank policy, failed to make an environmental analysis available to the public before the project went to appraisal.

The Bank also failed to undertake a full environmental assessment, provided no accounting of the impact on indigenous Tibetan and Mongolian peoples in the resettlement area, and neglected to evaluate the impact on fragile natural habitats.

The project will likely lead to increased ethnic tension and conflict over access to scarce natural resources.

And opposition to the project could land Tibetans in a Chinese prison. The official Chinese news agency has labeled opposition to the resettlement as a part of an "anti-China" plot.

Mr. Speaker, the World Bank has been placed on notice that it has to stay out of politics. It should stick to its mandate of poverty alleviation and not disenfranchise people who are struggling for their very existence.

China is one of the major recipients of World Bank money. It should not be dictating to terms of the loans to anyone.

[From the Washington Post, June 22, 1999]

THE U.N.'S NEW CHINA PROJECT

The World Bank's technical people, having launched 31 "poverty reduction projects" in China, saw no problem with No. 32. That is why, incredibly, only when British Tibet advocates started spreading the word seven or eight weeks ago did the bank learn of the project's political aspect: It would resettle some 60,000 poor Chinese farmers on land Tibetans say is traditionally theirs.

The word offended the bank's biggest shareholder, the United States. Treasury Secretary Robert Rubin, expressing doubt about the staff-proposed $160 million loan, has said he is "inclined" to oppose it. Needless to say, the bank's largest borrower, China, is also among the offended. It has threatened to "reevaluate its relationship with the bank" if the project does not unfold as planned.

The World Bank's board is due to vote on the question today. From an American standpoint, any vote on the merits has to be a simple one. As the Tibet lobbyists say, the project puts the bank in the position of underwriting the resettlement of Han Chinese and Chinese Muslims into a traditionally Tibetan and Mongolian area on the Tibetan plateau. Had this factor been fed into deliberations in a more timely fashion, no doubt the project would have been handled differently. It becomes a political embarrassment to deal with the project now. But it is an unavoidable and manageable embarrassment. The World Bank cannot accidentally become the instrument of a Chinese policy that affects the survival of Tibetans as a distinct people and culture.

The bank itself has a structural problem. The line between technical and political is obviously too sharp. Or the bank has been slow to grasp that decentralization works poorly when a heavy burden of accountability is devolved upon countries such as China that do not provide adequately for a free flow of information or for a space for dissent.

[From the Washington Times, June 22, 1999]

ETHNIC CLEANSING AND THE WORLD BANK

In a stunning display of insensitivity towards the plight of the Tibetan people, today the World Bank board is scheduled to vote on a project that would grant the Chinese government a $160 million loan to resettle 57,775 Han Chinese and Chinese Muslims farmers into a historically Tibetan territory. The move is being defended by China and the

World Bank as a simple initiative to give poor farmers greater access to arable land. The undeniable byproduct of such a project would be to undercut Tibetan territory and dilute the Tibetan culture.

It seems inconceivable that in the wake of NATO's air campaign to enforce human rights in Yugoslavia, the World Bank would fund an ethnic cleansing initiative in China. This is what the World Bank project would amount to if approved, however.

''In order to consolidate control over Tibetan areas, the Chinese government has undertaken a policy of moving Chinese citizens into these areas,'' 60 congressmen said in a letter to World Bank President James Wolfensohn. The project would ''facilitate the Chinese government's destructive transfer policy.'' The administration, on the other hand, has failed to voice clear opposition to the project. U.S. Treasury Secretary Robert Rubin said he was ''inclined'' to oppose it. He should try to incline himself to muster vigorous opposition.

The area in which the project would be carried out has the highest concentration of prisoners of any single county in China. According to John Ackerly, a spokesperson for International Campaign for Tibet, the bank would inevitably support prison labor by working in such a territory. The bank would have to depend on either prison labor itself or on goods produced by that labor, Mr. Ackerly added.

Not so, claims the World Bank. David Theis, chief of the World Bank's external affairs, said that local and provincial Chinese authorities assured the bank no ''prison labor will be involved or benefit from this project.'' Somehow, these assurances are not comforting.

The World Bank is also accused of running roughshod over its own environmental guidelines to give the loan swift approval. The bank insists that it gave the project a rigorous environmental review, but circumstantial evidence isn't supportive. China, due to its economical development of the past few years, will no longer be eligible for loans doled out by the bank's International Development Association after July 1. These loans are typically interest free and paid over a 40 year period. Interestingly, the vote on the project was scheduled suspiciously close to the cut off date and the project's environmental review was conducted swifter than most.

Unsurprisingly, China is allegedly pushing hard to get the loan approved. Apart from the obvious economic benefits, the loan would effectively grant the regime an international rubber stamp of its relocation policy. The regime has threatened reevaluated its relationship with the bank if the loan isn't approved. The World Bank should make clear it is free to do so.

The bank has long been derided for aiding and abetting corrupt and spendthrift regimes. It surely doesn't want to be labeled the benefactor of ethnic cleansing campaigns. The board should vote down the project today.

[From The New York Times, June 23, 1999]

LOAN FOR A LAND GRAB

The World Bank's board of executive directors ought to reject a loan package to China that would be used to relocate about 58,000 impoverished Chinese and Hui Muslim farmers to a remote area on the Tibetan plateau traditionally inhabited by Tibetans and Mongolians. In the past, China has used migration policies to tighten control over Tibetan areas and to diminish the viability of the distinct Tibetan culture. The World Bank should not be in the business of financing this destructive scheme.

The Chinese Government has rejected criticism of the project and insists on going forward. But approving this loan may violate the bank's own guidelines for assessing the social and environmental impacts of its projects. Dozens of international environmental groups, Tibetan activists and 60 members of Congress have written to James Wolfensohn, president of the World Bank, to oppose the resettlement. The Clinton Administration also announced its opposition yesterday.

The ostensible purpose of the project is to give desperately poor farmers in Western China a better life. But this plan would move them from badly eroded land to a barren high-altitude plain, currently used by nomads, that is itself environmentally fragile. Even though the project would involve construction of a dam and extensive irrigation works, it did not receive a full environmental assessment. Nor does it appear that the plan fully complies with World Bank policies designed to protect ethnic minorities and indigenous peoples from the adverse effects of development.

The World Bank has worked hard to overcome its reputation for insensitivity to local cultural and ecological concerns. Approval of this loan would be a significant step backward.

## SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. BILIRAKIS) is recognized for 5 minutes.

(Mr. BILIRAKIS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

## BASEBALL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina. Mr. Speaker, America has a long-standing fascination with baseball.

Perhaps only apple pie and the American flag can compete with its association to this country.

And with good reason.

Baseball, like many team sports, is beloved in part because of the unity it brings to our nation's communities.

Poet Walt Whitman once wrote, ''I see great things in baseball. It's our game—the American game. It will take our people out-of-doors, fill them with oxygen, give them a larger physical stoicism. (It will) repair these losses and be a blessing to us.''

Throughout times of hardship and strife, baseball has been a constant source of entertainment and pride, on both a local and national level.

In towns and cities across the country, friends and family gather together to pull for the home team, play baseball together in their backyards, or gather around their televisions to cheer for their favorite players.

In the Third District of North Carolina, which I am proud to represent, a group of young men recently gave their community and the entire state a reason to celebrate.

The Rose High baseball team from Greenville, NC had an undefeated season this year, winning 28 games and capturing the second 4–A State title in three years.

These 29 young men embody the spirit of teamwork.

They have proven that with enough hard work and dedication, success is within the reach of every young person who dares to achieve it.

Mr. Speaker, I have no doubt that every one of these outstanding baseball players can appreciate their victory.

But what they have learned on their path to success may be even more valuable than a perfect 28–0 season.

One of the greatest lessons that I learned growing up, playing team sports, is the ability to work together to accomplish a goal.

Playing baseball and basketball in school, I learned to work hard because I knew that my teammates were depending on me to always do my best.

This work ethic is something that I have carried with me throughout my life.

I use it now in Congress to face the challenges of working with 434 other Members of the House.

Sometimes we have disagreements, but our greatest successes come when we work together as a team.

The Rose High Rampant's have already mastered this lesson.

And all the while, they have let us watch and cheer from the sidelines.

Mr. Speaker, part of the enjoyment in watching these young men play and succeed is watching the families and the community that rally behind the players.

Baseball is a team sport and its instills a sense of excitement and enthusiasm to all that watch and participate behind the scenes.

Because of the community spirit that baseball inspires, when Rose won, we all won.

I salute the players, coaches, families, and fans that made this championship possible.

To the players . . . James Bengala, Jr., Kenneth Biggs, Jeffrey Blick, William Brinson, Ashley Capps, David Creech, John Finch, Brian Flye, Michael Gordon, Matthew Grace, Michael Harrington, Kelly Hodges, Dylan Jackson, John Landen, Vincent Langston, Jefferson Lea, Vincent Logan, Demond Mayo, Julian Morgan, Adrian Moye, James Paige, IV, Bryan Pair, Justin Phillips, Robert Riggs II, William Teel, Reid Twine, Adam Tysinger, Joseph White, and Jesse Williams III.

Coach Ronald Vincent and assistant coaches . . . Paul Hill, Marvin Jarman, Steven Lovett, Ryan Meadows, and Eric Jarman and coaches, congratulations.

You brought together your community.

And through your dedication and hard work, you have made us all proud.

Thank you Rose High State champions for letting us share in your success.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## SMALLER SCHOOLS FOR BETTER EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DUNCAN) is recognized for 5 minutes.

Mr. DUNCAN. Mr. Speaker, right after the Columbine shootings I mentioned as one of the many causes of some of these problems the fact that many of our high schools are simply too big. We have done a good job in getting class sizes down, but we made a bad mistake going from small neighborhood or community-based high schools to centralized, consolidated mega-sized high schools.

Columbine had almost 2,000 students. Most young people can handle this, but some feel they have to resort to weird or sometimes even dangerous behavior to get noticed or get attention in a school where they are little more than a number.

In a small school, a young person has a better chance of making a team or being a leader in a club or a cheerleader or being elected to the student council or standing out in some positive way. I wish we did not have to have a high school of more than 500 students. Young people will be much better off going to a smaller school even if they had to go into an older building or where fewer courses were offered.

Bill Kauffman, writing in the new issue of Chronicles Magazine has some very interesting comments concerning the need for smaller schools and the shootings in Colorado, and this is a very lengthy quote, but I think it is worth listening to. Writing about our mobile and anonymous society he said,

□ 1715

''Harris was an Army brat, spawn of a bizarre subculture that prizes rootlessness and places transience next to godliness. He grew up on a series of Socialist reservations. The family's final move was from Plattsburgh, New York, to Littleton, 2,000 miles distant. There he became just another brick in the wall of the inhumanly large Columbine High, whose 1,950 students were connected by a web so attenuated that dozens might fall through the cracks without the principal even knowing their names.

''Impersonal education factories like Columbine were a domestic innovation of the Cold War. The consolidation of small and rural schools into centralized warehouses was given its greatest push by Harvard President James B. Conant, who, subsidized by the Carnegie Corporation, produced a series of postwar reports arguing for the 'elimination of the small high school.'

Mr. Kaufman continued, ''According to Conant, defenders of human-scale education were still living in a dream world which knew neither nuclear weapons nor Soviet imperialism. They believe they can live and prosper in an isolated, insulated United States.'' Conant, the barbarian, triumphed: The number of school districts plummeted from 83,000 in 1950 to 18,000 in 1970. Mr. Kaufman said, ''Brutish kids will always make fun of others, but in a small school, parents or other adults have a fighting chance to enforce at least a minimal code of respect. And children in small, settled communities grow up with each other; by high school they almost certainly will have been to each other's homes and birthday parties and been on each other's ball clubs. Each student is essential to the small rural or neighborhood school; sports teams and the school play and a handful of clubs, 4–H rather than a model U.N., depend upon widespread participation. In a stable, which is to say blessedly immobile, community, kids know one another, and while to know Eric and Dylan may not have been to love them, the ties of human sympathy and lifelong friendship with at least some of their classmates might have braked the homicidal slide.''

So, Mr. Speaker, I would say again, we need to go back to smaller high schools, even if in older buildings or even with fewer courses.

Let me mention one other thing, Mr. Speaker. Insight Magazine, a publication of the Washington Times, had a cover story a few days ago which said, almost all of these school shootings over the last 2 or 3 years have been done by young people who were taking or had recently taken very strong, mood-altering drugs such as Ritalin or Prozac.

I remember another article in the Knoxville News-Sentinel, which said we were prescribing Ritalin in the United States at six times the rate of any other industrialized Nation.

This article quoted a former top official of the DEA who said Ritalin had the same properties as cocaine and some of the strongest illegal narcotics. One study I heard about said Ritalin was most often taken by young boys who had both parents working full time.

I know some of this may be necessary, but I question whether we need it at six times the rate of other industrialized nations. Some of it may be essential, but some of these children may be just boys crying out for more attention.

We certainly should not be turning our children into drug addicts.

To sum up, Mr. Speaker, we need smaller schools and fewer drugs and more time and attention for our children.

The SPEAKER pro tempore (Mr. TERRY). Under a previous order of the House, the gentleman from New York (Mr. HINCHEY) is recognized for 5 minutes.

(Mr. HINCHEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## HONORING NEW PSALMIST BAPTIST CHURCH ON ITS 100TH ANNIVERSARY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Speaker, I rise today to recognize significant events that occurred 100 years ago, in the year of 1899.

A century ago our Nation was engaged in the Philippine-American War and ending the Spanish-American War. Two great literary works were being created by two of the few African-American authors, Booker T. Washington's Up From Slavery and W.E.B. DuBois' The Philadelphia Negro. Two automobile empires would begin to prosper, with the entrance of Henry Ford and David Buick into the industry; and Duke Ellington and Ernest Hemingway, and, most significantly, New Psalmist Baptist Church of Baltimore City were born.

As we reflect 100 years later on this rich history, it is my honor and privilege to congratulate my pastor, Dr. Walter Scott Thomas, and my New Psalmist Baptist Church family on our 100th anniversary to be celebrated this week. What a blessing for our church celebration to be a part of a centennial anniversary of so many momentous events in our Nation's history.

From its meager beginnings in an alley, New Psalmist was guided by Reverend Junius Gray, its founder and visionary leader. From its home at Riggs Avenue and Woodyear Street to North and Druid Hill Avenues in Baltimore, Reverend Frederick Atkins took the reins and preserved the traditions and spirit of the church.

Over the years, New Psalmist Baptist Church has flourished, expanding from a membership of 5 to more than 5,000. Under the illustrious leadership of its current pastor, Dr. Walter Scott Thomas, the church has done the following:

Birthed 13 ministers; founded a fully accredited Christian school, grades pre-K through 5; an education ministry; establish a 3-year discipleship program; launched two radio broadcasts aired throughout the Mid-Atlantic region and a television ministry aired twice weekly; and established several outreach ministries, including those focused on seniors, youth, health and prison.

I was especially honored to welcome our Nation's top leader, President Bill Clinton, to our church on November 1, 1998.

Mr. Speaker, 100 years after the birth of New Psalmist, our Nation has also made tremendous strides. Our Nation has fought and won numerous wars and strives to encourage the principles of democracy worldwide.

African-American literature, movies and music have infiltrated American

culture and have become widely recognized by the mainstream. The automobile industry has developed battery-operated and electric motor vehicles, and there are 39 African-Americans that have been elected to serve as Members of the United States House of Representatives.

Even with all of these changes, albeit positive, it is still good to know that some things do remain the same. New Psalmist remains a key cornerstone of spiritual leadership to my home district of Baltimore and to the Nation, as well as a source of inspirational outreach and education.

Pastor Thomas, associate ministers, officers and members have carried on a legacy of selfless dedication and commitment to the greater Baltimore community. Not only are souls being saved, but lives are being revitalized and uplifted. Members are educating Baltimore's youth, assisting in getting people to work, and ensuring that citizens are getting appropriate health care. In other words, the church is helping real people with real-life issues.

Walking in faith and working together for good, New Psalmist has provided leadership and strength to families, men, women and children, searching for a church home. Personally, Pastor Thomas and the members have had a profound impact and have been a constant source of strength in my life and that of my family's, and it is good to have my minister and my church to call upon in good and tough times.

So it is today that I applaud New Psalmist on its continued spiritual tradition and congratulate Pastor Walter Scott Thomas and my church family on its 100th anniversary.

## MANAGED CARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, at first it was campaign finance reform, then it was gun safety and school violence; now it is health care reform where we see an unfortunate recurring pattern taking place by our Republican leadership.

Mr. Speaker, on issue after issue, the leadership uses its power to stomp out any real discussion on the House floor. Once again, those of us who care about patients' rights have no alternative, no alternative but to sign a discharge petition to force a discussion on managed care reform, because, my colleagues, serious proposals for meaningful health care reform have been rejected by the Republican leadership.

Why? I am not sure, but it certainly looks like they are trying to protect the profits of the managed care industry. And that is protecting managed care industry's profits over the protection of all of our constituents, every single Member of the House of Representatives and the people we work for.

While they claim reform would actually allow the Federal Government to interfere with the doctor-patient relationship, our families are left unprotected.

Democrats in Congress have been waiting 2 years to pass a Patients' Bill of Rights, because we are ready. We are ready to improve Americans' access to health care. On the other hand, the leadership in this Congress has taken their sham bill from last year, broken it into eight pieces, eight pieces that they want to sell this year as health care reform.

Well, we have to be clear about this. There is no real change in their piecemeal approach. Their same refusal to protect doctors and patients from the insult of an insurance clerk's ability to dictate medical treatment procedures remains. The American Medical Association, in fact, says that their package falls short of the mark; says it does not solve any of the problems our doctors and patients have.

It is time, Mr. Speaker, to put doctors and patients back in charge of our health care system. There must be enforceable rights to make consumer protections real for all Americans.

Mr. Speaker, we know that many States have passed legislation making a patchwork of protections. This patchwork does not provide a good fix. This fix does not work for over 160 million Americans who need a real effort to fix the problems of managed care.

While there are many top-notch managed care organizations, many in my own district; I represent Sonoma and Marin Counties in California, just north of the Golden Gate Bridge; in other areas, there are too many horror stories that we hear across this country. Doctors tell us horror stories about how they are gagged by insurance companies, companies that dictate what they can tell their patients, what they can tell their patients about their patients' treatment options. They tell us that a patient's treatment decisions are often overruled by a clerk, and that patients are denied a specialist's care, and that patients are shuttled out of hospitals before full recovery.

Americans are demanding, they are demanding that this Congress take action and that we do it now. But instead, the Republican leadership has provided legislation that does not ensure that patients have the right to see a specialist, nor do they prevent insurance companies from continuing to send women who have had mastectomies home early, against the advice of their physician.

Under the Republicans' bill, if patients are denied care, they would not have the right to a meaningful external appeal.

That is why we need to debate managed care reform. That is why we need a Patients' Bill of Rights. This legislation will make sure that doctors and patients are free to make decisions about the patient's health. The Patients' Bill of Rights will ensure that patients can openly discuss with their doctors their treatment options. The Patients' Bill of Rights will ensure that patients receive uniform information about their health plan, and they will be able to go to emergency rooms when the need arises, see a specialist, and seek a remedy from the courts when the claims have been unfairly denied.

It is time to put doctors and patients back in charge of our health care system. I urge my colleagues to support a full debate on managed care reform and support a Patients' Bill of Rights. I urge the Speaker and I urge my colleagues to give the American people what they want. I urge my colleagues to work for managed care reform.

□ 1730

## THIRD ANNIVERSARY OF THE KHOBAR TOWERS BOMBING IN SAUDI ARABIA

The SPEAKER pro tempore (Mr. TERRY). Under a previous order of the House, the gentleman from Florida (Mr. MICA) is recognized for 5 minutes.

Mr. MICA. Mr. Speaker, I come before the House tonight on the eve of the third anniversary of the Khobar Towers bombing in Saudi Arabia.

Tomorrow will mark the third anniversary of the Khobar Towers bombing. Shortly before 10 p.m. on Tuesday, June 25, 1996, a van parked outside the Khobar Towers military complex in Saudi Arabia exploded. The van held an estimated 2,000 pounds of explosives which killed 19 American servicemen and injured approximately 500 other people.

One of those servicemen who was killed was U.S. Airman Brian W. McVeigh from DeBary, Florida.

Mr. Speaker, I had the opportunity to speak at Brian's high school graduation. I had the honor to speak at the unfortunate circumstance of his funeral and memorial service, and I was so honored to be asked to be part of that in memory of Brian after he was killed.

I had an opportunity on this Memorial Day to join with citizens of central Florida and the city of DeBary and others who chipped in to create a memorial park for Brian McVeigh, in memory of Brian and other U.S. servicemen and women who served our country and lost their lives. The parents of Brian were there; Jim and Sandy Wetmore, Brian McVeigh's parents.

But a park is not satisfactory. It is a nice memorial, but what I think we all demand on the eve of this horrible anniversary is justice. The investigation of this terrorist attack has included countless closed-door top secret briefings of government officials in which I have participated, and we still do not have answers.

Regardless of those closed-door briefings and discussions held to date, there

have been no indictments. The families who lost their loved ones in this terrible crime deserve to have justice and see those responsible prosecuted. We know where some of the responsible parties are, and we have the ability to detain and to prosecute and go after them. Why have the victims' families not received justice?

While we have been informed that the Saudi Government is being extremely cooperative, they are still not producing results, while they have strong indications of who the perpetrators of this terrible crime were and are. Let us move away from international politics and bring these terrible criminals to justice.

Mr. Speaker, I include for the RECORD the names of the service members killed in the bombing of Khobar Towers, in addition to Brian McVeigh.

The list referred to is as follows:

Following is the list of names of service members killed in the bombing of Khobar Towers near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, in June 1996:

Capt. Christopher J. Adams, Massapequa Park, N.Y.

Capt. Leland T. Haun, Clovis, Calif.

Master Sgt. Michael G. Heiser, Palm Coast, Fla.

Master Sgt. Kendall K. Kitson Jr., Yukon, Okla.

Tech. Sgt. Patrick P. Fennig, Greendale, Wis.

Tech. Sgt. Thanh V. Nguyen, Panama City, Fla.

Staff Sgt. Daniel B. Cafourek, Watertown, S.D.

Staff Sgt. Kevin J. Johnson, Shreveport, La.

Staff Sgt. Ronald L. King, Battle Creek, Mich.

Sgt. Millard D. Campbell, Angelton, Texas

Senior Airman Earl F. Cartrette Jr., Sellersburg, Ind.

Senior Airman Jeremy A. Taylor, Rosehill, Kan.

Airman First Class Christopher B. Lester, Pineville W. Va.

Airman First Class Brent E. Marthaler, Cambridge, Minn.

Airman First Class Brian W. McVeigh, Debary, Fla.

Airman First Class Peter J. Morgera, Stratham, N.H.

Airman First Class Joseph E. Rimkus, Edwardsville, Ill.

Airman First Class Justin R. Wood, Modesto, Calif.

Airman First Class Joshua E. Woody, Corning, Calif.

This information was confirmed by the Office of Assistant Secretary of Defense, Public Affairs.

Mr. Speaker, that list, as I said, includes 19 American servicemen who lost their lives in service to this country 3 years ago tomorrow. All the relatives of those servicemen deserve justice, Jim and Sandy Wetmore, the parents of Brian McVeigh, deserve justice, the American people demand justice, and Congress must demand justice.

On the eve of this tragic anniversary, I urge the Congress to continue its effort, I urge this administration to continue their efforts, I urge each and every agency responsible, including the Department of Justice, including the Department of State, and all of our Federal agencies, to see that justice does prevail, again, not only for Brian McVeigh, our hero, but for the parents and the families of the 18 other servicemen who lost their lives on June 25, 1996, in a terrorist attack in Saudi Arabia.

## TRIBUTE TO AN AMERICAN HERO, CAPTAIN CURTIS J. ZANE, UNITED STATES NAVY RETIRED

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Alaska (Mr. YOUNG) is recognized for 60 minutes as the designee of the majority leader.

Mr. YOUNG of Alaska. Mr. Speaker, on the eve of his 80th birthday, I rise tonight to pay tribute to an American hero, Captain Curtis J. Zane, United States Navy Retired.

Captain Zane, or Casey, as he is known among his friends, is not a hero in the popular sense of media. He is really one of those many silent and unsung American heroes who, when their Nation called, put everything on the line to protect our freedom. He is one of those heroes who strives every day to find the right balance between devoting time to work and financial success and just taking time to experience the sheer joy of living.

Born on July 4, our Independence Day, in 1919, in Cleveland, Ohio, Casey Zane has seen and lived the greatest part of this century, the American century. His parents came from Poland at the turn of the century, and like so many millions of immigrants, came to this country to begin a new life.

They married here and had five children. Casey is the youngest. While his father worked long and hard hours in the Cleveland steel mills, Casey attended school in Cleveland, selling newspapers before and after school with his brothers, Hank and Al.

After taking a year off to work following the tragic death of his father at the hands of a drunk driver, Casey graduated from John Hay High School in 1938. He was elected president of his graduating class. Casey's mom and brothers and sisters pulled together and were determined that he, Casey, would be the first of the family to attend college.

In 1939, he started at Ohio State University. After 3 years there, with war clouds looming, Casey signed up for and took Navy flight training from November of 1941 through September, 1942, in Kansas City and Corpus Christi.

From November, 1942, through June, 1943, Casey flew PBY's and B–24s in combat patrol missions in the South Pacific with Patrol Squadron 14, and beginning in March of 1943, with the famed Black Cat Patrol Squadron 101, under the command of Lord Louie Mountbatten.

Casey flew combat patrol missions that covered areas in Australia, Papua New Guinea, New Caledonia, the Coral Sea, the Solomon Islands, Indonesia, and the Java Sea. During those perilous years of combat and sacrifice, some of Casey's closest friends lost their lives or were wounded at the hands of the imperial Japanese forces. Fortunately for us and for myself, Casey is one of the survivors.

After combat duty from July, 1944, through May, 1946, Casey was instructing B–24 pilots at Hutchinson, Kansas. He was married on March 10, 1945, to a wonderful lady, Dorothy Dix Kavanagh, Dickey, as we call her, Kavanagh, whom Casey had met while in Ohio State, one of seven children born to Ohio farmers Fred and Mabel Kavanagh. All seven of the Kavanagh children have lived to see their 50th wedding anniversaries.

Casey and Dickey have been married for 54 years and have two daughters, two sons-in-law, one son, a daughter-in-law, four grandchildren, and two great grandchildren. They have the kind of mutual respect and supportive relationship that lasts forever. Both Casey and Dickey have a deep and abiding faith in God and continue to live honest and moral lives.

Throughout the remainder of Casey's Navy career, he continued to put it on the line for this country. After the war, Casey and Dickey served in Saipan. In fact, after transiting aboard the vessel Breckenridge from Norfolk to Saipan, Dickey and new daughter Susan had more sea time than Casey did at that time.

Further assignments included Fleet Air Wing Staff, Naval Air Station, Jacksonville, Florida, then aboard the aircraft carrier the USS Leyte as communications officer. Later the Zanes were transferred back to Jacksonville, Florida, where Casey served as executive, then commanding officer, Patrol Squadron 18, performing anti-submarine warfare missions off Florida and in the Caribbean.

During the Cuban missile crisis, Casey served at the Command Post of the CINCLant Fleet, Norfolk, Virginia. In the early sixties he was stationed at the Navy's Bureau of Personnel, and in 1965 took command of vital Cold War U.S. Navy communications bases at Londonderry, Northern Ireland, and Thurso, Scotland.

After duty in Ireland and Scotland, Casey returned to his last hitch at the Pentagon and retired as a Navy Captain in November of 1968, having served our Nation defending our freedom for a little over 27 years.

During his Navy years, Casey completed Navy flight and aviation pilot training, U.S. Command and General Staff College, Aviation Ordnance School, General Line School, postgraduate Naval Command Communications School, and U.S. Naval War College.

His medals and decorations include the American Defense Service Medal; the American Campaign Medal; the Air Medal; the Asiatic-Pacific Campaign Medal, for three stars; World War II Victory Medal; National Defense Service Medal, one star.

After the Navy, Casey was not finished by a long shot. He and his wife decided it was time to work, to hunker down and make a little money. Throughout the 1970s and 1980s and early nineties Casey and Dickey both became hard working real estate agents and brokers in the greater Northern Virginia area. Casey had a very successful second career in land development and commercial and industrial real estate.

My personal relationship with Casey goes back for more than 25 years. During that time he visited my home State of Alaska many times. In fact, as a great campaign supporter and worker he rightfully credits himself with more than one of my narrow campaign victories.

As a young man Casey was a scratch golfer and later carried a single digit handicap for years. Over 30 years a member of the Army-Navy Country Club, Casey can still break 90 on a regular basis.

Even as he approaches his 80 years young this Fourth of July, Casey is as active as ever. He works out three times a week, stays in excellent shape, maintains a delightful sense of humor, and still drinks his vodka on the rocks, sports a license plate that declares life is too short to smoke cheap cigars. God willing, my wife Lu and I will have many more years of close friendship to look forward to with this very special man and his very special family.

As I recollect on the meaning of July 4, I will, along with many other friends and family, celebrate on that day the birth of a particularly good friend, an American hero who was willing to give his all to our Nation.

Mr. Speaker, please join my colleagues and me in wishing a very happy 80th birthday to Captain Curtis J. Zane, United States Navy Retired. Happy birthday, Casey. You are my sweetheart.

## HEALTH CARE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Iowa (Mr. GANSKE) is recognized for the balance of the majority leader's hour.

Mr. GANSKE. Mr. Speaker, I plan to talk about three things concerning health care, the status of managed care reform legislation, the problem of the uninsured and access to health care, and briefly, some problems with the Medicare Reform Act of 1997.

Mr. Speaker, another week has gone by without health care reform reaching the floor of the House of Representatives. As Yogi Berra would say, it is deja vu all over again. Why do I say that? Last year we debated an HMO reform bill on this floor that was drafted in the middle of the night by the HMO lobbyists and should have been labeled ''the HMO Protection Act of 1998.''

Last week in the Committee on Education and the Workforce components of last year's sadly deficient HMO bill were debated again. Members would think that since we passed decent HMO legislation for Medicare in 1997 dealing with HMO gag rules that prevent doctors from telling patients all their treatment options, that it would not be too difficult to duplicate that for everyone.

No, on the Committee on Education and Workforce, the subcommittee bill's rules of construction suggested that a plan's own guidelines can still be enforced, even if they have the effect of preventing full and open communication between patients and their health care providers.

Members would think that the subcommittee bill's provisions on emergency care could simply mirror what we passed for Medicare in 1997. After all, if it is good enough for seniors, it should be good enough for the rest of us, right? Well, not according to the K Street lobbyists who wrote this provision, too.

The subcommittee bill, as passed last week, narrows the prudent layperson definition so that patients would only be covered for an initial but undefined appropriate screening examination. For all other services, including potentially lifesaving treatments, emergency physicians would have to certify in writing that the patient needed immediate emergency medical care.

□ 1745

Now, think of that for a moment. In the middle of saving a patient's life, an ER doc is supposed to write a letter to an HMO. Just how long would it take for the HMO to get that letter? I would not recommend holding one's breath.

This new HMO protection bill would then make the plan cover such care only if retrospectively the plan itself agreed to. Furthermore, patients in severe pain would not be fully protected under the Committee on Education and the Workforce subcommittee bills.

What about a man or a woman whose only symptom of a heart attack is crushing chest pain? This type of patient protection is a joke. This is just another example, and on a simple issue at that, of trying to look like one is for patient protection when one is really only looking for a fig leaf.

But the bills that passed the subcommittee last week are not just bad bills, they would actually make it harder for patients to fight HMO abuses under ERISA, the Employee Retirement Income Security Act. For instance, one of the Committee on Education and the Workforce bills, the Group Health Plan Review Standards Act of 1999, requires that group health plan's arbitrary definitions and guidelines be followed throughout the review process when determining medical necessity.

Thus, the bills fail to address what we would call the smart bomb of HMOs, and that is their ability under ERISA to justify any decision they want in denying care, even if that care is well within prevailing standards of medical care.

Now, Mr. Speaker, I have spoken many times on this floor about how important it is for patients to have care that fits prevailing standards of medical care. Let me give my colleagues an example. One particularly aggressive HMO defines medically necessary as the cheapest, least expensive care, quote-unquote. So what is wrong with that, my colleagues say?

Well, take a look at this child. Prior to coming to Congress, I cared for children with this defect, cleft lip and palate. The prevailing standard of care for this defect, this birth defect is surgery. But according to that HMO's definition to give the cheapest, least expensive care, he could use his own definition under current Federal law to justify using a piece of plastic to fill in the roof of this child's mouth. After all, that would be the cheapest, least expensive treatment.

Of course, the child would not speak as well. If the plastic obturator fell out, he would get food and his drink coming out of his nose. But of what difference is that to the HMO since they are providing the cheapest, least expensive care?

This Committee on Education and the Workforce bill would, not only fail to correct that travesty, but it would move in the opposite direction by permanently stopping the development of ERISA case law that has slowly been forcing plans to account for negligent decisions.

This bill violates the dictum that all who treat patients learn early in their training, ''primum non nocere'', first do not harm. I urge my colleagues on the Committee on Education and the Workforce to remember that dictum. I urge the Committee on Education and the Workforce chairman to work with the gentlewoman from New Jersey (Mrs. ROUKEMA) and the gentleman from Georgia (Mr. NORWOOD) to adopt real patient protections.

Fortunately, enough of my Republican colleagues on the Committee on Education and the Workforce have joined their Democratic committee members and have forced the chairman to delay the full committee markup of those HMO industry bills. Maybe if the Members of that committee hear from enough of their concerned consumers back home, they may yet come up with some legislation worthy of the name ''patient protection.''

Mr. Speaker, common sense proposals to regulate managed care plans do not constitute a rejection of the market model for health care. In fact, they are just as likely to have the opposite effect, to preserve the market model by saving it from its most destructive tendencies.

Surveys show that there is a significant public concern about the quality of HMO care. If these concerns are not addressed, I think that it is likely that the public will ultimately reject the market model. However, if we can enact true managed care reform such as that embodied in my own Managed

Care Reform Act of 1999, or the bill of the gentleman from Michigan (Mr. DINGELL) or the bill of the gentleman from Georgia (Mr. NORWOOD), then consumer rejection of a market model is less likely.

Mr. Speaker, this is not a novel situation. Congress has stepped in to correct abuses in many industries. That is why we have child labor laws and food and drug safety laws. That is why Teddy Roosevelt broke up the trusts. Those laws, in my opinion, helped preserve a free market system. Congress would not be dealing with this issue were it not for past law enacted by Congress.

For a long time, Congress had left insurance regulation to the States. By and large, the States have done a pretty good job. But Congress passed a law called the Employee Retirement Income Security Act, known as ERISA, some 25 years ago to simplify pension management.

Almost as an afterthought, employer health plans were included in the exemption from State law. Unfortunately, nothing was substituted for effective oversight in terms of quality, marketing, or other functions that State insurance commissioners or legislatures have effectively done.

That lack of oversight, coupled with lack of responsibility for medical decisions that they make, has led to many tragedies. Let me tell my colleagues about just one example.

This is little Jimmy Adams tugging on his sister's shirt sleeve before his HMO health care. About 3 weeks or so after this picture was taken, at 3:30 in the morning, Lamona Adams, Jimmy's mother, found Jimmy sweating, panting, moaning. He had a temperature of over 104. So she phoned her HMO to ask for permission to go to the emergency room.

The voice at the other end of the 1–800 number told her to go to Scottish Rite Hospital. Where is it, asked Lamona. I do not know; find a map, came the reply. It turns out that the Adams family lived south of Atlanta, Georgia, and Scottish Rite was an hour away on the other side of the Atlanta metro area.

Lamona held little Jimmy in her arms while dad drove as fast as he could. Twenty miles into the trip, Mr. and Mrs. Adams passed Emory University Hospital's emergency room. They passed the emergency room at Georgia Baptist. They passed Grady Memorial's emergency room. But they pushed on to Scottish Rite Medical Center, still 22 miles away, because they knew that, if they stopped at one of those unauthorized hospitals, they would get stuck with the bill.

They also knew that Jimmy was sick. They just did not know how sick he was. I mean, after all, they were not trained medical professionals.

With miles yet to go, Jimmy's eyes fell shut, and they would not open. Lamona franticly called out to him, but he did not awaken. His heart had stopped. Imagine Jimmy's dad driving as fast as he could while Lamona is trying to keep her little 6-month-old baby alive.

They finally pulled into the emergency room. Lamona leaped out of the car screaming, ''help my baby, help my baby.'' A nurse rushed out, gave him mouth-to-mouth resuscitation. They brought out the crash cart. They started the lines. They intubated him. They gave him medicines. They did everything that modern medicine could do to save this little infant.

Well, Jimmy was a tough little guy. He survived despite the delay in his emergency care caused by that medical decision by his HMO which told him to go a long ways and not go to the nearest emergency room. But he did not end up whole.

Because of that cardiac arrest caused by that HMO's decision, Jimmy ended up with gangrene in both hands and both feet. The doctors had to amputate both of Jimmy's hands and both of Jimmy's feet. This is Jimmy after his HMO health care.

Well, today, Jimmy is learning to put on his leg prostheses with his arm stumps. But it is tough for him to get on his bilateral arm hooks by himself.

The HMO industry calls victims like this ''anecdotes.'' Well, this little anecdote will never play basketball. He will never be able to caress the cheek of the woman that he loves with his hand. I will tell my colleagues this little anecdote, if he had a finger, and one pricked it, it would bleed.

Jimmy's mom and dad tried to get care for him. They followed their HMO's instructions. They phoned their gatekeeper. The problem was they were dealing with a managed care system that emphasizes cost over quality.

Lamona never spoke to a doctor when she called at 3:30 in the morning. They were not allowed to speak to a doctor, nor were they allowed to go to the nearest ER with what a layperson would have said surely was a true emergency.

A judge looked at the case of James Adams and said this HMOs margin of safety was ''razor thin'', and I would add to that about as razor thin as the scalpel that had to amputate little Jimmy's hands and feet.

Well, under current Federal law, this funny law called ERISA, if one receives one's insurance from one's employer, and one has a tragedy happen to one's family like happened to little Jimmy Adams, one's HMO that has made that decision is liable for nothing. That is right, nothing. Congress created this law, ERISA, with a loophole that prevents health plans from being responsible for the tragedies that they create like that that happened to little Jimmy Adams.

The Ganske Managed Care Reform Act of 1999 would help prevent a case like this. It would also make health plans responsible for their actions. So to my Republican colleagues, I call out, we Republicans talk about people being responsible for their actions. I have heard on this floor many times that we think we Republicans think that a murderer or a rapist should be responsible for his actions. We think an able-bodied person should be responsible for providing for his children. Well, my fellow Republicans, HMOs should be responsible for their actions, too. Let us walk the walk on responsibility when it comes to HMOs, just as we do for criminals, and deadbeat fathers.

Mr. Speaker, opponents to real managed care reform always try to inflate fears that this legislation will cause premiums to go up, that people will be priced out of coverage. Not so. Studies have shown that the price of managed care reform would be minimal, probably less than $35 a year for a family of four.

In fact, the CEO of Iowa's Blue Cross Wellmark told me that they are implementing HMO reforms, and they do not expect to see any premium increases from those changes.

Now, the HMO industry last year spent more than $100,000 per Congressman lobbying on this issue and has been running ads all around the country claiming larger costs for this legislation. I advise my colleagues to take their numbers with a grain of salt.

The industry took an estimate of last year's Patients' Bill of Rights, which was scored by the Congressional Budget Office at 4 percent cumulative increase over 10 years, but the industry reported the increase as if it were 4 percent annually.

The HMO industry also conveniently ignored page 2 of the Congressional Budget Office summary, which said that only about two-thirds of that 4 percent over 10 years would be in the form of raised premiums. Yes, the HMOs predict dire consequences if Congress passes a bill like my Managed Care Reform Act of 1999. They say lawsuits will run rampant. They say costs will skyrocket, that managed care will shrink.

Well, Mr. Speaker, these Chicken Littles remind me of the opponents years ago to legislation to clean water, to clean air a decade ago. At that time, they said the sky will fall, the sky will fall if that legislation is passed. Instead, what do we have today, Mr. Speaker? We have clean air, and we have clean water at a reasonable cost.

So let us look at the facts as they relate to this HMO legislation. In Texas, after a series of highly publicized hearings during which numerous Texans told of injury or death resulting from denial of treatment by their HMOs, the Texas Senate passed a strong HMO reform bill, making HMOs liable for their medical decisions by a vote of 25 to 5.

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The Texas House passed that bill unanimously. And under Governor George W. Bush, that bill became law in May 1997.

Yesterday, in the House Committee on Commerce, we heard testimony

from Texans that refutes those dire predictions by the HMOs. A deluge of lawsuits? There has been one lawsuit in the 2 years since passage of the Texas Managed Care Liability Act. That lawsuit, Plocica v. NYLCare, is a case in which the managed care company did not obey the law and a man died because of that. This case exemplifies why we need accountability at the end of external review.

Mr. Plocica was discharged from the hospital suffering from severe clinical depression. His treating psychiatrist informed the HMO that he was suicidal and that he needed additional hospitalization until he could be stabilized. Texas law requires an expedited review by an independent review organization prior to discharge. Such a review was not offered by the plan. Mr. Plocica's wife took him home. During the night he went to his garage, he drank antifreeze, and he died a horrible, painful death.

That case shows that external review and liability go hand in hand, Mr. Speaker. Without the threat of legal accountability, HMO abuses, like those that happened to little Jimmy Adams or to Mr. Plocica, will go unchecked. But a lesson from Texas also is that lawsuits will not go crazy. In fact, when HMOs know that they will be held accountable, there will be fewer tragedies like these.

And just as there has not been a vast increase in litigation, neither has there been skyrocketing increases in premiums in Texas. The national average for overall health care costs increased 3.7 percent in 1998, while the Dallas and Houston markets were well below average at 2.8 percent and 2.4 percent respectively. Other national surveys show Texas premium increases to be consistent with those of States that do not have the extensive patient protections passed by the Texas Legislature.

And the managed care market in Texas certainly has not shrunk. In 1994, the year prior to the Texas managed care reforms, there were 30 HMOs in Texas. Today there are 51. In a recent newspaper article, Aetna's CEO Richard Huber referred to Texas as the filet mignon when asked about Aetna's plans to acquire Prudential. None of these facts support the HMOs' accusations that the Texas patient protection laws would negatively impact on the desires of HMOs to do business in Texas.

Perhaps all of the above is why Governor George W. Bush personally told me that he thinks that Texas patient protection laws are working ''pretty good'' in his State.

It is time for this Congress to get off its duff, to fix this problem which it created when it took health insurance oversight away from States two decades ago. I call on my Republican colleagues to bombard our leadership with demands that this legislation be brought to the floor in the next 4 weeks for a fair debate. A fair debate is already long overdue.

I would tell my colleagues that just half an hour ago I had a talk with the Speaker of the House, the gentleman from Illinois (Mr. HASTERT). I begged him to bring this legislation to the floor, and he assured me that we will have a debate on the floor here in Congress, in the House of Representatives, by the middle of July. That is his intent. So, Mr. Speaker, I am anxiously awaiting.

Now, Mr. Speaker, let me talk for a minute about the uninsured, because I think Congress should address this issue, and I have some thoughts on this important issue.

First of all, who are the uninsured? Well, there are about 43 million people without any form of health insurance coverage. About 25 percent of the uninsured are under the age of 19, 25 percent are Hispanic, 25 percent are legal noncitizens, 25 percent are poor, which is noteworthy because 46 percent of the poor do not have Medicaid even though they qualify. These groups overlap so that if someone is below the age of 19, Hispanic, poor and a legal noncitizen, the chances of being uninsured are very high. A significant proportion, however, are not poor and have incomes more than two times the poverty level, but these people tend to be aged 19 to 25. Fewer than 15 percent of those older than 25 do not have health insurance.

Well, knowing these facts, a few solutions to help solve the problem of the uninsured should be obvious. First, there are 11 million uninsured children living in this country, one-quarter of the uninsured. About 5 million of those children qualify for Medicaid or for the Children's Health Insurance Program, known as CHIP, but they are not enrolled. They are not enrolled.

Hispanic Americans represent 12 percent of the under-65 population, but 24 percent of the uninsured. The income of many Hispanics qualifies them for Medicaid, but they, too, are frequently not getting health coverage they are qualified to receive. Why? Because the government bureaucracy has made it difficult for families to access the system.

In my own State of Iowa, the application is not only long, but a Medicaid recipient must report his income each month in order to get Medicaid. I encourage my colleagues back in the State of Iowa to correct this.

In Texas, to be eligible for Medicaid, the uninsured must first apply in person at the Department of Human Services, usually located way off the beaten track and out of range of public transportation. And if even one of the receipts to prove eligibility is forgotten, the applicant then has to spend another day traveling and waiting in line.

In California, the uninsured person who is poor must first fill out a 25-page application for Medicaid, often in a language the applicant can barely read. In fact, English is frequently a second language.

So the first thing we can do to reduce the number of the uninsured is to make sure that the poor who qualify for Medicaid are, in fact, receiving Medicaid. Simplify forms, reach out to the Hispanic and other ethnic communities and oversee the CHIP program to see why more people who qualify are not taking advantage of that program. In many cases it is as simple as the uninsured not knowing about the programs.

What about those aged 19 through 23? Many are in college. This is a healthy group. They should be inexpensive to cover. Some colleges say they can cover these people for only $500 a year for a catastrophic insurance plan. That is a small price to pay compared to tuition. I know, I have a daughter in college. So why have we not made a commitment to health care coverage for that group? Maybe we should look at tying student loans to health coverage.

I do believe that tax policy also determines to some extent whether an individual has health insurance. Businesses get 100 percent deductibility for providing health care to employees. Individuals purchasing their own insurance should get the same treatment. This would lower the cost of insurance for many.

But, Mr. Speaker, in trying to address the uninsured, Congress should be very careful not to pass legislation that could actually increase the number of uninsured through unintended consequences of potentially harmful ideas such as health marts and association health plans.

Let me explain my concern. Under court interpretations of the Employee Retirement Income Security Act, ERISA, State insurance officials cannot regulate health coverage by self-insured employers. This regulatory loophole created many problems with the association health plans. The benefit of being able to create a favorable risk pool motivated many to self-insure, but without the discipline of State insurance oversight, many of the association health plans became insolvent during the 1970s and the early 1980s, and they left hundreds of thousands of people stranded without coverage.

Some of those plans went under because of bad management and financial miscalculations. Remember, they did not have insurance regulatory oversight. Others were started by unscrupulous people whose only goal was to make a quick buck and to get out without any concern about the plight of those covered in those ''association plans.'' I would encourage my colleagues to read Karl Polzer's article ''Preempting State Authority to Regulate Association Plans: Where Might It Take Us.'' It is in National Health Policy Forum, October 1997.

My colleagues, those who do not know history are bound to repeat it. The rash of failures led Congress in 1983 to amend ERISA, to give back to the States some of that authority to regulate self-insured, multiple-employer welfare associations or AHPs, association health plans. Only self-insured plans established or maintained by a

union or a single employer remained exempt from insurance regulation.

Unfortunately, there are now those who want to ignore the hard lessons of the past. They want to repeat the mistakes of pre-1983. If anything, some mismanaged and fraudulent associations continue to operate. Some associations try to escape State regulation by setting up a sham union or sham employer associations. Then they self-insure, and then they claim they are not an MEWA, a multiple-employer welfare association.

To quote an article by Wicks and Meyer in an article called ''Small Employer Health Insurance Purchasing Arrangement: Can They Expand Coverage?'': ''The consequences are sometimes disastrous for people covered by these bogus schemes.'' If anything, Mr. Speaker, Congress should crack down on these fraudulent activities, not promote them.

Wicks and Meyer summarized the two big problems with expanding ERISA exemption to association health plans. First, if they bring together people who have below-average risk, and they exclude others, and they are not subject to small group rating rules, then they draw off people from the larger insurance pool, thereby raising premiums for those who remain in the pool.

Second, if they are not subject to appropriate insurance regulation to prevent fraud and to ensure solvency and long-run financial viability, they may leave enrollees with unpaid medical claims and no coverage for future medical expenses. Mr. Speaker, that certainly would not help the problem of the uninsured.

I recently asked a panel that appeared before the Committee on Commerce if they agreed with those concerns that I just mentioned about association health plans, and they unanimously did. And that panel even included proponents of association health plans.

Mr. Speaker, let us pass real HMO reform legislation. Let us learn from States like Texas. After all, is it not Republicans who say that the States are the laboratories of democracy? Let us address the uninsured by making sure that those who qualify for the safety net are actually enrolled. And, yes, let us have equity in health insurance tax incentives, but let us also be wary of repeating past mistakes with ERISA.

And, finally, Mr. Speaker, I want to talk briefly about Medicare as it relates to access to health care for all of us. In 1997, Congress passed and the President signed the Balanced Budget Act. In that bill were provisions to slow the growth of Medicare expenditures in order to extend the solvency of that trust fund.

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But Mr. Speaker, the effect of that bill on our rural and teaching hospitals is more profound than what was anticipated. We are not seeing just slowed growth rates for our rural and teaching hospitals. We are seeing real and significant cuts.

A survey in Iowa found that Medicare's lower reimbursement will cost small rural Iowa hospitals on the average to lose $1 million each in the next 5 years. Larger rural hospitals will lose between $2 million and $5 million. And urban teaching hospitals will lose between $10 million and $40 million.

The University of Iowa hospitals and clinics is projected to lose $64 million over 5 years. And this is in Iowa, with one of the lowest reimbursement rates in the country.

Let me give my colleagues some specific examples for hospitals in Iowa. Current payment to Iowa rural hospitals for cataract operations is about $1,300. The proposed payment will be $980, a 30-percent reduction, not just a ''reduced rate of growth.''

A rural hospital in Iowa today receives about $500 for a colonoscopy. The proposed payment will be $300, a 40-percent reduction. Medicare today pays about $45 for a mammogram to rural hospitals. The future payment will be $30. And this is happening in rural and teaching hospitals everywhere in this country.

The Washington Post just published an article that Georgetown University Hospital is projected to lose $75 million because of the 1997 Balanced Budget Act. This hemorrhage in our rural and teaching hospital will cause some to fail. This will certainly not help people's access to care.

If a county seat town in Iowa loses its hospital, it will lose its doctors and the town itself will start to fade away. And I am sure that my colleague from Vermont would say the same thing about Vermont.

Mr. Speaker, I took a lot of heat from my colleagues back in 1995 when I pointed out that $250 billion in Medicare reduced payments would severely hurt health care. Fortunately, arguments like mine were able to scale back the cuts. However, it is now clear that Congress needs to restriction adjust that bill. There are reports that the savings from that legislation are significantly greater than anticipated.

Now, I am not talking about a wholesale rewrite of the Medicare bill, because a lot of it is working well. Reducing payments to HMOs was a positive. In fact, a recent GAO report shows that HMOs are still being overpaid because they select healthy seniors and they shed the sick. However, we ought to be able to afford some adjustments for our rural and teaching hospitals.

After all, Mr. Speaker, what good does it do to have insurance, whether private or Medicare, if we do not have a hospital to go to if we are sick?

Let us not bury our heads in the sand about either HMO abuses or this Medicare problem, or I will guarantee my colleagues, Mr. Speaker, the people in the next election will remember.

I am anxiously awaiting a fair and a complete debate on this floor. We owe it to the Jimmy Adamses in our country.

## YOUNG AMERICANS MUST PARTICIPATE IN POLITICAL PROCESS

The SPEAKER pro tempore (Mr. DEMINT). Under the Speaker's announced policy of January 6, 1999, the gentleman from Vermont (Mr. SANDERS) is recognized for 60 minutes as the designee of the minority leader.

Mr. SANDERS. Mr. Speaker, it has always seemed to me that the major crisis that we face as a country is not that we do not know the answers to the most serious problems that we face but rather, for a variety of reasons, we refuse to ask the right questions.

As the only independent in the Congress, I want to raise some issues that are usually ignored by most of my Democratic colleagues and most of my Republican colleagues and are often ignored by the mass media, as well.

Let me start off with one question that I think is the most important of all; and that is, why is it that tens and tens of millions of people in our country, most especially the young people, are giving up on the political process? Why is it that virtually every day we become a less and less democratic and participatory society? Why is it that in the last election, in November of 1998, only 36 percent of the American people bothered to vote, which was the lowest turnout that we have had in many years? And this compares, as my colleagues know, Mr. Speaker, with the recent election that took place in Israel, where 90 percent of the eligible people voted, compared to 36 percent in the United States.

It is not uncommon in Canada, in Europe, in Scandinavia to have elections in which 70 or 80 or 90 percent of eligible voters participate.

Why is that? Why is that that so many people say, ''oh, democracy, oh, voting, oh, participating in the political system, do not be silly. I would not think of doing that.''

Now, as bad as the general situation is, as bad as a 36-percent voter turnout is, what is even worse and more frightening is that, in the last election, if my colleagues can believe it, only 18 percent of the young people under 24 years of age voted. That means 82 percent of people 24 years of age or younger did not vote. And that in itself is a very serious situation.

But what is even more frightening is that we know that, by and large, if people do not vote and participate when they are young, they are much less likely to vote as they age. So that means that, everything being equal, as low as our voter turnout is right now, it is likely that in years to come it will become even lower.

Now, not only is the voter turnout among young people distressingly low, but what is also very frightening is that polls indicate that young people know very little about the political

process. There was a poll recently done by the National Association of Secretaries of State, and what they discovered when they asked young people three questions. They said, very hard question, ''Can you name the vice president of the United States?'' Pretty hard question. ''Can you name the governor of your States?'' Pretty hard question. And lastly they said, ''How long is a congressional term?'' ''How long do Members of Congress serve?''

Those are not very hard questions. Those are questions that we would hope that kids in the sixth grade would know. And yet, three-quarters of the young people 24 years of age and younger were unable to answer that question.

Poll after poll shows not only that young people but people of all ages have very little understanding of what our budget is about, of how appropriations are made, of how they can participate in the political process.

I go to many, many schools in the State of Vermont because I think it is important for a Member of Congress to do that. What we find is that people in Vermont, young people, and people all over this country, they know the rules of basketball. They know that when you throw a ball through a hoop you make two points. They know all about football. You score six points when you make a touchdown, one point an extra point, two points if you throw a pass. They know all about that. Field hockey. They know hockey. They know all of these things.

And yet they say, ''Tell me something, young people. Are you concerned about the high cost of college?'' And young people say, ''Oh, yeah. Twenty, thirty thousand dollars. My family cannot afford that.'' And then you say to them, ''Okay. From a democratic political perspective, how do you change that? How do you make your voice heard? How do you make sure that the Federal Government helps middle class and working families better able to go to college and to pay for college tuition?'' ''Gee, I do not know. I have not got a clue. How do you do that? We do not know how to do that.''

Well, the reason is, if young people came together on this issue and they said to the United States Congress, ''get your priorities right, put more money into Pell grants, put more money into higher education so that middle class and working families can afford to get to college, and if you do not do that, Members of Congress, we are not going to vote for you,'' and that if a few million young people said, ''you know what,'' just like that suddenly Members of Congress would wake up and say, ''Oh, golly gee. College education is very expensive. We are going to deal with that. Maybe we are going to cut back on corporate welfare. Maybe we are going to cut back on tax breaks for the rich.''

But that is not going to happen unless young people participate in the political process. So the first point that I want to make is that I consider the most serious problem facing this country is the growing alienation of the American people and especially the young people from politics and government. And not only does that alienation mean that working people and young people are going to be less able to achieve their goals through the political process, it means something else.

In my view, it is an insult to the men and women who have put their lives on the line defending American democracy that people are not utilizing our democratic system. Clearly, we are not going to have a democratic system if people do not utilize it and participate in it. And if ordinary folks, if working people, if low-income people, if young people do not participate in the political process, who do you think is going to fill the gap?

The answer is quite clear. The people who have the money. The people who have the power want nothing more than for the American people and for working people and young people and elderly people, they want those people not to participate in the political process. Why is that? Well, because then their money can have an even greater impact over the political process than it has right now.

Today we have the outrageous situation that the wealthiest one-quarter of one percent of the American population makes 80 percent of the campaign contributions. And then we combine that with the fact that only 36 percent of the people vote and we end up with a Congress that does exactly what this Congress does, and that is to represent the interests of the wealthy and the powerful.

It seems to me, if young people are serious about education, what do they think education is? It means learning how to participate, learning how to use their ideas to make this country and their community and this world a little bit better place. So they are cheating themselves and they are demeaning the education that they have received if they are not participating.

Mr. Speaker, I am delighted that I am being joined this evening by the gentleman from Oregon (Mr. DEFAZIO). I am proud that I chaired the Progressive Caucus here in Congress, which now has some 55 members, for 8 years. I am delighted that the gentleman from Oregon is now chair of the Progressive Caucus, and he has been a valiant fighter for working people and the elderly and people who do not make the $50,000 contributions to both political parties. I am delighted that the gentleman is with us this evening.

Mr. Speaker, I yield to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, just to expand on the point of my colleague. I think it is a statistic the American people need to pay attention to. It is one-quarter of one percent. One-quarter of one percent of the people in America gave more than $200 to a political campaign last year and yet constituted 80 percent of the contributions.

So who do we think are in the Republican leader's office when the decisions are being made on tax relief or reforming Social Security or on whether or not we are going to have HMO reform that gives patients rights? Guess what, the insurance company executives are in the office, not the patients, not the people who desperately need access to health care and cannot get it because their HMO is more interested in profits than in their health care. Guess who is in those offices when we are talking about tax reform?

Now, we could do some tax reform around here that would benefit the majority of the working people in America. In fact, I have introduced some legislation to reform Social Security that would vouchsafe Social Security for 75 years, certified by the board of trustees, and it would give tax relief to 95 percent of the wage earning Americans in this country.

It is simple. Right now we pay Social Security tax on the first $72,600 of income. After that, we do not pay Social Security tax. If we earn a million dollars a year, our tax rate under Social Security is less than one percent. If we earn $15,000 a year, our tax rate on Social Security, which is part of the FICA, is six percent. We make six times more out of a meager income on which we cannot make ends meet.

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So if we just lifted the cap and said, fair is fair, all these people want to talk about a flat tax, well, let us make Social Security a flat tax on all income, not a regressive, super-regressive flat tax which is only on the first $72,600 of income. That would vouchsafe Social Security into the indefinite future. But you can also use some of that money to give a $4,000 exemption from FICA tax. Forty percent or 45 percent of Americans pay more in taxes to Social Security than they pay in income taxes. Ninety-five percent of Americans would benefit under that system. Everybody who earned less than $76,000 a year would get a tax break. But guess what? The same people are sitting in the leaders of the office of the Committee on Ways and Means and the Republican leader's office when I talk about a progressive Social Security reform, something to make this vital program safe, and saying, ''You better worry about your campaign contributions here if you raise my taxes.'' They want to tax the little people, and they want tax relief at the top.

It is time to change this system. But it is not going to change, as the gentleman from Vermont pointed out, until more people who have more on the line choose to vote, and that is the majority of the American people, who are losing under the current system. Often I give speeches like this on the floor and I have had colleagues and

friends from the Republican side of the aisle say, ''You're talking about class warfare. We don't want class warfare around here.'' That is what they say. That is not the truth. What they want is they want to continue the current class warfare, which is winning warfare against middle-income and working families and the poor in America to the advantage of that one-half of 1 percent at the top. That is what they want to perpetuate. They do not want to talk about it. They do not want the truth out there. It goes to so many issues. It goes to Social Security reform. It could be progressive. It goes to trade. I hope the gentleman does not mind if I switch to trade for a moment.

Mr. SANDERS. Before you do, because trade is certainly an issue that you and I have worked together very hard on, I wanted to pick up on a point that the gentleman made. When we talk about campaign contributions, let us be demonstrative and very clear what we mean when we talk about the wealthiest one-quarter of 1 percent making 80 percent of the campaign contributions.

One of the issues that I have been working on very hard for the last several years and is an issue of great, great concern in my State of Vermont among the elderly, among almost the entire population, is the outrageously high cost of prescription drugs. In the United States today, we have by far, it ain't even close, the highest cost for prescription drugs of any country in the industrialized world. Many of those drugs are manufactured by American companies. They sell it to Canada far cheaper than they sell it to Americans. They sell it to Mexicans far cheaper than they sell it to those of us in the United States. They sell it throughout Europe.

Now, how is that? One of the answers lies in the fact that the pharmaceutical industry spends more money on campaign contributions and lobbying than any other industry in the United States. In the first 18 months of the last election cycle leading up to the 1998 campaign, they spent over $83 million on lobbying and campaign contributions. Today, in a Washington publication, there is an article which says that the pharmaceutical industry is becoming very nervous. They are becoming very nervous because all over this country, people are saying, ''We can't afford to pay these outrageously high prices for prescription drugs.'' It is obscene that elderly people have to choose between food and prescription drugs. Here in Congress many of us are now saying, let us have Medicare include prescription drugs, so that elderly people do not have to make that choice.

Well, what do we read in the paper today? We read that the pharmaceutical industry is now prepared to spend between 20 and $30 million on TV ads and on lobbying so that Congress does not protect the elderly and the sick in terms of prescription drugs. That is how life goes and will continue to go until we have real campaign finance reform. So at a time when the pharmaceutical industry last year had the biggest increase in profits of any industry, over 18 percent, when the top 10 pharmaceutical companies had an average increase in profits of over 26 percent, what they do is they take those profits, they put it into lobbying, they put it into campaign funds of Members of Congress so that their interests are protected, and we continue to have the highest price for prescription drugs in the world.

Mr. DEFAZIO. I would like to expand on that because this is very important to my constituents and in a moment I will talk about a study that was just done in my district on prescription drug prices. But I will just give a personal example. There is a drug called Lomotil that you take if you get an intestinal problem and you are traveling overseas. My wife and I on a private trip were traveling overseas. My doctor said, ''You ought to take some of this with you.'' He gave me a prescription. Okay. I went to a local pharmacy. The pharmacies are not the ones that are ripping us off on this and that is something the American people need to know. They need to know where to focus their anger and it is not on the pharmacist because they are paying more than the drug company is selling the drug for to other customers. The pills were about a buck each. I got to India. I was sick. I was out of the pills. I went into a local pharmacy there, same manufacturer, exactly the same drug, made in America, that was good, I was happy to have a made in America drug, six cents per pill.

Mr. SANDERS. Compared to a dollar.

Mr. DEFAZIO. Somehow that pill is shipped from the United States to India and sold, with all the middle men, to India at a profit at six cents, but here in America I have to pay $1. You go just north of the border to Canada and, in fact, because the government is exacting some controls and scrutiny on the pharmaceutical industry, the drugs cost between 20 and 40 percent less, sometimes even more. It is extraordinary. These are life-saving drugs that Americans need. I have talked to seniors who say, ''Congressman, I've got to choose between paying my light bill and my heat, eating, the mortgage, and my drugs for my high blood pressure, or my cholesterol, or my heart condition,'' or whatever ails them. They say, ''You know what goes.'' I say, ''I know what goes, the prescription.'' Some of them are taking prescriptions and they will buy half the prescription and they will take drugs at half the dose, because they cannot afford a full dose of the drugs. The funny thing is that these same drugs, even in America, are sold for less. Now, that is getting really peculiar. You can understand there is some government scrutiny overseas and the governments there are not allowing the pharmaceutical companies to rob people blind, but here in America you find in my district, in Oregon, we just did a drug study. Let us take one drug, called Zocor, which is made by Merck, it is used for high cholesterol, quite commonly by seniors, and for favored customers, that is, for companies that will promise to only buy that drug, as there are competing drugs, from Merck, some insurance industries, HMO plans and others who will make their insureds buy that particular drug no matter what the doctor wants to give them, that will be the formulary, it is $34.80 a dose. Now, if a senior walks in with Medicare which does not cover prescription drugs today, the price in my district is $106.12. That is interesting. We know Merck is not giving it away at $34.80. They are making money to their best customers. But somehow the poor little old senior who walks in, who does not have one of those plans, is paying $106.12, 205 percent more. That is a scandal. That needs to change. But it is not going to change in this body because, as the gentleman from Vermont pointed out, that industry is a very generous contributor to campaigns, not mine, but to other Members. And the executives of that industry are very generous givers to campaigns, and they have got the ear of many powerful Members of Congress. Here is something that cries out for regulation. Here is something that is being done in other democracies and republics around the world, but not in the United States of America. It is outrageous.

Mr. SANDERS. I know the gentleman shares with me the outrage that people throughout this country are suffering and dying and are forced to take money out of their food budget or their heat budget in order to pay for the outrageously high cost of prescription drugs. What we have learned is that in terms of the drugs that seniors use, I do not know that it is different for the general population, but in terms of seniors' needs, in my State of Vermont, the most commonly used drugs by seniors cost 81 percent more in the State of Vermont than they do in Canada, same exact drugs, manufactured by companies, American companies, and they cost 112 percent more in Vermont than they do in Mexico.

Let me also mention some other information. You mentioned about how the cost of drugs in India, at least one particular drug, was significantly cheaper, the same exact product, in the same exact bottle, than you purchase here in the United States. In terms of the drugs most commonly used by seniors, if we use a figure of $1 for a drug paid in the United States, in Germany that same product would cost 71 cents, in Sweden 68 cents, in the United Kingdom 65 cents, in Canada 64 cents, France 57 cents, and Italy 51 cents. Half price in Italy. Meanwhile, the drug companies are experiencing record-breaking profits and they spend that money very freely here in Washington in campaign contributions and in lobbying.

Mr. DEFAZIO. I would like to just congratulate the gentleman on legislation he has tried to pass here in the House a couple of times which embarrassingly enough for the House of Representatives we have yet to be successful on, which is to say, when the drug is developed with public research, that the government, the taxpayers, would be reimbursed. Many of the most successful drugs were not from the pharmaceutical companies. That is what they say, we need those obscene profits to invest in research. That is not where the money goes. It goes to the stockholders, the chief executive officers, and other places. Yes, some of it goes into research, but not an inordinate amount. In fact, many of the most successful drugs are a result of research done by the National Institutes of Health. When a private company takes their research and produces and markets a drug with exclusive rights for 8 to 10 years, as happened recently with a drug for uterine cancer, this was doubly ironic, not only was the research done and the drug developed by the National Institutes of Health, at total taxpayer expense, the product, before they developed an artificial one, which produced the drug was harvested off of Federal lands, yew bark. So this company was given not only the exclusive right to use and sell these drugs which were taxpayer-created but they were also given exclusive rights to go out and harvest the yew bark off of Federal lands, and no controls were put on their profits. None. That is absolutely obscene.

The gentleman has tried over a number of years to say, here is a simple principle. If a drug company takes the public research, patents it and puts it into a drug, then we should get some reimbursement, the taxpayers should get some reimbursement for that drug development. You might even talk about that.

Mr. SANDERS. I thank the gentleman. The bottom line is very simple. The taxpayers of this country have spent, appropriately, billions of dollars in research through the National Institutes of Health to develop very important anticancer drugs, anti-AIDS drugs and many other types of drugs. We have had a good result. What the outrage is, is that after the taxpayer pays for the development and the research of that drug, what we have right now is the government then simply gives over that product to the private pharmaceutical company which can charge any price it wants. So the taxpayer gets screwed twice. After you pay for the research, then you have to pay some outrageous price to purchase that product.

We are going to continue on that legislation, and we are going to bring it up as soon as we can on the floor of the House. But I want to mention another piece of legislation that we have recently introduced, and that is that given the reality of what goes on right now, that the price for American prescription drugs are sold in Canada and Mexico far, far cheaper than the United States, I have legislation which would do a very simple thing.

We are going to talk about trade in a minute, and a lot of the folks here think, oh, free trade is a great idea. You and I have problems with certain aspects of, quote-unquote, free trade. But here is something very interesting. If a prescription drug distributor in the United States wanted to do business with a distributor in Canada and wanted to purchase a prescription drug there at the same price that the Canadians are able to purchase it from American companies, that is currently illegal. The theory of free enterprise is that a businessperson can go shopping around and get the best price and the consumer benefits and everything else. It is a nice theory, I guess, except it does not apply, NAFTA notwithstanding, to prescription drugs.

□ 1845

So right now an American distributor cannot negotiate with a Canadian distributor to purchase a prescription drug at the same price as the Canadians are getting it. So we have very simple conservative legislation in that says: Let the free market work, and when you have exactly the same product approved by the FDA, let American prescription drug distributors get the best price, sell it to the pharmacist, and as the gentleman from Oregon (Mr. DEFAZIO) indicated a moment ago, the problem is not with the pharmacist in the United States; he or she is paying significantly higher prices than pharmacists all over the world, and we are saying: Hey, let us have a level playing field, let us have a little free trade when it comes to protecting the American consumers.

So this is a piece of legislation that we look forward to bringing to the floor of the House and passing.

Mr. DEFAZIO. In fact, in speaking further to that issue, some seniors in border States have actually formed little clubs and rented buses to go across the border to pick up their needed drugs, their lifesaving drugs, at an incredibly cheaper price, and now, of course, I understand the border patrol is starting to crack down on that.

Mr. SANDERS. Well, we have actually worked with the Customs people, and in fact I am planning to do just that. We border on Canada, and already we had a hearing in Montpelier, Vermont, well attended, and a number of folks were coming up and they say, ''You know, BERNIE, we go over the border. We have a particular problem. The drug there is 50 percent, so we are going to organize a little bit of a trip to our neighbors to the north and bring back some prescription drugs.''

And the goal of all of that is to highlight the absurdity, the outrageous situation, and let us reiterate this once again in case people get confused. We are not talking about generics, we are not talking about look-alikes. We are talking about the same exact product often in the same exact bottle sold all over the world at significantly lower prices than the United States, and we are going to do something to change that situation.

I am tired of seeing we are also asking for a study. Can you imagine how many folks, in fact, have died in this country because they cannot afford the prescription drugs? Can you imagine the absurdity of elderly people or sick people in general not being able to pay relatively small sums for their prescription drugs; what happens when they are ill? They end up in emergency rooms, they end up in the hospital, and Medicare kicks in thousands of dollars that could have been saved if these folks had their prescription drug in the first place.

Bottom line of this situation is that people are dying, people are suffering while pharmaceutical companies are enjoying record breaking profits and spending their cash all over Washington trying to prevent the Congress from doing the right thing, and the gentleman from Oregon (Mr. DEFAZIO) and I are going to do our best to turn the tables and finally give the American health care consumers a break, and we are going to save lives, and we are going to ease suffering, and we are going to finally help lead the effort in standing up to this very, very greedy industry.

Mr. DEFAZIO. Well, I do not want to get too far afield, but I think at this point, as I said earlier, I would like just to address the issues of trade a little bit because we do seem to have these kind of strange standards. If it would benefit American consumers to be able to purchase their drugs, the exact same drugs manufactured mostly in America, in Puerto Rico for the most part, in Canada seems trade law does not allow that. But if an American firm wants to export jobs, export capital, if an American firm wants to blackmail their suppliers into moving to Mexico to get cheaper labor, now that is okay. It is kind of an odd world.

I mean when are the American consumers and workers going to truly come out ahead on trade, or is it all just about corporate profits and driving down wages in this country? I have got to believe that that maybe is more of the agenda.

I just, as my colleagues know, have been watching for years our trade balance, and we are headed toward a record trade deficit this year. The funny thing is that the Commerce Department loves to talk about trade and how much trade benefits American people, and they say: Hey, every billion dollars of trade is worth 20,000 jobs. But if you are running a $200 billion trade deficit and you apply the ruler of our own Commerce Department, that means we have just lost a lot of jobs.

Mr. SANDERS. Is the gentleman actually suggesting that we should look at both sides of the equation?

Now that is a radical concept.

Mr. DEFAZIO. Well, they do not, but, as my colleague knows, I think that I mean they want to use the ruler for our exports, let us use the ruler on the imports which exceed our exports by 200 hundred million dollars. So then you multiply 200 times 20,000. I am not really very good at math, but it seems like that is going to come out to about a lot of jobs, like probably a job for just about every American who would want one and then more.

But, as my colleagues know, our greatest trade deficit has been with Japan, but that probably will be eclipsed this year by China, and the extraordinary thing is, of course, we have got a few problems with the way the Chinese behave in the international community. They are identified as the least fair trading Nation on earth. They have been identified as a Nation that provides weapons and nuclear technology to rogue States. You know, they have committed a few human rights abuses, running over students with tanks and a few other things, have, as my colleagues know, basically destroyed the country of Tibet and taken it into their country. Of course we said nothing about that because it would interfere with business.

Well, what are we so desperate about in terms of business when we are running an $80 billion trade deficit with the Chinese, an $80 billion trade deficit is what we are heading toward this year; what do they do with that money? They use that money to go around the world and buy technology to become our economic and military competitor in the next century. Credibly they are using American dollars. They allow, as my colleagues know, in a few critical American goods where they can use the technology, but for the most part they keep our goods out, but their goods are flooding into the United States.

And now the President apparently is going to propose making this situation permanent, to give China permanent, as my colleagues know, Most Favored Nation status, and secondly, to allow them to get into the World Trade Organization because the theory is some day, some how we will whip them into line and they will drop all those trade barriers and we will start to sell them Coca-Cola or something else in the billions, and we will make a lot of money.

But right now it is just a few American corporations that are in China making a bundle of money, trying to drive down wages here. Boeing has time and time again threatened to export jobs to China to their workers here in the United States as they export the technology. Of course Chinese say do not worry, we will not build airplanes, we are not going to use your technology in any critical way, and then, of course, they lied again.

Mr. SANDERS. The gentleman forgets one very important point. China is a very good place to do business. It is a wonderful place to do business. Why would you want to pay an American worker $15 an hour or $20 an hour? Why would you have to live up to and obey environmental standards and work safety standards? Why would you have to deal with workers who might actually be members of unions? Why would you want to deal with workers who have the freedom to vote and to elect or un-elect their officials when you can go to China and pay workers 20 cents an hour, 25 cents an hour, where workers cannot form unions, where workers cannot go out on strike, where workers cannot protect their safety on the job?

It is an absolutely outrage, prima facie, right on the surface, that you have tens of billions of dollars being invested in China by the largest American corporations who at the same exact time have laid off millions of American workers, and they are going there because they can pay desperate people slave wages.

And that is the essence of our trade policy which is what? Two hundred billion dollars deficit this year? And yet when you hear the administration or you hear the Chamber of Commerce or the National Association of Manufacturing, they tell us about all the jobs that we are creating by exporting, and, as you just indicated a moment ago, they forget to tell us about the millions of jobs that we have lost.

Not only have we lost jobs, but another very important factor is taking place, and that is that if an employer has the option to run to Mexico and pay a desperate person there 50 cents an hour through NAFTA or runs to China and pays a worker there 20 cents an hour, what do we think this does to the wage structure in the United States? All over this country workers are given a proposition. They say either you are going to take a wage cut, take cuts in your health insurance, or we are going to move to Mexico, we are going to move to China.

So our whole trade policy has not only cost us jobs, it has lowered wages in the United States.

Mr. DEFAZIO. Well, we just do need to expand on that point a little bit; as my colleagues know, the fact that these companies are chasing the lowest labor around the world and the least enforcement. As my colleagues know, actually I saw, not to be humorous about a serious subject, but I saw a cartoon once, and it was one a guy asked another, ''Why do you think it is we are spending all this money on NASA, National Aeronautics and Space Administration?''

And the other guy said; well, he says no because we know somewhere out there in the universe there are people who work for less than a dollar a day.

As my colleague knows, I mean it is kind of a sad commentary, but unfortunately there is some truth in it. Under this guise of free trade American corporations are chasing around the world, and multinational corporations, after the cheapest labor from the most desperate people or from children, as we have seen in many countries where children are exploited in horrible conditions as young as age 7 and 8 in some countries, basically indentured into their jobs, deprived of an education or any opportunity to get ahead, to make products that are marketed in the United States and other developed countries. And trade law does not allow us to prohibit those goods from coming into our country.

Mr. SANDERS. You are not suggesting that we should interfere with, quote, unquote, free trade just because we are importing products made by children who are virtual slaves; the gentleman is not suggesting that, is he?

Mr. DEFAZIO. Well, I understand it is not the policy of this Congress or this administration to interfere in those workings of the market, but as an individual Member of Congress and someone who is concerned about humanity worldwide, I kind of would like to see us take a stand there. I mean slave labor, prison labor, child labor; it seems to me these are sort of basic things that should be allowed and should be part of your trade policy. Project your values, and, yes, this is even more radical to talk about maybe looking toward the people at home and protecting their jobs.

Now say, oh, well, you are talking about protectionism. I say no, I am just talking about leveling the playing field. Let us not have unfair competition. Let us not let American firms go south of the border and dump their pollutants out the back-door into the rivers in Mexico. Let us have them follow the same environmental laws there. Let us allow the Mexican people to organize and strike and not be bullied or even killed sometimes by their own government because they are trying to organize and help their wages. If we get level playing field, then workers all around the world will benefit, and I think these companies will ultimately do well too. They forget something:

In America, in our country, we have kind of a compact. As the middle class grew, the companies did better because they could consume the goods. They seem to have forgotten that now because with families desperate more and more to make ends meet, they are becoming less and less capable.

Mr. SANDERS. The gentleman has led us in an interesting direction, and he talks about families making ends meet. But wait a second. I looked at the newspaper this morning, and I watched television. We are in the greatest economic boom in the history of this country.

Is the gentleman suggesting that not all of the people in Oregon or in Vermont are doing extraordinarily well? Gee, that is what I saw on television. What is the reality of this great economic boom?

As my colleagues know, when I speak in the State of Vermont, I go from one end of our State to the other, and I talk to a lot of middle class audiences and working class audiences, I talk to

family farmers. I always ask one question. I start off, and I would like to ask the people of America this question, and that is you see on the television and you read in the newspaper that the economy is booming.

So my question is: Is the economy booming for you? And in the State of Vermont you ask that question of 300 people in an audience, one or two people raise their hands. What does a booming economy mean? A booming economy for you means that you are making more money and working fewer hours; that is what a booming economy is. You have better health care, you are better able to send your kids to college. Your housing situation is better.

What is the reality? Well, let me say first the good news, and we have to be honest about this. The good news is that last year Bill Gates had a very good year, and I mean a very good year. Bill saw his wealth increase by $40 billion, increase up to 90 billion.

What is 40 billion? Let me put it in a context. In my State of Vermont, which is a small State, we have our entire state budget which covers all of the needs of the people of 580,000 people in the State of Vermont. It is a little over $1 billion. That means that in Gates' increase in wealth in 1 year, could run the State of Vermont for 40 years, which brings him to a total, by the way, of 90 billion.

So Gates had a good year; what about the average American? Let us go over some facts here.

□ 1900

During the period of 1979 through the present, the growth in income has disproportionately flowed to the top. The bottom 60 percent of the population actually saw their real income, that is inflation-accounted income, decrease in 1990 dollars. The top 20 percent saw modest gains, but the wealthiest 1 percent saw their incomes explode over 80 percent.

In other words, when we talk about the great economic boom, most people today are worse off in terms of what they earn than they were in 1979. People are working longer hours for lower wages, and a lot of that reason has to do with the absurd trade policy that the gentleman described. We have 43 million Americans with no health insurance. And, here is a fact that is not very much discussed: today, the average American is working 160 hours a year more than was the case 20 years ago.

We had hoped as we entered the 20th century, and remember, the unions were saying 40 hours, they wanted a 40 hour work week 100 years ago; that is what workers were fighting for. Today we are lucky to find the workers only working 40 hours. People are working 50 and 60 hours; people are working two jobs, three jobs. So how do we have an economy booming when people are forced to work 50 or 60 hours at wages less than was the case 20 years ago; when they do not have health insurance and they cannot afford their basic needs.

Mr. DEFAZIO. Mr. Speaker, I have talked to a lot of people in Oregon and different places and I just remember one young man, I pulled into the gas station late one night after I flew back across the country, as I do almost every week, and he was kind of almost apologetic about it; he recognized me, and he said, I got to tell you, Congressman, I am not doing too good, I am not making it. And Oregon has the highest minimum wage in the United States, and guess what, our economy is booming, all the companies have not fled the State as we heard they would with the highest minimum wage in the country.

But he said I have two jobs, my wife has a job, and he said, we are really not making it. We want to have a kid. We are not really sure we can afford to have a kid, because, he said, I have two minimum wage jobs at the Oregon minimum wage, the highest minimum wage in the United States; my wife has a minimum wage job, but after we pay the rent and the car payment and the other stuff, he said, there is not much left over. That is the unfortunate reality for many Americans.

There have been a lot of jobs created, but compare the salaries and wages and benefits of those jobs. The largest employer in the United States of America now is not General Motors, it is not even Microsoft; it is something called Manpower, Inc., which is a temporary employment firm, with no benefits and, obviously, very little security and not the greatest wages in the world for most of the people they place. That is the largest employer in America. There is something wrong with that picture.

It goes to trade policy, it goes to tax policy; it goes back to who funds the elections in this country. I mean there are a whole host of things contributing to this. It is very complex. It also goes to the Federal Reserve Board, who are a bunch of bankers who meet downtown at the largest, heaviest, most expensive marble and exotic hardwood table in the world, in secret, by the way, to determine monetary policy for the United States of America. And now, they are obsessed. They are obsessed. It is now, will a one-rate increase satisfy the Fed? What are they worried about? Another cartoon, I saw it. There are all these old guys, pretty much older guys, bankers and stuff, standing around behind Frankenstein, who is tied town, and Frankenstein's label is inflation, and one of them says, his eye lid twitched, his little toe moved, I think he is starting to breath.

They are worried about inflation that does not exist; the lowest real rate of inflation in the last 50 years in the United States. Highest real interest rates, though, if we borrow money, and guess what? If there was a little bit more inflation, debtors, which is most of the people in America, the ones certainly I care the most about; everybody has a credit card, a mortgage, a home loan, a car loan, if inflation ticked up a half percent or 1 percent, guess what, you come out a little bit ahead, but your banker, your banker loses a little bit on the margin.

So the obsession is we have to worry that wages might go up. The Fed is petrified, petrified that wages might go up. We have a law that says we are supposed to work to our full employment and keep down inflation. They do not look at the full employment side, and they particularly look negatively upon the idea of a real increase in wages. They do not want that to happen. And they are willing to drive up interest rates, which raises the credit card of virtually every American who has credit card debt, makes car loans more expensive, makes housing loans more expensive, because they are worried that the profits of the banks, that some of them who actually sit there and make policy in secret work for, might go down a little bit.

There is a very strange system we are running here. What happened to the policymakers? What happened to the Congress? What happened to the President? Why can we not make monetary policy to drive up wages in this country, to create full employment? Why are those things anathema. Something is very wrong. Why can they make policy in secret? How can they do this?

Mr. SANDERS. Mr. Speaker, my friend obviously misses the main point about what the function of the United States Congress is supposed to be. Does the gentleman not think that the function of the Congress is to represent the interests of the large banks and the rich? Does he really have the radical idea that the United States Congress is supposed to represent the vast majority of the people, the working people, the elderly people, the people who are struggling?

Ah, he forgets. Those are not the people who contribute $50,000 a plate at fund-raising dinners, so those are not the people who are going to get a fair shake.

If my friend will allow, I want to quote something from a very interesting book. It is called Shifting Fortunes, the Perils of the Growing American Wealth Gap by Chuck Collins and some other people, and it touches on an issue that we very rarely talk about, and that is the fact that the United States has by far the greatest disparity of wealth and income in the industrialized world; that we now have the obscene situation where the wealthiest 1 percent of the population owns more wealth than the bottom 95 percent. And in the book, and let me quote it, he says, ''The top 1 percent of households have soared, while most Americans have been working harder to stay in place, if they have not fallen further behind.''

Now, this is not income, this is all together what you own.

Well, since the 1970s, the top 1 percent of households have doubled their

share of the national wealth at the expense of everyone else. The top 1 percent have doubled their share of the national wealth. Using data from the Fed, Federal Reserve Survey of Consumer Finances, economist Edward Wolf of New York University says that 40 percent of the Nation's household wealth as of 1997, the top 1 percent of households have more wealth than the bottom 95 percent. And in fact, what we are seeing today is a greater concentration of wealth than at any time in the modern history of this country.

Mr. DEFAZIO. Mr. Speaker, there are some policy issues at stake here. We talked about trade and we will not go back to that, but we could have a trade policy that helped in those areas. But the other issue is tax policy.

The majority party here in the House very much wants to give a tax break to the American people, and the question becomes first off, are they going to give that tax break out of the Social Security surplus; that is a question and a problem; or, are they going to give a tax break by cutting programs like Pell grants and other things the gentleman talked about. But maybe it can be justified, but we can only justify it if we look and see where those tax benefits are going to flow. There are ways that we can provide substantial tax relief to the majority of the American people, but I fear, as in the last several tax bills since I have been here, the wealth and what they are talking about, the people at the top are going to do very well, and those average people are not.

They want to reduce the capital gains tax again. Now, this is not quite clear to me, but let me see if I totally understand this. If I invest for a living, my effective tax rate is just slightly more than half of a retail check-out, unionized check-out clerk or a teacher, is that correct? A teacher is paying at 28 percent on the margin and if I do capital gains, I do not have them, so I do not know, but I think it is 18 or 19 percent, as I recall.

So what are we saying to the American people? Is this like the Leona Helmsley theory of taxation, only the little people pay taxes? I mean they are talking about a world in which they would do away with the inheritance tax, and let us say we were lucky enough to be Bill Gates' kids. But he says he is going to give most of the money away and not to his kids. So maybe he only gives his kid $1 billion. So his kid only gets $1 billion. The rest, the other $89 billion goes to charity. That would be nice. But then the kid goes to college and vests that $1 billion and becomes an investor for a living. Does not work for wages.

Guess what? That person would not pay any inheritance taxes under the brave new world of tax reform they are talking about, and would pay no income taxes, because they would exempt capital gains from income taxes. So the guy selling the burgers down on the corner, well, they are paying FICA tax, Social Security, they are paying income tax; they are subject to all of these taxes, but the person who inherited and invests for a living does not.

What is wrong with this picture? If they want to talk about leveling the playing field, why should it be that people who invest for a living pay a lower rate of taxes than people who earn through blood, sweat and tears and time away from their home and their families, wages? Let us equalize the two. Why would we not do that? What is wrong with that idea? Would that not help most people?

Mr. SANDERS. Mr. Speaker, it makes a lot of sense to me, but unfortunately, those people who make $10 or $12 an hour are not making the huge contributions to both political parties and to their Members of Congress, or to the United States Senate.

The gentleman a moment ago, and maybe we can get back to this point, touched on a very important issue that I do not think is very widely known by the American people. That is when some of our friends talk about taxes, talk about income taxes, two points to be made. Number one, when we hear somebody on television saying, let us have an across-the-board reduction in income tax, it sounds pretty good. But please understand that the bulk of those tax breaks are going to go to upper income people.

Now, the gentleman a moment ago touched on the FICA tax and Social Security. It seems to me that if we want to make our tax system a bit fairer and protect middle income and working families, we might want to take a hard look at the Social Security tax, which is extremely regressive. As the gentleman said a moment ago, somebody makes $1 billion a year, somebody makes $72,000 a year, who contributes more into the Social Security system? Answer: they both contribute exactly the same. A worker making $20,000 a year pays 6.2 percent; somebody making $1 million a year pays 6.2 percent on the first $72,000. Very regressive system.

I know that the gentleman has brought forth a proposal which is far more progressive, and maybe he might want to say a word on it, which not only protects middle and low-income workers, but it does something else very interesting. When we hear all of our friends telling us how Social Security is falling apart, the gentleman's approach would extend the life of Social Security for many years.

Mr. DEFAZIO. Mr. Speaker, it is pretty simple. They are talking about destroying the system to save it; moving toward a privatized, sink-or-swim, on-your-own system, but there is one simple fact. If we just lifted the cap and said every American will pay the same amount of Social Security tax on all of their wages, that sounds pretty fair to me. It is not progressive, even. It is not. We are not saying low income people will pay less, we are saying everybody would pay the same amount on every dollar, and that would provide more than enough money to make Social Security solvent beyond the 75-year window.

But I went a step further in my bill. I said okay, I like that, that is pretty good. We do not have to cut benefits, raise the retirement age or do things that hurt working people, and we do not have to roll the dice on some sort of individualized accounts, which have not worked out real well in Great Britain and in Chili, but what we could do also is exempt the first $4,000 of income. I would like to give a little tax relief.

So the plan I have would lift the cap and use some of that money to provide tax relief by exempting the first $4,000 of income for self-employed and for wage-earning Americans who pay FICA taxes.

Now, guess what that means? That means 95 percent of the people in the United States of America who work for wages would get a tax cut, and they would still collect their full Social Security. But 5 percent, those who earn over $76,600 a year, would pay the same amount as the other people who earn less than them.

Now, would that not be a fairer way to fix Social Security?

Mr. SANDERS. Mr. Speaker, if I could interrupt the gentleman, what he is suggesting is that his proposal would lower taxes for 95 percent of the American people and in fact would provide a very substantial tax break for lower income working people, and at the same time, we would be able to extend the life of Social Security for the 75 years that the actuaries think we need; is that what the gentleman is saying?

Mr. DEFAZIO. Mr. Speaker, that is correct.

Mr. SANDERS. Now, Mr. Speaker, that sounds like a pretty good proposal to me, and let us see how many of our colleagues here who tell us day after day how the Social Security system is going bankrupt, which certainly is not true, let us see how many of them are going to join us in that type of an approach.

Mr. DEFAZIO. Mr. Speaker, I thank the gentleman. In fact, I went before the Committee on Ways and Means. They would only accept bills that the actuaries had certified as meeting the 75-year requirement, so they only had testimony I believe on five pieces of legislation before the Committee on Ways and Means, and mine was one of the five certified by the trustees of Social Security. The chairman of that committee, who is also I believe for a flat tax, he did not just like latch on to it. I said, well, Mr. Chairman, this is going to be right down your alley; this is a flat tax. People are going to pay the same if they earn $1 million, if they earn $75,000 a year. Would that not be fair? And, we fix the system and we do not have to go through this whole disassembly and reassembly and rolling the dice and taking chances on whether something else would work, and whether the ''something else'' that they

might put in place of Social Security, the system that is responsible for lifting millions of Americans, older Americans out of poverty, disabled Americans out of poverty, survivors of workers who died at a young age; we would lose or risk all that in the newly fractioned, independent sort of account kind of system.

□ 1915

Yes, a few people would do better, but most would not. Here is an option that would provide tax relief and save the system, but it just somehow did not capture the chairman's attention right off. I do not intend to drop the idea. I have final legislation and I am ready to introduce it soon. I am hoping to begin a debate about a better way to fix social security.

Mr. SANDERS. Mr. Speaker, we are running out of time, and I want to thank the gentleman from Oregon (Mr. DEFAZIO) for joining me this evening.

The bottom line of this discussion is the following, that unless ordinary people, working people, middle-income people, young people, get actively involved in the process and fight and stand up for social justice, what will happen is that the people who have the money, the people who make the campaign contributions, they will continue to call the tune here in the Congress and in the administration.

What will happen is that the policies, whether they are trade policies, health care policies, prescription drug policies, labor policies, environmental policies, whatever, those policies will be heavily influenced by the interests of those people who have the money, and they will work against the interests of the vast majority of the people.

The bottom line of this whole discussion is that we are a great and wealthy Nation. If we all stood together and became actively involved in the political process, we could create a society where every man, woman, and child had a decent standard of living. That is not utopian vision, that is concrete reality. That is what we could do. We could join the rest of the industrialized world and provide health care to every man, woman, and child, including prescription drugs.

We will not do that unless people stand up and be prepared to fight for what is right. I just want to thank the gentleman from Oregon (Mr. DEFAZIO) for joining me this evening.

## THE VITAL ROLE OF THE FEDERAL GOVERNMENT IN AMERICA'S EDUCATION SYSTEM

The SPEAKER pro tempore (Mr. GREEN of Wisconsin). Under the Speaker's announced policy of January 6, 1999, the gentleman from New York (Mr. OWENS) is recognized for 60 minutes.

Mr. OWENS. Mr. Speaker, abolishing the Federal role in education will produce a long-term monumental disaster for this country. I open with that statement to make it clear what I want to talk about tonight. Abolishing the Federal role in education would produce a long-term monumental disaster for this country.

I want to make it clear what I am speaking about because I have had a couple of people, interns in my office and constituents, say that I ramble a bit, and they are not sure what my basic subject is about because of my examples that are far-reaching, et cetera.

It is about education. I am here to talk about education again because it is important that we not allow education to get off of the radar screens of the people who make decisions here in Washington.

Members of Congress and the White House must understand that it is a subject that the voters have indicated in poll after poll that they consider to be the number one priority. They want the Federal government to do more in the area of aid to education. That is a priority, and they are on target. The common sense of the voting public is more on target than the priority-setting here in Congress. Education is the number one priority.

The reaction of the political leadership here in this city, in Washington, has been not to deal with education in a straightforward way which recognizes the need to provide more resources for education. No, instead we are avoiding the issue with rhetoric and trickery. I am here tonight because the latest active trickery deserves immediate exposure.

On Tuesday, June 22, the Republican majority, and this includes the majority in both Houses, let it be known what their basic thrust is going to be with respect to education. The reauthorization of the Elementary and Secondary Education Act per se has been put on the back burner, but it is being preempted by an obvious assault on the Federal role in the process of education.

The same Republicans who came to power in 1995 and said they wanted to abolish the Department of Education are now pursuing that same goal through a different route. They have found that the American people did not approve of a frontal assault on education which talked about abolishing the Department of Education. That was unacceptable.

Instead of a frontal assault, now we are going through a different route, through the back door, and waging guerilla warfare against the Federal role in education.

On Tuesday, June 22, Republican leaders, and I am reading from an article in the New York Times, page A–18, Tuesday, June 22, ''Republican leaders in Congress today unveiled an education bill that builds significantly on their previous efforts to give State and local governments even broader discretion over the spending of Federal money.''

I appreciate the wisdom of the writer of this article, Mr. Frank Bruno. He starts out with an indication of exactly what is happening: ''It builds significantly on their previous efforts to give State and local governments even broader discretion over the spending of Federal money.''

The article continues, ''Under the proposal, a State could opt out of the current Federal financing system which allocates money for specific purposes and instead use most of that Federal aid as it wishes, provided that the State first enters into a 5-year contract with the Department of Education that holds the State to certain performance goals.''

The trickery here is that this proposal follows the same course as the Welfare Reform Act, where there were supposed to be contracts and specific plans made, and most States have reneged on their contracts already. The Federal government seems to be paralyzed and unable to monitor them properly or to enforce those welfare reform agreements.

Now we propose to follow the same course with education. The same people who wanted to abolish education in 1995 are not saying we should abolish the Department of Education, but instead take all the money, give it to the States, and let the Department of Education monitor it.

However, we will hear them shortly after that saying that the Department of Education is a swollen bureaucracy, and therefore, we should cut the administrative costs by cutting the size of the Department of Education. The staff to monitor these programs I assure the Members in a few years, they will not be around at all. Right now they are all too few.

Continuing in the New York Times article, ''The plan, which would apply to more than $10 billion in Federal money nationally, faces an uncertain fate. There is not yet a timetable for its procession to the floor of either the House and Senate, and Democrats in both chambers denounced it as a reckless experiment.''

The Democrats who have been quoted are the same Democrats who voted against the Ed-Flex bill, which is the forerunner for this present, broader block grant approach. The Ed-Flex bill was taking a portion of the existing Federal funds and allowing States to use that as they saw fit. That was quite popular and a large number of Democrats voted for it.

My fear is that despite the recklessness of this and the extremism involved here, large numbers of Democrats are going to be caught sleeping, and the idea is going to look very attractive when the Governor calls and the State Department of Education people call and say, yes, we would like maximum flexibility. Give it to us. They will have an immediate targeted approach to the Members of Congress while the public is still out there wandering in confusion about the meaning of this kind of flexibility.

The meaning of this kind of flexibility is that the States, which have

traditionally and presently always had the power to forge education policy to improve schools and to get better results, the States that have failed to keep our education systems up to par and promote the kinds of education systems which are able to keep up with a world that is rapidly moving towards a cyber civilization, demanding more and more education of workers, a high-tech civilization where those who do not have a first-rate education will find it difficult to find employment, the States have failed to do that, and they have had 93 percent of the responsibility.

In another part of the same article they point out, the writer, Mr. Bruno points out the fact that ''Overall, the Federal government provides only about 7 percent of the education budget.'' I cannot emphasize this fact too much, because the core of Republican propaganda about education insists that education has been ruined by Federal intervention.

The Federal government intervenes to the tune of 7 percent of the total allocation, the total appropriation for education. The States and the local governments are responsible for the rest, 93 percent. They have 93 percent of the funding authority and responsibility. They have 93 percent of the control. So this preoccupation with grabbing the 7 percent from the Federal government has no basis in any rational philosophy of trying to improve education. It is just a grab for more money, and it is an extremist act.

It is extreme because it will push the Federal government completely out of the process of trying to improve our schools and to reform education. This is the last big amount of money the Federal government has invested, or the only significant amount it has invested to date. So if we push the Federal government out, then we only have the States left, and we have an extreme system.

Our system already is weighted in terms of local control and State control. Unlike any other industrial democracy or industrial Nation, democracy or otherwise, we have decentralized policy-making, decentralized control of our education system. We are way at the other end of the spectrum from those nations that have total control in a central education ministry like Japan and France, and Great Britain has decentralized to a great extent.

Basically all of the European countries have strong central roles for the development of education policies and practices and procedures, enforcement of accountability, et cetera. We have always been out there as the most decentralized system, and we are not apologetic about that. There is a lot to say about the American decentralized approaches to education.

It started with Thomas Jefferson opposing a central national university, but he was the first to establish a university at the State level, and many other States followed suit. The Morrill Act created land grant colleges in all the States, and we have had a decentralized system in terms of elementary and secondary education as well as higher education for the life of this Republic.

However, there are weaknesses in a system which is so extreme that it only involves the States and local governments. We discovered those weaknesses in a big way in World War II, and even more so later on when the Russians challenged us in the scientific race for new high-tech weaponry and the race into space, et cetera.

The Russian challenge led to a great intervention by the Federal government in the form of incentives and new ways to stimulate science education, math and science education in our local schools. The involvement of the Federal government has been there to some degree since then.

Later on under Lyndon Johnson, of course, we created the Title I program, which seeks to provide greater aid for the poorest school districts, the poorest schools in the poorest school districts in the country.

□ 1930

But total involvement, even after the Federal intervention, is minuscule compared to the involvement of other Nations in terms of their central government involvement with education.

So we have a system which is at one extreme already. We are going to make it even more extreme by pushing the Federal Government totally out of the process. There is a great deal to be said about the present involvement in the Federal Government. I think it is far too little. It should be more.

But even if we increase the Federal appropriations from 7 percent of the total to 25 percent of the total, we still would only have a minor role, a secondary role being played by the Federal Government. The States and localities would have 75 percent of the control. That would be a greater balance.

The check and balance approach that we have found very useful in our overall national government, the check and balance approach is good in a number of different kinds of activities and enterprises, the check and balance approach where one does have some participation by another body to help to sort of balance off the kind of extremes that are negative on one side at the same time not take over and not smuggle the process.

We need a check and balance of the Federal Government with respect to the State and local governments on education. There is nothing negative about having some ideas and some initiatives, innovations, research, statistics gathering, comparative analyses, sharing of information from one State to another, a number of things that the Federal Government does and does very well that it will not be able to do if it is pushed out of the process.

It has to have a role which is significant, and the fact that it actually makes funds available to States and local governments gives it a role of some significance, however minor it may be. But to totally eliminate that is extremism.

It is the kind of Republican extremism we heard in 1995. It is just more subtle now. Instead of screaming that we should abolish the Department of Education, they now propose a rational reallocation of the dollars that the Federal Government provides for education.

It is like Marie Antoinette, when they said they have no bread, the poor have no bread, she said let them eat cake. The Republican majority, answering the call of the common sense of the voters who say we should have more Federal aid to education, they say let us just scramble the resources we have now. No more resources. Nothing new is going to be offered.

We are going to scramble the existing money that is being provided in federal aid to education and make it appear that we are doing something great by giving control of all of the Federal funds to the States, which have done a bad job, I will not say bad, but inadequate, they certainly have not been able to keep up, and their resources are dwindling while the Federal resources are increasing. It is an extreme position.

The bill which both houses of the Congress are praising as their new approach to education, they call it the Academic Achievement For All Act. They have already got a good nickname called the Straight A's Act. Their public relations people have done a good job. That is very, very effective, Academic Achievement For All, Straight A's Act.

But it is only scrambling the Title I money primarily. We already have Title I funds. We already have a few other funds. They are going to take that, put it in a pot, scramble it, give it away to the States, and will claim that they have done something new for education.

Let me just quote again from the article, ''But the extraordinary fanfare with which it was introduced suggested the extent to which Republicans in Congress eyeing next year's critical elections have decided to seize education as an issue and make local control their battle cry.

''Education is number one on the Republican agenda, said Senator TRENT LOTT of Mississippi, the majority leader, at an early afternoon news conference just outside the Capitol. Mr. LOTT was joined by Speaker J. DENNIS HASTERT of Illinois. They stood with other lawmakers in front of a yellow school bus brimming with fresh-faced students. Dozens of other students fanned out around the lawmakers, clapping and cheering their assent to each policy point, no matter how arcane.''

I am quoting from the New York Times article Tuesday, June 22. ''Mr. HASTERT described the bill which Republicans have titled the Academic

Achievement For All Act and nicknamed the Straight A's as a historic step. Democrats said the direction of that movement was backward. Representative GEORGE MILLER, Democrat of California, said it was unclear from the Republican plan how accountable schools would be. Mr. MILLER also said States would be able to shift money from poor districts and children to wealthier ones. Communities will be pitted against each other to lobby their State Capitols for school money, he said.

''We know how that fight will turn out. Education Secretary Richard W. Riley issued a statement denouncing the bill along similar lines. The bill is a far-reaching extension of the philosophy behind the Education Flexibility Partnership Act, or Ed-Flex, which Congress passed with broad bipartisan support this year and President Clinton signed the bill into law.''

Let me repeat that last paragraph. I quote from the New York Times article, ''The bill is a far-reaching extension of the philosophy behind the Education Flexibility Partnership Act, or Ed-Flex, which Congress passed with broad bipartisan support this year and President Clinton signed into law.''

I reread that because I want to make it clear that I am not an alarmist. I am not here upset and frightened for no reason. What was done before on a bipartisan basis, with large numbers of Democrats participating, was a precedent-setting action. It is the forerunner of what is about to come back to us in the form of a take-it-all flexibility-for-all-of-it, meaning take everything that the Federal Government has invested in education and give it to the States.

Democrats, beware. Democrats, do not fall into this kind of appeal for local control reasonableness. The local control is already 93 percent. Why not let the Federal Government remain in the process with its measly 7 percent?

Continuing to read the article from the New York times, ''The law authorizes States to grant waivers to local school districts that want to spend Federal dollars in ways differ slightly from the specifically intended purpose.

''The new Republican bill whose chief sponsors are Representative BILL GOODLING from Pennsylvania and Senator SLADE GORTON of Washington would allow precisely that kind of reshuffling. Republicans said the safeguard preventing any particular area of education or school district from neglect would be the performer's contract which would oblige States to prove that achievement was not suffering.''

The performance contract, the same kind of thing that they have in the welfare reform bill. The States must show that they are doing certain kinds of things, only they have not bothered to do it, and no one in the Federal Government has been strong enough to force them to live up to the contract.

Thus, it will be with education. Once the States have the money and the Department of Education has less of a reason to exist, less staff, less budget, who will go out to enforce the contract? No one. This is a rip-off, a grab for the 7 percent of the Federal dollars that are now devoted to education by the States, who have, as I said before, done a very poor job up to now.

Democrats contended that many students could fall by the way side before the Federal Government was able to determine that a State had fallen short of its goals. Like Ed-Flex, the new bill would affect slightly more than $10 billion of Federal money, largely the same pool of money to which Ed-Flex applies. That represents most of what the Federal Government spends on primary and secondary education.

So we are about to make a monumental mistake. It is on extremist's proposal that will be clothed in sweet reasonableness, and a lot of people are going to be caught off guard and fall for it. Why have total control, total involvement only by States and local governments and leave the Federal Government totally out of the picture with respect to the effort to reform education and improve our schools?

There was a time when States were totally responsible for housing, States and local governments, housing for the poor. Nothing ever happened. Only the Federal Governments intervention provided decent housing in areas for people for whom there was no other answer.

There was a time when health care was not a Federal responsibility. Federal Government did not get involved with health care. We had a monumental disaster across the Nation in terms of health care later. Later on, the Federal Government, through Medicaid and Medicare, through Lyndon Johnson, began to play a greater role.

Whatever my colleagues may consider wrong with our health system at present, I am certain that my colleagues would not try to take away Medicare. Medicaid, they are trying to take away, but even Medicaid, one would have great resistance in taking that away from the American people.

Senior citizens and retirement and care for people who are aging was totally neglected by the States. We had the poor houses. We had all kinds of bizarre ways in which they made a token effort to help aging people. But only Social Security, a Federal program saved senior citizens from abject poverty and suffering.

The States had the ball, and they would not run with it. The States traditionally are controlled by people who have not bothered to govern for everybody. The temptation and the tendency of the States is always to govern for the powerful, and to do as little as possible to please the majority, and let the minority go completely. Triage systems. Do not provide health care at all. Do not provide housing at all. Social Security. Do not provide anything for the aging. It is the Federal Government that has made the effort to close the gap and provide the safety nets.

In education, that has not been the case. It is still primarily a State responsibility, a local responsibility. So why move to the extreme position of trying to make it a total State local responsibility using Federal funds?

I spoke last time about the fact that the Federal Government, in its intervention, redistributes funds in ways that have aroused a great deal of opposition in certain quarters, because if one distributes funds according to the population, the big cities are likely to get a larger percentage of the funds than other areas, the States that have large populations. For some reason, that is considered to be undesirable. If one distributes funds according to population it seems to me the fairest way in the world to distribute them. But that is undesirable.

There was a move afoot last week to try to cut back on the mass transit funds received by California and New York because the mass transit funds were going a larger percentage to California and New York. Well, that is where most of the mass transit is. That is where the people who ride on subways and buses live. So why was there a great outcry about the fact that they got a larger proportion of the mass transit funds than most other areas?

Highways and road were getting large amounts of money in areas where the per capita utilization of the highways is minimal. If one had to give highway and road money out on the basis of how often the roads are used, then the large population centers would get more highway money because, actually, the number of people utilizing the highways and utilizing the roads are far greater in the areas where the people live. People are there, therefore they should get from the Federal Government a proportional share of the resources that are available.

But this has not happened; and for that reason, I use an example which several people called me about and said, well, what does that have to do with education? What does it have to do with justice for the big cities? Why are you reverting to reciting statistics about who died in all the wars? It just seems to me a very graphic way to try to bring home the point I am trying to make.

□ 1945

The resources for education, the resources which involve helping people, should go where the people are. The fact that we are abandoning public schools means that the largest concentration of public schools and the largest concentration of people voting in public schools are in the big cities and the States that have the big cities.

Why do we want to abandon them with respect to education and leave them in a situation where they will not be able to get decent employment in the future? We are going to create an uneducated underclass, an inadequately educated class or half educated class or poorly educated class.

Whatever title we may choose to give it, it is a class of people that will not be able to qualify for the high-tech jobs. They will not be able to participate in the cyber civilization that is coming. That will be a great tragedy. And if we do that, we are generating a great unjust situation against a segment of the population which repeatedly has been called upon to defend the country.

In all the wars, the largest number of casualties have been in the big States and the big cities where most of the people live. I used that example before and I will repeat it again. I think it is important to recognize that the demographics of the war dead, the demographics of heroism. These are heroes. Everybody who gave their life is automatically a hero. They gave all they could give in defense of this country in World War I, in World War II, in Vietnam, in Korea. The demographics stand out.

But the people who died in the greatest numbers came from the places where people live in greatest numbers, where the population is. They might have had other factors that contribute to the heroism, but it was there.

Even the battle of Gettysburg. On the Union side, the largest number of soldiers who died were New Yorkers. Because New York was probably clearly the State which is most densely populated at that time which furnished soldiers and troops for the Union's cause. That is certainly one of the biggest factors. And there might have been other factors. But the greatest number of soldiers on the Union side who died were from New York and Massachusetts and Pennsylvania, the States with the largest population.

In World War I, New York and Pennsylvania again are way up there ahead of everybody else; 35,100 casualties, 7,307 combat deaths from New York in World War I. Pennsylvania 5,996 combat deaths. Illinois 3,016. These are the big cities of New York, Buffalo, Philadelphia, Pittsburgh, Chicago.

California was just beginning to boom in population, and they had far fewer deaths. But later on, California, where the people live, where the population is, they are the people who send the largest number of soldiers to the wars and they died in great numbers. Eighty-nine thousand casualties in World War II from New York State. Twenty-seven thousand of those, almost 28,000, were combat deaths.

Why should we quibble about the portion of Federal funds that New York receives for mass transit or that they receive for education or for Medicaid? That is where the people live.

California, big jump in World War II, 47,000 casualties. Seventeen thousand died. But even then, it was less than half of New York, which was still the largest population center during the Second World War. Where the people live, that is where we have the casualties, that is where we have the heroes, and that is where we have the public schools that are being abandoned now. Those are the people that we call upon and order to go to war. But in peacetime suddenly they become a nuisance.

We have a philosophy that is sometimes weakly expressed, and sometimes there are high-powered people who come right out and say it: We do not need poor people.

There was a member of the editorial board of the New York Times more than 15 years ago who used the phrase, ''planned shrinkage,'' that instead of trying to rebuild poor communities, instead of trying to take care of the poor, let us just plan for the city to shrink in size and population. Planned shrinkage sounds like a perfectly respectable, acceptable term.

Now, that was long before anybody ever talked about ethnic cleansing. Ethnic cleansing you would say cannot be equated to planned shrinkage, and I would agree. But it is on the way. Low-income cleansing is what happens when you have plan shrinkage, low-income cleansing. Let us make life difficult for people who are poor and maybe they will move away. Let us make life difficult and hostile and they will solve the problem for us by moving away. We do not really need people. We only need people in times of war. We only need people when the Vietnam War takes place, and out of our cities comes a larger percentage of combat deaths than any other part of the Nation.

In the big cities we will have the names on the Vietnam Wall Memorial. Go look at the names. And I am glad we have such a memorial, as I said before, because it brings war home in a very human way. We are not talking about unknown soldiers. We are not talking about tombs for unknown soldiers. We are talking about human beings that lived and breathed and they lived and breathed in the big cities. That is where the soldiers came from. They died in large numbers. Their names are on the Vietnam Memorial. They are the soldiers whose families and friends and neighbors still in those big cities that we should make a pledge to provide first-class education.

The Federal Government should participate in provisional education because those people are very important to our Nation. I hope I do not just have to use that example, but that example is a graphic which brings it home.

What about the future of the Nation if we do not educate the people in the big cities, we do not educate the folks who go to our public schools large numbers?

There are a couple of other items that appeared recently in the paper that I think are significant. I am here repeatedly to talk about improving education and improving schools. I talk about the need to have a massive construction program, a school construction program, which not only deals with the problem of overcrowding in our big cities and in rural areas, replacement of schools that are falling down, replacement of the trailers that are inadequate in so many places, but also school construction which would provide for the wiring of schools so that we can get more technology in schools.

They need new computers to do the construction. They need to be hooked up to the Internet. That is where the world is going. We have thousands of thousands of jobs. I think now they talk about right now there being 300,000 vacancies. There are 300,000 vacancies in the information technology industry. They expect the number to climb to 1.5 million in 2 or 3 years. And these estimates are based on the fact that they look at the number of youngsters who are taking computer science in our colleges and they say that number is totally inadequate.

We need more youngsters going into college. We need more youngsters at every level, not only the colleges where they can get the computer program training, but the junior colleges where they are going to become computer technicians, or even high school where they get enough training to become computer mechanics or in some way assist. Because the world is going in that direction.

The age of cyber civilization is going to be here sooner than we realize. And in order to participate in that and hold a job, they have got to have the education necessary.

Let me just highlight this report that appeared yesterday in the New York Times.

A report was issued by the Commerce Department which describes the economic benefits from the Internet. The economic benefits from the Internet have greatly benefited our economy. Our overall economy is fed by a new kind of phenomena which requires a highly educated work force.

The article was in the New York Times on June 23. It reads as follows:

> The financial benefits of the Internet and high technology extend beyond the quick riches they have brought high-profile entrepreneurs and investors in recent years to the Nation's economy as a whole, a new Government study shows.
>
> The information technology industry, which includes everything from the Dell Computer Corporation PC's to the Microsoft Corporation's software, to Cisco System, Inc.'s routers, generated at least a third of the Nation's economic growth between 1995 and 1998, the Commerce Department said in a report released today. During that period, the gross domestic product rose 22 percent, to $8.7 trillion.

The Internet as a force in our economy did not exist 20 or 30 years ago. But between 1995 and 1998, it expanded to reach the point where it is now third. Internet related activities are a third of our economy.

> Those goods and services also got cheaper and allowed businesses to become more productive, cutting inflation by seven-tenths of a percentage point in 1996 and 1997, the report says.
>
> ''The improvement in technology, in productivity, is what has made the economy so incredibly attractive in the last couple of

years,'' said William J. McDonough, president of Federal Reserve Bank of New York.

Today's Commerce Department report, the second in a series of three on technology, does not provide figures measuring total spending on high technology. Instead, it focuses on growth of on-line businesses and companies that cater to the technology industry. For example, it says almost half of all American workers will be employed in high-technology industries or at companies that rely heavily on technology by 2006.

I repeat. The report says, ''Almost half of all American workers will be employed in high-technology industries or at companies that rely heavily on technology by 2006.''

I cannot say that too often. Because as I move through my own district, which has very serious problems with respect to resources that schools have, most of them are not appropriately wired, they do not have enough computers, and many of those who have computers are not wired to the Internet.

I move about among people who say that I am talking about a luxury. ''Let us get enough books, enough crayons enough blackboards. Let us deal with the basics,'' they say, ''and then you can come back to us and talk to us about computers and the Internet.''

No, we cannot wait because we are galloping forward and if half of the people employed, if half of the American workers in the year 2006 are going to be in the high-tech industries, our youngsters in the schools in my district, unless they have more exposure to computers and there is an effort to interject and interweave the Internet and the kind of things it can do, computer literacy, computer competency, we will not be able to qualify for those jobs.

The unemployment rate is already very high in my district. It is already very high. There is no hope for it going down even if the number of jobs increase, as they have in New York City. We have a large amount of vacancies in the high-technology industry in New York City. But the unemployment rate among the young people in my district is still up around 20 percent. They cannot qualify for the jobs if they do not have the education. That is a simple fact, and we have to understand that.

I cannot speak too often or too long or too forcefully about education when we are talking about the livelihood of these young people. They have no future if they do not get the education that they need.

Workers in information technology have been at least twice as productive as other workers from 1990 to 1997 and earn 78 percent more than other workers, the report said.

The report ''provides fresh evidence that our Nation's massive investments in these sectors are producing gains in productivity and that these sectors are creating new and higher-paying jobs faster than any other,'' Commerce Secretary William M. Daley said in the report.

Meanwhile, those who invested in high technology have reaped rewards that outpaced the market as a whole. The Standard and Poor's High Technology index rose more than five times since June of 1994, while the broader S.&P. 500 stock index tripled. Spending on information technology has quadrupled over the last decade, rising as a share of all business spending on equipment to 53 percent from 29 percent, according to the Commerce Department in a separate report.

□ 2000

''Internet activity is driving deflationary boom conditions,'' said Ed Hyman, an economist for the ISI Group in New York. ''It's official.''

Mr. Speaker, I ask to enter the article which describes the report from the Commerce Department on the impact of high technology and information technology in its entirety for the RECORD.

[The New York Times, June 23, 1999]

COMMERCE REPORT DESCRIBES ECONOMIC BENEFITS FROM INTERNET

WASHINGTON, June 23 (Bloomberg News)—The financial benefits of the Internet and high technology extend beyond the quick riches they have brought high-profile entrepreneurs and investors in recent years to the nation's economy as a whole, a new Government study shows.

The information technology industry—which includes everything from the Dell Computer Corporation's PC's, to the Microsoft Corporation's software, to Cisco Systems Inc.'s routers—generated at least a third of the nation's economic growth between 1995 and 1998, the Commerce Department said in a report released today. During that period, the gross domestic product rose 22 percent, to $8.7 trillion.

Those goods and services also got cheaper and allowed businesses to become more productive, cutting inflation by seven-tenths of a percentage point in 1996 and 1997, the report says.

''The improvement in technology, in productivity, is what has made the economy so incredibly attractive in the last couple of years,'' William J. McDonough, president of the Federal Reserve Bank of New York, said in a speech in New Jersey today.

Today's Commerce Department report, the second in a series of three on technology, does not provide figures measuring total spending on high technology. Instead, it focuses on growth of on-line businesses and companies that cater to the technology industry. For example, it says almost half of all American workers will be employed in high-technology industries or at companies that rely heavily on technology by 2006.

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''Internet activity is driving deflationary boom conditions,'' said Ed Hyman, an economist for the ISI Group in New York. ''It's official.''

Mr. Speaker, it cannot be said too often, if we do not educate our young people in our big cities, a whole segment of the population will be out there wandering in the wilderness, nowhere to go, in terms of employment. I will not begin to postulate on what the consequences will be. I just know that a just America, which seeks to have a continuation of law and order, of promulgation of the right to pursue happiness, is an America which will not shut down the public school system and cut off the opportunities for the young people in our biggest cities and the poor people in our rural areas. That is what will happen if the Republican Academic Achievement for All Students Through Freedom and Accountability Act goes through. Because all it does is take the Federal initiative, the Federal dollars, scramble them up and put them in the hands of State and local governments who have not been able to measure up to the job, to the requirements, up to now.

How can we improve education by giving more money, throwing more money, taking Federal money which exists now, throwing it into the State and local coffers? What is the great automatic, obvious advantage of local control? Why is local control sacred? There are many examples of local control degenerating into complete corruption. There are more examples of local control being stagnant. For long periods of time school systems did not move off dead center in terms of improving the performance of their students. This is not just true of low-income areas but large numbers of middle-income communities had stagnation. When the Federal Government intervened shortly after the Russian Sputnik triumph in space and began to offer greater incentives and offer greater amounts of money and money for training and for leadership to promote more science and education, better science and education teachers, the public schools began to do a better job in science and math. The effect of that was to create something that has continued. We have a large number of very good public schools in the Nation. In areas where you have low performance overall, there are schools that stand out. We have some of the best schools in the world in New York City. Some of the high schools have repeatedly taken the largest share of science prizes whether it is Westinghouse or some other science prizes. If you move into the area of debate, any other area, you find other high schools who stand out there. So we have individual schools that have done a magnificent job, but the system overall is lagging. The system overall that seeks to educate 1 million children in New York City has many, many problems. A majority of the youngsters in these schools are receiving an inadequate education. Some of them have never been able to sit in a classroom with a teacher of science or math who majored in math or science in college. In our junior high

schools a survey was done which showed that in the areas where most of the African Americans and Latino students live, the poorest students in the city, most of the junior high school teachers teaching science and math had not majored in science or math in college. They were people who were thrown in there and had to try to do a job because no other bodies were available. This is a chronic problem. It was not just for that year or the year after, it still exists. There are some schools that lost their physics teachers, high schools, several years ago. They still do not have a physics teacher who majored in physics and has some expertise in the area 3 or 4 years later. The problem is acute. In an area where larger salaries are paid in the suburbs surrounding the city, they attract off the best teachers and you have a situation where the ones who need the greatest amount of help and the most expertise, the most creative, the most imaginative teachers, get the least from the teachers.

The shrinking teacher pool, the number of teachers available, the fact that it is becoming more and more difficult to find good teachers, is part of the larger problem. Because of the fact that we have not appropriately funded the education system, we have not appropriately insisted on accountability, you do not have enough youngsters going into college, you do not have enough coming out. So those who are graduating from college, they choose other professions in large numbers and the number of students who go into teaching as a percentage of the professions chosen, that number keeps shrinking. We need more youngsters going into the college from high schools, youngsters who are qualified to do college work, who can come out of college and become those good teachers which would back up the system's effort to teach those who need help most. Nothing of that kind will happen if we take away from the big city schools the title I funds that go in large amounts to big city schools. This Academic Achievement for All Students Through Freedom and Accountability, Straight A's Act, that was described by the Republicans the day before yesterday is an attempt to move in a direction where the ultimate, the final result would be that States would have the power to move the money that the Federal Government appropriates now for the poorest schools, they can move it anywhere. We know from past history they will move it to the areas where they are seeking votes, where the greater number of votes are. They will move it to the areas where the people have the most political power. Those who have political power now have the best schools now already. In New York State, we have some of the world's best schools, best outfitted high technology schools, schools who have had computers, that the ratio of students to computers has been very good for years and they have been hooked up to the Internet for years. They have not had problems of wiring their schools because there is an asbestos problem. We cannot wire a lot of schools because asbestos still exists and when you start boring holes just to put wires in, that is a big problem. They have not had the problem of appropriations being too small for books so that the teachers and the principals do not even want to ask for additional appropriations for computers. They have not had those kinds of problems. They have not had the problems that there is no room to place the computers even if they were given to you because the schools are overcrowded. There are a number of schools in my district that are operating at a capacity of twice the number of students that they were built for. An elementary school built for 500 students has 1,000. A high school built for 2,000 students has 4,000. They go from 7 in the morning until late in the afternoon. Many schools have three lunch periods because the lunchroom cannot accommodate all of the students so they have to have lunches in shifts. That forces some elementary school students to eat lunch as early as 10 o'clock in the morning. That is child abuse, to force a child to eat lunch at 10 o'clock in the morning. It happens in large numbers of schools.

So without the Federal help, the first opportunity to learn factor, a decent building, a place where you can go and feel safe, a place which is adequate, adequate and conducive for learning, a place which nowadays would be able to accommodate technology and allow computers which are not a luxury anymore, wiring to the Internet which is not a luxury, to allow all of those factors to be involved in the education process, it is impossible to achieve that without more help from the Federal Government.

The greatest emphasis that I have placed on my role as a member of the Committee on Education and the Workforce is to focus on the basic problem of school construction. We may talk about a lot of other factors, and I do not want to minimize the need for more research, I do not want to minimize the need for more teacher training and teacher accountability. All of these problems, all of these factors are important. But before anything happens, we need to have a massive school construction program which says to the Nation that we have not abandoned the public schools. The fact that schools are literally falling down sends a message that is highly visible and highly symbolic, that we do not care about public education anymore. We talk about improving the teaching of reading, computer literacy and computer competence, but when a child walks into a school with a coal-burning furnace, the risk to that child's health is greatly increased, it would be better off if at a young age they stayed away from school because the more you are exposed to certain fumes, the greater the likelihood that you are going to have asthma or other respiratory illnesses. Why should we have children go to school and have their health jeopardized, be placed at risk because they go to school? If a child goes to a school which still has paint that had lead in it, and they are first graders or kindergarten children, they play with the paint and they get some of that in their system, their health is greatly threatened. We still have those kinds of problems. We still have asbestos problems, but the greatest problem is, of course, the overcrowding, where you cannot teach 40 children in one room, especially when they are children who need a great deal of attention. You need the space before you can use the additional teachers.

I am very proud of the fact that President Clinton forged an initiative on increasing the number of teachers per classroom, especially in the early grades. That was a $1.2 billion initiative in last year's budget which was not easily gained. It took a lot of hard negotiating. The Republican majority resisted it all the way and they are still resisting. They want to convert that into something else. But it is important that we made the effort, we recognized the need to have a ratio of students to teachers, especially in the early grades, which is better than the kind of 35 to 40 ratio of students to teachers that exist in some schools now.

But in New York, the truth is where they need the teachers to relieve the burden of teachers having too many students, they do not have the classrooms. You cannot put a teacher with 20 children in the front of the room, a teacher with 20 children in the back of the room and expect to really have education among young children. It is not going to happen. That is too many kids in one room. The fact that there is another adult, another teacher, will not solve the problem. You need space. You need a classroom. You need a well-lighted classroom. You need a classroom that does not have the threat of coal dust from a coal-burning furnace. You need a classroom that is properly ventilated. You need new classrooms in many of these situations.

The Republicans claim in their new initiative that the way to solve the problem is to give it all to the States and let them solve the problem, let the States and the localities have the Federal money, that measly 7 percent that we provide for the overall education budget, give it to the States and that is the solution to the problem. Well, the States, some States have large surpluses at this point. In fact, quite a number of States have surpluses. The prosperity that has benefited the Federal treasury has also benefited State treasuries. In New York State, the State had more than $2 billion as a surplus in last year's budget. The Democrats in the legislature sought to get a measly $500 million of that to provide for school repairs and school construction in the areas of greatest need. The

governor vetoed the $500 million out of the $2 billion budget.

At the city level, New York City had a surplus of at least $2 billion, and the mayor of the city of New York did not bother to appropriate a single penny to relieve the overcrowding in schools, to get rid of more coal-burning furnaces, to deal with asbestos problems, not a penny went out of that surplus. Are we going to give more money to the mayors and the governors, are we going to give the Federal money and expect an improvement in the situation when their behavior has indicated that they do not themselves care about their public schools? They are abandoning public schools. The great talk of vouchers and charter schools, et cetera was designed to deflect attention away from the fact that you need to invest heavily in public schools.

I introduced, on May 14, a bill, H.R. 1820, to amend the Elementary and Secondary Education Act of 1965 to provide grants to improve the infrastructure of elementary and secondary schools. Title XII already exists in present law. This is a very germane approach. There is no need to depend only on the Committee on Ways and Means to provide loans for school districts as a means of dealing with the problem of construction. We have a massive need for more school construction. We might recall that last year, we authorized $218 billion over a 6-year period for highway construction. I do not know why the Federal Government has to be so involved in highways and roads, but $218 billion was authorized for highway construction. I was not against that. I think that is a proper use of public dollars. But I am proposing in this bill, H.R. 1820, that over a 5-year period we spend $110 billion on school construction, $22 billion a year. The $110 billion is close to the $112 billion that the General Accounting Office said in 1995 we needed in order to, at that time, revamp, repair and keep our public school inventory at its present level, in proper condition. They did not talk about the expanding enrollments which now require probably, if we were trying to meet the need, about $200 billion for school construction all across the Nation.

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H.R. 1820 is based on the fact that there are certain findings we cannot turn away from. There are 52,700,000 students in 88,223 elementary and secondary schools across the United States. The current expenditure of the Federal Government for education infrastructure is only $12 million. The present federal expenditure per enrolled student for education infrastructure, any kind of physical facility, is 23 cents per student, and appropriation of $22 billion a year would result in a federal expenditure for education infrastructure of only $417 per student per fiscal year, $417 per student per year compared to the present 23 cents.

That is what I am talking about. Let us not be overwhelmed by the big numbers; 22 billion a year sounds so great, but when you look at the number of children involved, we are talking about spending $417 per year.

My bill, H.R. 1820, proposes to provide, to distribute, the money across the country in accordance with the number of school aged children that each State has. Therefore my use of the statistics of the number of students divided into the amount of money is correct.

I do not propose to try to make judgments on priorities. We just proposed to address the problem. Some schools will spend majority of their money on building new schools, some may spend the funds on repairing existing schools, in some cases schools will choose to use some of the money for improving their schools for technology. Those are the options that they would have at the local level, but we must understand that there is a need to move and not to leave this up to the local and State governments that are obviously not going to deal with the problem.

Overcrowded classrooms have a dire impact on learning. Students in overcrowded schools score lower on both mathematics and region exams than do students in other schools. We must meet the challenge of a cyber civilization by educating all of our children. The Republican approach which proposes to end the federal role in education is the wrong one; we need more help, not less, for our public schools.

The article I referred to is as follows:

[The New York Times, June 23, 1999]

BILL OFFERS STATES LEEWAY ON EDUCATION AID

(By Frank Bruni)

WASHINGTON, June 22.—Republican leaders in Congress today unveiled an education bill that builds significantly on their previous efforts to give state and local governments ever broader discretion over the spending of Federal money.

Under the proposal, a state could opt out of the current Federal financing system, which allocates money for specific purposes, and instead use most of that Federal aid as it wishes, provided that the state first enters into a five-year contract with the Department of Education that holds the state to certain performance goals.

If the state failed to meet those goals, which the Secretary of Education would have to approve, the state would return to the old system of financing.

The plan, which would apply to more than $10 billion in Federal money nationally, faces an uncertain fate. There is not yet a timetable for its procession to the floor of either the House or the Senate, and Democrats in both chambers denounced it as a reckless experiment.

But the extraordinary fanfare with which it was introduced suggested the extent to which Republicans in Congress, eyeing next year's critical elections, have decided to seize education as an issue and make local control their battle cry.

''Education is No. 1 on the Republican agenda,'' said Senator Trent Lott of Mississippi, the majority leader, at an early after news conference just outside the Capitol.

Mr. Lott was joined by Speaker J. Dennis Hastert of Illinois. They stood with other lawmakers in front of a yellow school bus brimming with fresh-faced students. Dozens of other children fanned out around the lawmakers, clapping and cheering their assent to each policy point, no matter how arcane.

Mr. Hastert described the bill, which Republicans have titled the Academic Achievement for All Act and nicknamed Straight A's, as a ''historic step.''

Democrats said the direction of that movement was backward. Representative George Miller, Democrat of California, said it was unclear from the Republican plan how accountable schools would be. Mr. Miller also said states would be able to shift money from poor districts and children to wealthier ones. ''Communities will be pitted against each other to lobby their state capitols for school money,'' he said. ''We know how that fight will turn out.''

Education Secretary Richard W. Riley issued a statement denouncing the bill along similar lines.

The bill is a far-reaching extension of the philosophy behind the Education Flexibility Partnership Act, of Ed-Flex, which Congress passed with broad bipartisan support this year and President Clinton signed into law.

The law authorizes states to grant waivers to local school districts that want to spend Federal dollars in ways that differ slightly from the specfically intended purpose. But the districts can deviate only so much; money meant to combat substance abuse can be shuttled from a program specified by the Federal Government to one that is not, but the money cannot be used, for example, to improve reading skills.

The new Republican bill, whose chief sponsors are Representative Bill Goodling of Pennsylvania and Senator Slade Gorton of Washington, would allow precisely that kind of reshuffling. Republicans said the safeguard preventing any particular area of education or school district from neglect would be the performance contract, which would oblige states to prove that achievement was not suffering.

Democrats contended that many students could fall by the wayside before the Federal Government was able to determine that a state had fallen short of its goals.

Like Ed-Flex, the new bill would affect slightly more than $10 billion in Federal money, largely the same pool of money to which Ed-Flex applies. That represents most of what the Federal Government spends on primary and secondary education.

Over all, the Government provides only about 7 percent of the education budget for the nation's public schools and education experts have said that even striking changes in Federal policy have limited impact.

## THE REPUBLICAN AGENDA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Michigan (Mr. HOEKSTRA) is recognized for 60 minutes.

Mr. HOEKSTRA. Mr. Speaker, tonight I would like to take the opportunity to talk about a number of the items on the Republican agenda, the agenda that I believe provides us with the opportunity to really build on the prosperity that this country has experienced over the last 7 to 8 years, the opportunity to take that prosperity and to reform the programs that we have in here in Washington, to reform our budget priorities and to address some of the systematic problems that we are experiencing.

Let me give my colleagues one example. In the budget resolution that we

passed earlier this year this Congress took a historic step. We stated that for the budget horizon, the next 10 years, that we would lock away every dollar of Social Security surplus, that we would lock it away and allow those funds to be only used to reform and save Social Security and Medicare.

When we take a look at the commitment that we have made of locking away 1.8 trillion dollars, we see that that is a historic change. It provides the framework for shoring up Social Security and Medicare and at the same time ensures that those dollars will not be spent to grow other segments of government.

That is exactly what has happened over the last 30 years. Every American today, they get their paycheck at the end of the week, and they recognize how much they have grossed, and between their gross and their net is this thing called FICA. That is the amount that your employer, actually that you, pay to Washington for Social Security. It is 6.2 percent of your income.

The interesting thing is that your employer also matches that with another 6.2 percent. It means that you are paying or based on the hours and the salary that you have earned, 12.4 percent of your income is going to Washington, and it was going and it is supposed to be coming to Washington to deal with Social Security and to be set aside so that when you reach retirement income those dollars will be there and they will be there for you.

But what has happened over the last 30 years is those dollars have come into Washington. They have been set aside. They have been set aside with IOUs. Government then went in, and took that money, and put in the IOU and spent it on other federal programs. So what we now have in the Social Security Trust Fund is not all of the 30 years of surplus in Social Security, but what we have is a stack of IOUs, and on this hand we have got a bunch of federal programs that we have grown and expanded.

We want to set aside the total Social Security surplus for the next 10 years, $1.8 trillion. That is a hundred billion dollars more than what the President plans to set aside for Social Security. As a matter of fact, when you take a look at a shorter window rather than 10 years out, you take a look at what this President and this administration is proposing for the next 5 years, they are going to spend $146 billion of the Social Security surplus. They are not saving every dime of Social Security over the next 5 years and setting it aside to save and reform Social Security and Medicare; they are actually going out and continuing the practices of the past, and they are going out, and they are going to spend it one more time.

What happens when we set aside $1.8 trillion? What it means is that we can go out and we can reduce the public debt. We will reduce the public debt by $1.8 trillion over the next 10 years. That is $450 billion more of debt reduction than what the President's budget proposes. Under our budget it means that the debt held by the public declines from $3.6 trillion to $1.9 trillion by the year 2009.

The other thing that we have in our budget plan is that we maintain the spending discipline of the 1997 balanced budget agreement. As the Chair will remember, in 1997 we passed a historic budget agreement. It laid out a 5-year plan for spending, it laid out a 5-year plan for revenues, and it said by the year 2002 we will be out of surplus budget.

Some positive things have happened. The economy and Federal tax revenues have been stronger than what we anticipated. What it means is that we move closer and we have actually moved to a surplus budget, as it is defined in Washington, this year. There are those now that would say, well, now that we are at surplus, let us forget about the spending restraints that we agreed to in 1997, let us open up the vault, and let us start spending the surplus.

There are many here in the House who believe that that is the wrong thing to do. We believe that this is an opportunity where we can really continue the fiscal discipline and commit to meeting the spending targets that were outlined in 1997 which then enables us to save every dime for Social Security and then also provides us with the opportunity to another step which we think is very positive, which is to provide tax relief to the American people.

When you take a look at taxes and why we need tax relief, think about the two-parent working family today. The second working adult usually earns about 40 percent of the combined income. It is interesting enough to note that the average American today pays 40 percent of their income in one form of tax or another, a State tax, a local tax or a Federal tax. What that means is that in a two-parent or two-working-parent family, the second person is not working to support the family. The second person is working to support Washington, their State government or their local government. They are paying 40 percent of their income.

We have an opportunity to relieve the stress that that places on American families and that places on American workers. Think about it. You go out, and you earn a dollar; you lose 40 cents of it before you ever go home and use it to buy food, to pay for a vacation, to invest in your child's education. The first 40 cents always comes to government.

We think that there is an opportunity to reduce taxes in three different areas. In one way we will propose in our tax relief package something that provides an immediate benefit to the American people. What does that mean? It means that your take-home pay is larger, means that your check at the end of the week for what you have worked that week, means that you get to keep more of it and Washington gets to take less of it.

We want to provide tax relief in a way that says you can prepare for your long-term future. Because a tax code is being restructured, you can be better prepared to plan your financial future so that you will be more secure and you will have the freedom to get financial security.

How do we do that? For those of you that save, for those of you that invest, we can reduce the capital gains tax. We can encourage you through the Tax Code to invest in individual retirement accounts so that you can prepare for your retirement, or perhaps that you can set aside dollars so that if you want to go out and purchase your first home, you can use those dollars for that, or if you are really talking about long-term security, would it not be great if you can take more of your income and set it aside so that you can prepare to help your child get a better education?

That is what we mean when we talk about enabling you to have more freedom to plan for your future and to get your financial independence.

There is another area that we think we can reduce taxes in, and that is we think you have got the opportunity, and we have got the opportunity, to let Washington know who is in charge. Do you ever have these fees or services that you just think where did they come from? And why are they doing this? Let me give you two examples:

A few years ago we passed a telecommunications reform bill. As part of that we said that we were going to encourage the expansion of the Internet into the schools, a very good goal. We have got a bureaucracy that said: Wow, that gives us the latitude to impose a fee on every American's phone bill.

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It is called the Gore tax. It is the Vice President's idea. It was not passed by Congress; it was an interpretation by a bureaucracy and a group of bureaucrats as a way to get money from the American people. This is a wonderful opportunity to say, no. The American people are in charge. We are going to repeal that bureaucratic abuse of power and we are going to eliminate that ''fee.'' It is not a fee. It was a tax that was initiated by bureaucrats who had no right and no authority to do it.

There is another one that is currently going through, and I think it is maybe going to affect only a small number of Americans today, but again, it is an abuse of power, and it is an abuse of power by the Postal Service. For those of us that have a box, a mailbox, but it is not at the Post Office and it is now at a private business, there is a whole new set of rules and regulations that the Postal Service has put on the small businesses and has put this cost on Americans who say, I would really like a Post Office box or a place of business that can receive my mail, because it can do things that the

Postal Service cannot do, meaning that this business will sign and accept a delivery by an overnight delivery company. The Post Office will not do that. But if one now wants to do that, this company that has provided someone with this service is going to have to go through and provide a whole series of documents on that box to the Post Office.

The bottom line: rules, regulations. They do not come free. It is a huge new cost and another way, again for, in this case, not for the government to collect more money, but for someone who is providing a service that may be in direct competition to a government monopoly, to penalize this service and make it more expensive for the American people to use an alternative delivery service or a Post Office box that provides additional services.

This is a wonderful opportunity for us to go back and say, no. We are not going to let the government do that. We are going to repeal that. We are going to pass a bill here that says, you cannot put these kinds of costs on the American people. You cannot put these kinds of costs on small businesses who, because the Postal Service could not deliver the service, found a niche, identified a need, and in the great spirit of the American entrepreneurs, created a business, only now to be penalized by the Postal Service. We need to change that, and this will provide us an opportunity to do that.

Mr. Speaker, underlying our direction on taxes where we want to increase take-home pay, we want to let Americans understand that they are going to have more freedom for planning their financial security in the future and for sending a message back to Washington that says, we are in charge and you are not, we want to overlay two broad themes. It is time to simplify the Tax Code, and it is time to make it fairer. Perhaps the most unfair component of our Tax Code today, although there are probably a number of different items competing for that title, but perhaps the most unfair is that our Tax Code continues to penalize married couples. Think about it. We have a Tax Code in America that penalizes people for being married. That is not fair. Not only that, it is the wrong thing to do. So as we move forward through our agenda this year, as we continue building on the balancing of the budget, as we plan for solidifying Social Security, solidifying Medicare, we are doing the right things, and we are using the prosperity to get our house in order.

I want to spend a little time now moving on to another priority that over the last number of years I have spent a lot of time on, and that is education. I am glad that I came to the House Floor tonight to be able to respond to my colleague's comments about what those Republicans did this week with our Straight As program, where we are going to move more flexibility back to the local level and we are going to move the dollars down there so that people at the local and at the State level can have the flexibility to deal with the issues and the problems at their local level and not worry about whether their problems match the problems that we here in Washington have identified as national issues.

I have a great quote. My colleague earlier was asking the question, do we really trust people at the local level and at the State level to do what is right for our kids? Do we really trust those people who know the names of the kids in their class and in their school to do the right thing for those kids? And the answer, obviously, from my colleague was, of course we do not. There is a Federal role here because Washington knows best.

As my colleague in the chair remembers, back in 1995 when we began the welfare debate, we began the welfare debate very much on the same tone and tenor, and we really accelerated the debate on welfare reform when I came down to the floor with a number of my colleagues from Wisconsin. And the reason we came to the floor was that Wisconsin had proposed a reform of welfare. It had passed the State legislature in a bipartisan way. The governor had signed it. They sent their application here to Washington, because somebody in Washington in Health and Human Services had to approve what the State of Wisconsin wanted to do to help their people in their State get off of welfare, to go to work, to get training, and to become more productive.

I believe that it was something like 287 days later that we came to the floor, 287 days or something like that after Wisconsin had sent their application to a bureaucracy in Washington, a bureaucracy that probably had some people from Wisconsin working in it, but the reform proposal maybe was not read by anybody that had ever been to Wisconsin. But 280-some days later, Health and Human Services had not acted.

Now, get this. It is the State of Wisconsin, the governor, the State legislature saying, we think we have a better idea. We think we have a model that we would like to try that is better for our people and it is better for the people on welfare than what the national Washington one-size-fits-all model is. And after roughly two-thirds of a year, the people in Washington had not thought it was important enough to go through this, to study the issue, and to answer the people in the State of Wisconsin as to whether this was or was not something that they were going to let them do. And that is the same attitude that our colleagues are expressing when it comes to education.

What finally happened in welfare reform? We pushed for flexibility, we pushed for local accountability, and now that welfare reform has passed the House, that it has been implemented at the State level where we have given this authority to the governors and to the State legislatures and said, you have a great degree of flexibility, you have a huge opportunity here to take the Washington resources, to break the rules, to break the mold, and use the money to solve the problems in your own State.

A couple of years ago we heard the same types of claims: they will not do the right thing. They will move the money into the wrong places. They do not really care about the people that are on welfare. They are not going to help. They are going to take the money and move it to different places.

What we found in welfare reform is exactly the opposite. It is a wonderful success story. The States have taken the freedom, they have taken the flexibility to reach out and help those that were on welfare get work, to come off of the welfare rolls, and the wonderful thing is that I am not sure what they are doing in Wisconsin. Wisconsin has a model that works for them. Michigan has a model that has worked for us. Michigan is probably learning from Wisconsin and Wisconsin is learning from Michigan, and both programs are moving forward. What they are doing in Hawaii is probably a little bit different or very different from what they are doing in New York, but as we go around the country, it is one success story after another. And, we have 50 models of welfare reform, all working, all learning from each other, and all moving forward. And what a wonderful difference it makes to have 50 States learning from each other and all competing to have the best welfare program, or the best welfare reform program; to have the best statistics about saying we have moved this percentage of people off of welfare into being more productive members of society. What a wonderful way to compete versus where we were before.

Because what has happened now is States are forced to focus on results, not process. Under the old model, Wisconsin had to focus on process. They had to fill out all of the Washington forms. They had to fill out all of the forms and make sure that they dotted the I's and crossed the T's correctly, and they would send it to Washington and Washington would make sure that they had dotted the I's and crossed the T's and if they had filled out something slightly wrong, they would send it back to Wisconsin to fix it or they would send it back to Michigan to fix it and the paper would flow back and forth eating up dollars. But as soon as we reformed welfare, we moved away from a paper work shuffle, we moved away from a bureaucratic red-tape system to a system that is doing exactly what it is supposed to. It is focusing on people. It is focusing on how, with key help, people get off of welfare.

Why am I talking about welfare reform? Because I think it is a beautiful model for what we are proposing to do with education. And we know that the same broken bureaucratic model that we suffered under in welfare reform is

also found in education. That model is Washington Knows Best. We are going to take the 7 percent of the dollars that any school district gets from Washington and we are going to use that 7 percent to, on a significant scale, impact what goes on in the school because we know best and the people at the local level do not. That is the broken model.

How do we know that that is the model that people at the local level believe exists today? We know because we went to over 15 States, had something like 18, 19 different hearings, and learned about what is going on in education. But the thing that we found over and over and over again, really two things. Number one, we saw great schools, we saw great kids, we saw great teachers, great administrators, parents, administrators, and teachers who knew the child's name and had a passion for making sure that that child would have the best opportunities to learn that they could provide.

Now what do we see? Here is what somebody basically found out and what they said about Washington. I think there is an arrogance on the part of the school bureaucracy, that is Washington, that assumes that they know what is best for everybody's children. I assume the opposite. I do not think that anybody can make a better decision for their children than the parent.

□ 2045

The focus of directing a child's education does not need to be here in a bureaucracy in Washington, it needs to be at the local level, starting with a parent or an adult guardian, moving to a teacher, moving to an administrator, and the last person in the food chain is a bureaucrat in Washington. We need to improve education.

Let me just talk about why we believe it is important to reform education and why the current model does not work. We published a report called ''America's Education System at a Crossroads,'' ''Education at a crossroads.'' It is the result of a whole series of hearings around the country, a series of hearings here in Washington meeting with the education experts here in Washington, and other research and analysis that we completed here.

We know that America's education system needs to be reformed. Why? What are some of the statistics? Forty forty percent of fourth-graders do not read at even a basic level. Half of the students from urban school districts fail to graduate on time, if at all. The average NAPE scores among 17-year-olds are lower than they were in 1984. That is a year after a Nation at Risk was released. We are not necessarily making progress.

U.S. 12th graders only outperformed two of 21 nations in mathematics. What does that mean? Here are the statistics. In the Third Annual International Math and Science Study, called TIMS, 12th grade U.S. lags behind in math and sciences.

Here are the nations with average scores significantly higher than the U.S.: the Netherlands, Sweden, Denmark, Switzerland, Iceland, Norway, France, New Zealand, Australia, Canada, Austria, Slovenia, Germany, and Hungary. Nations with average scores not significantly different from the U.S.: Italy, the Russian federation, Lithuania, the Czech Republic, and the U.S. are in this category. The two nations that did score below us, Cyprus and South Africa; not a very impressive showing.

Another startling statistic: American students fall further behind students from other countries the longer they are in school.

One of our first hearings a couple of years ago was in California. We had one on K through 12 and then we had one on higher ed.

The first year, the hearing with people from the colleges, they said, make sure you do not cut our remedial education budgets. You kind of do a double-take and say, excuse me? These are kids who have gotten into college. What are we remediating? They are remediating basic skills. Public institutions of higher education annually spend $1 billion on remedial education. It is a huge problem.

The other thing that I can tell the Members, even though those are the national statistics, as we went around the country we saw success story after success story of people at the local level achieving some wonderful things. That is where the reform is taking place. It is where parents and people at the local level have control over their local schools.

What other stuff did we find out as we took a look at Washington's answer to education, one of which says we are going to take the 7 percent of the Washington dollars and we are going to come up with a solution for almost every problem? We wonder, how does 7 percent really drive so much of a local curriculum?

Think about it. In Washington we have a program that will pay and contribute for a child's breakfast and a child's lunch. I am not saying these programs are not needed, but they come along with bureaucracy and red tape.

There are people in Washington who want to build the schools, they want to pay for putting in technology, they want to buy the technology, they want to pay for the technology classes. We already pay for drug education. We pay for sex education. We pay for arts in the schools. They want to hire our teachers. They want to test our kids. They want to develop curriculum. They want to develop after-school programs.

So when we take a look at it, they want to feed our kids breakfast, build our schools, pay for the technology, teach them about sex, teach them about drugs, teach them art, get involved with curriculum. They want to test our kids, hire our teachers, feed them lunch, do after-school programs, maybe midnight basketball. But other than that, it is our local school.

That is how 7 percent of Washington's Federal education dollars drive into a local school district to drive administrators from, rather than focusing on the child, rather than focusing on the education, to recognize that they have become just like welfare. They have become process-driven.

I want administrators, I want teachers focused on helping our children learn, not pushing paper. How do we know that they push paper? We surveyed the Federal government, and these are not all K through 12, but when we asked the question, how many Federal education programs are there, there are 760. Like I said, they are not all K through 12, but there are lots of programs.

We say, wow, that is why we have a Department of Education, to take these programs and centralize them in one department? Wrong. These 760 programs are spread over 39 different agencies that spend over $100 billion a year. It has gotten to be so complex that there is a cottage industry, again, the wonderful entrepreneurial spirit in America.

There is a company called the Education Funding Research Council. What do they do? They will sell a book for $400. What is it? It is the guide to Federal Funding for Education. We have a business out here that has decided that they can make a living by telling the rest of America where the dollars are in education, and help them go through the process of getting Federal education dollars.

There is another one that says, they talk about 500 education programs. There is another one that is called ''The Aid for Education Report.'' Here is what they say: ''Huge sums are available. In the Federal government alone there are nearly 800 different education programs that receive authorization totalling almost $100 billion a year.''

What do 760, 800 programs, what do they lead to? Even accounting for recent reductions, the U.S. Department of Education still requires over 48.6 million hours of paperwork per year, 48.6 million hours. This is for the paperwork. This is the focus on process rather than on results.

The President talks about hiring maybe 100,000 teachers. We do know that when you require 48.6 million hours of paperwork, that is about the equivalent of 25,000 people working full-time, 25,000 people working to meet the paperwork requirements of the Department of education and other Federal agencies.

The Department of Education talks about, well, there are only 4,637. We are one of the smallest agencies in Washington. They have been smart. They have moved the paperwork and the requirements down to the State level. At the State level there are another 13,400 full-time employees funded with Federal dollars to administer these programs.

The end result is that when we send a dollar to Washington, there is a good chance that only 65 to 70 cents actually reaches the classroom. If we are really concerned about educating our children, let us take a look at the welfare model, the welfare reform model that has been so successful, and let us focus on results rather than paperwork and process. Let us focus on educating our children, rather than administering 760 programs with mountains of paperwork that are run by a shadow education department that consume 30 to 40 cents of every dollar before it gets back to the child.

How does this work? Vice President GORE's National Performance Review discovered that the Department of Education's discretionary grant process, now think about this, in a world today where a new product in a high-tech business can be developed in India and can be in the room next door in a matter of seconds, if we want to get money from the Department of Education to help educate a child, the process is 26 weeks long and goes for 487 steps.

I have good news, the Department of Education has streamlined the process. They are now in the Information Age. But they define their Information Age and their streamlining as resulting in a process that now only takes 20 weeks and only has to go through 216 steps of review.

Think about this. This is the model that we have for 7 percent of our education funding: 760 programs, mountains of paperwork, three employees in the States for every Federal employee here in Washington chewing up every dollar in education so there is only about 65 to 70 cents left for the classroom, a process that goes through 216 steps and takes 20 weeks.

Where does this money go? It is kind of like, well, at least we have 65 to 70 cents of every dollar going to help educate our children in the basics. Wrong. Let me just give one good example: The Department of Education's Office of Special Education and Rehabilitative Services.

The objective of this program is supposedly to promote the general welfare of the deaf and hard of hearing, a very appropriate goal. How is that mandate and objective interpreted in Washington? It means that in Washington our taxpayer dollars, when we have this kind of performance that I mentioned earlier in education, what we are doing is in Washington educational meaningful programs include paying for the closed captioning of Baywatch, Ricki Lake, the Montel Williams Show, and Jerry Springer. And they have a special program dedicated to closed captioning for major sports programs. That is defined as a high priority program in Washington.

Other education programs, and remember, this is in context with where we were earlier for how our kids are performing internationally. Our education department believes that, here, they print a cartoon book. The title is ''The Ninjas, the X-men, and the Ladies, Playing with Power and Identity in the Urban Primary School.''

□ 2100

They have got one for the bakery industry. Lesson plans prepared for grocery employees. The lessons focused on topics from the workplace in the following areas: bakery, cake orders, courtesy clerk, and sushi bard. It is 96 pages long. Fifth grade pipe fitters. Building workplace vocabulary for pipe fitters, 27 pages.

I am not sure that those are the right priorities. My colleague said that is why we need more money in Washington and we need more focus in Washington, because we cannot trust people at the local level.

There is a better way to address education. What do we want to do? Let me talk a little bit about the values that are the foundation for our Academic Achievement For All Act, Straight A's, because there is a different approach. It builds on the welfare approach.

What it says simply is, we are going to take these Federal programs, and we are going to provide States with the opportunity, this is not a mandated program, this is a choice for the States, we are going to provide them with the opportunity to go through the categorical programs, the model that my colleague thinks is the most appropriate; and my colleague should be pleased to know that that program is going to stay in place.

But we also then provide the States with the opportunity of coming to Washington and presenting a plan and saying, we have got some special need and some special focus and some special priorities that we have in Wisconsin or that we have in Michigan that we really think we need to focus on.

So they reach an agreement with the Department of Education on a charter. So they get a 5-year waiver from the rules and the regulations. And, yes, they do get flexibility. They get flexibility to move their dollars around to their areas of focus and their areas of need.

In exchange for that increase to flexibility and in exchange for eliminating the paperwork, they reach an accountability agreement that says, for that flexibility for the dollars and that freedom from the red tape, we are going to focus on results, and we are going to agree on these accountability standards for all of our students, to make sure that we deal with all of our students and do not forget about any of our students. The State then gets that flexibility.

If, after 5 years, the States have not met their accountability guidelines, the Federal Government can come back and say they did not do what they said they were going to do. They did not get the results that they were going to get. They have got to go back into the categorical programs.

Flexibility, elimination of red tape, and a freedom to focus on results. It is the welfare model. What do we believe that this will lead to, and what are the values that drive this kind of a strategy? We believe that education needs to be student centered. Successful schools are not forced to rely and focus on Federal paperwork. They have the opportunity and the freedom to focus on each and every child. They are results oriented, not process oriented.

We believe in equality. Each and every child in America must be given the opportunity to succeed in his or her school.

Another value we have is that parental involvement and local control. Schools thrive, and we have seen this wherever we went, schools thrive when parents are integrated into the learning process, when parents and adults are viewed as equal partners in decision making and direction setting, and when decisions are made at the local level by individuals who know the names and understand the needs of each child in their school.

Freedom. We believe that families and students deserve the opportunity to choose the school that they will attend.

Safety. Successful schools are free from violence. Children and parents need schools which can provide a secure learning environment.

Basic academics. It is another core value much the schools and the successful schools that we have seen focus on basic academics. Reading, writing, and math are taught as the foundation of lifelong learning and a sound future. The methods used to teach these subjects and others should be based on sound science and reliable and reputable research.

Discipline. Successful schools maintain disciplined environments where all are respected.

Flexibility. Schools need the ability to shape programs and policies that fit their particular needs. One size does not fit all. It did not work in welfare. It does not work in education. No two school districts or States are the same, and a one-size-fits-all Federal education system just will not work. One size fits all cannot replace the knowledge or the concern. To imply that people at the local level and that parents and teachers and administrators do not care about their children at the local level sells them short. It does not sell them short, it is just a total lack of understanding of what is going on in local America today.

Results. Successful schools implement accountability mechanisms which measure whether or not a child is learning.

Finally, another value is we believe that dollars need to be spent in the classroom and not on bureaucracy. Successful schools spend less time and resources on paperwork and more time on classroom resources.

We all want a better education system. We want common sense principles

that drive our education strategy. For us, that means parental involvement. It means basic academic. It means flexibility. It means dollars to the classroom, and it means eliminating red tape.

For the other side, it means creating a Federal school board and running one's local school in a much more direct way from Washington than at the local level. That is just not going to work. It is not the right way to go.

We have a wonderful opportunity in today's prosperity to reform and to rethink the education model. We did part of it earlier this year when we did the Education Flexibility Act, providing a certain degree of latitude and flexibility in States to deal with the paperwork that has been imposed upon them.

We can build off that now by giving States and local schools the flexibility in how they spend their dollars and focusing on meeting the needs of their children's learning.

We can provide parents with the opportunity and the flexibility to secure their child's education by providing tax relief in the form of education savings accounts.

We can get more resources focused into the classroom by saying, when it comes to Federal education spending, Washington comes last. It does not mean we cut our Washington spending. It says that, for every dollar we spend in Washington, instead of getting 60 or 65 to 70 cents back to a local classroom, which is where the leverage point is, which is where we can have an impact on learning, we are saying we are going to get 95 cents of every Federal dollar back.

So without even expending more money in Washington, we can increase the amount of Federal dollars that get to the classroom, the local classroom, by 50 percent. That is an effective way to improve education.

We have made a lot of progress. We are going to continue working on this issue.

As I wrap up, I take a look at what we have accomplished and what we want to accomplish this year. We are going to have a balanced budget. We are going to begin the process of setting aside $1.8 trillion for Social Security and Medicare. We are going to provide tax relief to the American people. We are going to strengthen our national security so that we can be secure at home and abroad.

We are going to focus on education. We are going to allow parents and local schools to focus on meeting the needs of their children. We are going to provide States the flexibility. We are going to take the model that worked in welfare, and we are going to take that same kind of criteria, which is a trust in the local level, a trust in the State level, and saying the top-down structure does not work. We have got a model that works. We have seen it work. People have experienced it. People are benefiting from it. We need to take that same model and apply it to education.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. GILCHREST (at the request of Mr. ARMEY) for today and the balance of the week on account of illness.

Mr. SANFORD (at the request of Mr. ARMEY) for after 5 p.m. today and the balance of the week on account of official business.

Mr. PACKARD (at the request of Mr. ARMEY) for after 4 p.m. today and the balance of the week on account of personal reasons.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCNULTY) to revise and extend their remarks and include extraneous material:)

Ms. NORTON, for 5 minutes, today.
Mr. PALLONE, for 5 minutes, today.
Mr. HINCHEY, for 5 minutes, today.
Mr. CUMMINGS, for 5 minutes, today.
Ms. WOOLSEY, for 5 minutes, today.

The following Members (at the request of Mr. DUNCAN) to revise and extend their remarks and include extraneous material:

Mr. DUNCAN, for 5 minutes, today.
Mr. MICA, for 5 minutes, today.

## ADJOURNMENT

Mr. HOEKSTRA. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 10 minutes p.m.), under its previous order, the House adjourned until tomorrow, Friday, June 25, 1999, at 9 a.m.

## EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports and amended reports concerning the foreign currencies and U.S. dollars utilized for official foreign travel during the fourth quarter of 1998 and the first quarter of 1999 by Committees of the House of Representatives, as well as a consolidated report of foreign currencies and U.S. dollars utilized for speaker-authorized official travel during the first quarter of 1999, pursuant to Public Law 95–384 are as follows:

### AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 31 AND DEC. 31, 1998

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. Bill Archer: | | | | | | | | | | | |
| Hotel cancellation fees, 11/7/98 | | | Chile | | | | | | 2,508.00 | | 2,508.00 |
| Committee total | | | | | | | | | | | 2,508.00 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BILL ARCHER, Chairman, May 12, 1999.

### REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1, AND MAR. 31, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. Stephen Horn | 1/10 | 1/12 | Finland | | 568.00 | | | | | | |
| | 1/12 | 1/14 | Germany | | 508.00 | | | | | | |
| | 1/14 | 1/16 | France | | 502.00 | | | | | | |
| | 1/16 | 1/18 | Austria | | 480.00 | | | | | | |
| Hon. John Mica | 1/10 | 1/12 | Finland | | 568.00 | | | | | | |
| | 1/12 | 1/14 | Germany | | 508.00 | | | | | | |
| | 1/14 | 1/16 | France | | 502.00 | | | | | | |
| | 1/16 | 1/18 | Austria | | 480.00 | | | | | | |
| | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1, AND MAR. 31, 1999—Continued

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Robert Charles | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Michael Yeager | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Sean Littlefield | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Hon. Mark Souder | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Hon. Doug Ose | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 499.00 | | 88.89 | | |
| Hon. Judy Biggert | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Kevin Long | 2/13 | 2/14 | Panama | | 217.00 | | 92.00 | | 54.55 | | |
| | 2/14 | 2/15 | El Salvador | | 210.00 | | 87.85 | | 114.70 | | |
| | 2/15 | 2/16 | Peru | | 306.00 | | 43.10 | | | | |
| | 2/16 | 2/17 | Bolivia | | 398.50 | | 173.34 | | 1,052.64 | | |
| | 2/18 | 2/21 | Mexico | | 455.00 | | 183.00 | | 88.89 | | |
| Committee total | | | | | 16,808.00 | | 4,950.32 | | 10,486.24 | | 32,244.56 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DAN BURTON, Chairman, Apr. 30, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. John Conyers, Jr | 1/27 | 1/28 | Dominican Republic | | 161.00 | | (3) | | | | 161.00 |
| | 1/28 | 1/28 | Haiti | | | | | | | | |
| Hon. Bob Goodlatte | 2/14 | 2/17 | England | | 1,095.00 | | (3) | | | | 1,095.00 |
| | 2/17 | 2/18 | France | | 332.00 | | | | | | 332.00 |
| | 2/18 | 2/20 | Belgium | | 582.00 | | | | | | 582.00 |
| Hon. Rick Boucher | 2/14 | 2/17 | England | | 1,095.00 | | (3) | | | | 1,095.00 |
| | 2/17 | 2/18 | France | | 332.00 | | | | | | 332.00 |
| | 2/18 | 2/20 | Belgium | | 582.00 | | | | | | 582.00 |
| Debra Laman | 2/14 | 2/17 | England | | 1,095.00 | | (3) | | | | 1,095.00 |
| | 2/17 | 2/18 | France | | 332.00 | | | | | | 332.00 |
| | 2/18 | 2/20 | Belgium | | 582.00 | | | | | | 582.00 |
| Robert Jones | 2/14 | 2/17 | England | | 1,095.00 | | (3) | | | | 1,095.00 |
| | 2/17 | 2/18 | France | | 332.00 | | | | | | 332.00 |
| | 2/18 | 2/20 | Belgium | | 582.00 | | | | | | 582.00 |
| Delegation expenses | 2/18 | 2/20 | Belgium | | | | 765.26 | | 455.75 | | 1,221.01 |
| Committee total | | | | | 8,197.00 | | 765.26 | | 455.75 | | 9,418.01 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

HENRY HYDE, Chairman, May 6, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 30, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| David Heymsfeld | 1/12 | 1/17 | China | | 1,047.00 | | 4,422.40 | | | | 5,469.40 |
| Committee total | | | | | 1,047.00 | | 4,422.40 | | | | 5,469.40 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BUD SHUSTER, Chairman, May 5, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| John Stopher, Staff | 1/8 | 1/20 | Europe | | 3,207.00 | | | | | | 3,207.00 |
| Commercial Airfare | | | | | | | 5,301.97 | | | | 5,301.97 |
| Patrick Murray, Staff | 1/8 | 1/20 | Europe | | 2,843.00 | | | | | | 2,843.00 |
| Commercial Airfare | | | | | | | 6,586.47 | | | | 6,586.47 |
| Catherine Eberwein, Staff | 1/24 | 2/1 | Asia | | 2,045.00 | | | | | | 2,045.00 |
| Commercial Airfare | | | | | | | 5,920.20 | | | | 5,920.20 |
| Jay Jakub, Staff | 1/24 | 2/3 | Asia | | 2,473.00 | | | | | | 2,473.00 |
| Commercial Airfare | | | | | | | 7,383.40 | | | | 7,383.40 |
| Christopher Barton, Staff | 1/28 | 1/29 | Caribbean | | 161.00 | | (3) | | | | 161.00 |
| Tom Newcomb, Staff | 1/12 | 1/21 | Europe and Asia | | 2,097.00 | | (3) | | | | 2,097 |
| Commitee Total | | | | | 12,826.00 | | 25,192.04 | | | | 38,018.04 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

PORTER J. GOSS, Chairman, May 12, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HOUSE DELEGATION TO GERMANY, ALBANIA, MACEDONIA, ITALY, AND BELGIUM, EXPENDED BETWEEN APR. 16 AND APR. 18, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. C.W. Bill Young | | 4/16 | USA | | | | | | | | |
| | 4/16 | 4/17 | Germany | | | | | | | | |
| | 4/17 | 4/17 | Albania | | | | | | | | |
| | 4/17 | 4/17 | Macedonia | | | | | | | | |
| | 4/17 | 4/17 | Italy | | | | | | | | |
| | 4/17 | 4/18 | Belgium | | 100.00 | | | | | | |
| | 4/18 | | USA | | | | | | | | 100.00 |
| Identical itinerary and Per diem for: | | | | | | | | | | | |
| Hon. Steny Hoyer [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Henry Bonilla [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Ernest Istook [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Mac Collins [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Mark Souder [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Jim Gibbons [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Robin Hayes [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Nancy Pelosi [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Donald Payne [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Neil Abercrombie [3] | | | | | 100.00 | | | | | | 100.00 |
| Hon. Rod Blagojevich [3] | | | | | 100.00 | | | | | | 100.00 |
| Bill Inglee [3] | | | | | 100.00 | | | | | | 100.00 |
| Doug Gregory [3] | | | | | 100.00 | | | | | | 100.00 |
| Greg Dahlberg [3] | | | | | 100.00 | | | | | | 100.00 |
| Scott Paul [3] | | | | | 100.00 | | | | | | 100.00 |
| Committee Total | | | | | | | | | | | |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Identical itinerary and per diem as Hon. C.W. Bill Young.

BILL YOUNG, Chairman, May 13, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HOUSE DELEGATION TO GERMANY, ALBANIA, MACEDONIA, ITALY, AND BELGIUM, EXPENDED BETWEEN APR. 30 AND MAY 2, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. Richard Armey | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Chris Smith | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Peter Hoekstra | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Rick Lazio | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Ed Royce | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Sue Kelly | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Mark Sanford | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Mac Thornberry | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. John Cooksey | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Bob Riley | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Steven Kuykendall | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Tony Hall | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Sheila Jackson-Lee | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Frank Mascara | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Bill Pascrell | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Brad Sherman | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Tammy Baldwin | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Grace Napolitano | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Hon. Mike Thompson | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Wilson Livingood | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Scott Palmer | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Brian Gunderson | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Jim Wilkinson | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Kathleen Moazed | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Bill Natter | 4/30 | 5/2 | Belgium | | 218.19 | | (3) | | 140.51 | | 358.70 |
| Committee total | | | | | 5,672.94 | | | | 3,653.26 | | 9,326.20 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

DICK ARMEY, Chairman, June 3, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, TRAVEL TO RUSSIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 11 AND JAN. 14, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. Frank Wolf | 1/11 | 1/14 | Russia | | 1,002.00 | | 4,961.00 | | | | 6,113.00 |
| Committe total | | | | | | | | | | | |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

FRANK R. WOLF, Chairman, May 17, 1999.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, TRAVEL TO ITALY, ISRAEL, EGYPT, JORDAN, TUNISIA, AND MOROCCO, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAR. 26 AND APR. 8, 1999

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Dr. James Ford | 3/27 | 3/28 | Italy | | 328.00 | | | | | | |
| | 3/28 | 3/30 | Israel | | 658.00 | | | | | | |
| | 3/30 | 4/1 | Egypt | | 452.00 | | | | | | |
| | 4/1 | 4/3 | Jordan | | 588.00 | | | | | | |
| | 4/3 | 4/5 | Tunisia | | 358.00 | | | | | | |
| | 4/5 | 4/8 | Morocco | | 661.00 | | | | | | |
| Committtee total | | | | | 3,045.00 | | | | | | |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DR. JAMES FORD, May 12, 1999.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

2722. A letter from the Acting Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Performance of Certain Functions by National Futures Association With Respect to Those Foreign Firms Acting in the Capacity of a Futures Commission Merchant—received June 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2723. A letter from the Acting Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Rules of Practice; Final Rules; Correction—received June 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2724. A letter from the Acting Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Fees for Applications for Contract Market Designation—received June 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2725. A letter from the Administrator, Food and Consumer Service, Department of Agriculture, transmitting the Department's final rule—Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties (RIN: 0584–AC46) received May 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2726. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Kresoxim-methyl; Pesticide Tolerances [OPP–300873; FRL–6085–4] (RIN: 2070–AB78) received June 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2727. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Azoxystrobin; Extension of Tolerance for Emergency Exemptions [OPP–300840; FRL–6074–2] (RIN: 2070–AB78) received May 6, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2728. A letter from the Director, Defense Procurement, Department of Defense, transmitting the Department's final rule—Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns [DFARS Case 98–D310] received May 12, 1999; to the Committee on Armed Services.

2729. A letter from the Director, Defense Procurement, Department of Defense, transmitting the Department's final rule—Defense Federal Acquisition Regulation Supplement; Applicability of Buy American Clauses to Simplified Acquisitions [DFARS Case 98–D031] received May 12, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

2730. A letter from the Director, Defense Procurement, Department of Defense, transmitting the Department's final rule—Defense Federal Acquisition Regulation Supplement; Antiterrorism Training [DFARS Case 96–D016] received May 12, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

2731. A letter from the Secretary of Defense, transmitting approval of the retirement of Lieutenant General Joseph J. Redden, United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

2732. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to Indonesia, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

2733. A letter from the Commissioner, National Center for Education Statistics, Department of Education, transmitting the annual statistical report of the National Center for Educational Statistics (NCES), ''The Condition of Education,'' pursuant to 20 U.S.C. 1221e–1(d)(1); to the Committee on Education and the Workforce.

2734. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors [OPPTS–62158A; FRL–6058–6] (RIN: 2070–AD11) received June 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2735. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program [DC036–2017; FRL–6356–4] received June 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2736. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act: Compliance Determination [FRL–6341–2] (RIN: 2060–AI27) received May 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2737. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hazardous/Medical/Infectious Waste Incinerators [FRL–6340–6] received May 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2738. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District [CA012–0144a, FRL–6335–3] received May 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2739. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Halosulfuron; Pesticide Tolerance [OPP–300854; FRL–6078–5] (RIN: 2070–AB78) received May 6, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2740. A letter from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Meyersdale, Pennsylvania) (Richwood, West Virginia) (Newell,

Iowa) (Superior, Wyoming) (La Center, Kentucky) (Lovell, Wyoming) (Royal City, Washington) [MM Docket No. 98–28; RM–9234] [MM Docket No. 98–33; RM–9224] [MM Docket No. 98–71; RM–9266] [MM Docket No. 98–109; RM–9282] [MM Docket No. 98–114; RM–9298] [MM Docket No. 98–116; RM–9281] [MM Docket No. 98–150; RM–9302] received May 12, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2741. A letter from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules [MM Docket No. 98–93] received May 12, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2742. A letter from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting the Administration's final rule—Food Additives Permitted For Direct Addition to Food For Human Consumption; Sucrose Acetate Isobutyrate [Docket No. 91F–0228] received June 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2743. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services (Transmittal No. 99–06), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2744. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on the activities of the Multinational Force and Observers (MFO) and certain financial information concerning United States Government participation in that organization, pursuant to 22 U.S.C. 3422(a)(2)(A); to the Committee on International Relations.

2745. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule—Exports to Cuba [Docket No. 990427108–9108–01] (RIN: 0694–AB93) received May 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

2746. A letter from the Comptroller General, General Accounting Office, transmitting a list of all reports issued or released by the GAO in April 1999, pursuant to 31 U.S.C. 719(h); to the Committee on Government Reform.

2747. A letter from the Inspector General, Railroad Retirement Board, transmitting the semiannual report on activities of the Office of Inspector General for the period October 1, 1998, through March 31, 1999, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

2748. A letter from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Management Area; Exempted Fishing Permit [I.D. 052699D] received June 7, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

2749. A letter from the Program Analyst, Office of the Chief Counsel, FAA, Department of Transportation, transmitting the Department's final rule—Establishment of the San Juan High Offshore Airspace Area, PR [Airspace Docket No. 97–ASO–21] (RIN: 2120–AA66) received June 10, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2750. A letter from the Program Analyst, Office of the Chief Counsel, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; West Union, IA [Airspace Docket No. 99–ACE–12] received June 10, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2751. A letter from the Chief, Office of Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule—Drawbridge Operation Regulation; Back Bay of Biloxi, MS [CGD8–96–049] (RIN: 2115–AE47) received June 10, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2752. A letter from the Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Notice and Request for Proposals [Docket No. 990416102–9102–01] (RIN: 0648–ZA64) received June 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

2753. A letter from the Director, Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting the Department's final rule—Schedule for Rating Disabilities; Diseases of the Ear and Other Sense Organs (RIN: 2900–AF22) received May 11, 1999, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Florida: Committee on Appropriations. H.R. 853. A bill to amend the Congressional Budget Act of 1974 to provide for joint resolutions on the budget, reserve funds for emergency spending, strengthened enforcement of budgetary decisions, increased accountability for Federal spending, accrual budgeting for Federal insurance programs, mitigation of the bias in the budget process toward higher spending, modifications in paygo requirements when there is an on-budget surplus, and for other purposes; with an amendment, adversely, (Rept. 106–198 Pt. 1). Ordered to be printed.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 221. Resolution providing for consideration of the bill (H.R. 1802) to amend part E of title IV of the Social Security Act to provide States with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency, and for other purposes (Rept. 106–199). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. TOWNS (for himself, Mr. GILLMOR, Mr. HALL of Texas, Mr. BURR of North Carolina, Mr. BISHOP, and Mr. HASTINGS of Washington):

H.R. 2335. A bill to amend the Federal Power Act to improve the hydroelectric licensing process by granting the Federal Energy Regulatory Commission statutory authority to better coordinate participation by other agencies and entities, and for other purposes; to the Committee on Commerce.

By Mr. MCCOLLUM:

H.R. 2336. A bill to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General; to the Committee on the Judiciary.

By Mr. PAUL (for himself, Mr. BARR of Georgia, Mr. HINCHEY, Mr. HOSTETTLER, Mr. MEEKS of New York, and Mr. CAMPBELL):

H.R. 2337. A bill to repeal section 656 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; to the Committee on Government Reform.

By Mr. RAMSTAD:

H.R. 2338. A bill to require the Secretary of Health and Human Services to provide an individual who seeks to have a particular type of item or service to be covered benefit under the Medicare Program the option to meet with the Secretary in advance to develop a written agreement specifying the information necessary for the Secretary to make a national coverage determination under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BEREUTER (for himself, Mr. VENTO, Mr. HEFLEY, Mr. RAHALL, Mr. CASTLE, Mr. PICKETT, Mr. BARRETT of Nebraska, Mr. SAWYER, Mr. BOEHLERT, Mrs. TAUSCHER, Mr. GILCHREST, Mrs. NORTHUP, Mr. MCINNIS, Mr. OBERSTAR, Ms. PELOSI, Mr. FALEOMAVAEGA, Mr. LIPINSKI, Mr. LEACH, Mr. HINCHEY, Mr. MOLLOHAN, Mr. EHRLICH, Mr. ENGLISH, Mr. KUCINICH, Mr. EVANS, Mr. STARK, Mr. LANTOS, Mr. PORTER, Ms. WOOLSEY, Mr. COSTELLO, Mr. DAVIS of Illinois, Mrs. MORELLA, Mr. PHELPS, Mr. UDALL of Colorado, Ms. NORTON, Mr. MORAN of Virginia, Mr. EHLERS, Mr. WELLER, Mr. CLAY, Mr. GILMAN, and Mr. BLUMENAUER):

H.R. 2339. A bill to amend the National Trails System Act to authorize an additional category of national trail known as a national discovery trail, to provide special requirements for the establishment and administration of national discovery trails, and to designate the cross country American Discovery Trail as the first national discovery trail; to the Committee on Resources.

By Mr. BISHOP (for himself and Mr. CHAMBLISS):

H.R. 2340. A bill to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes; to the Committee on the Judiciary.

By Mr. BURR of North Carolina (for himself and Mr. TOWNS):

H.R. 2341. A bill to amend title XIX of the Social Security Act to establish a new prospective payment system for Federally-qualified health centers and rural health clinics; to the Committee on Commerce.

By Mr. BURR of North Carolina (for himself and Mr. BALLENGER):

H.R. 2342. A bill to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CALVERT:

H.R. 2343. A bill to amend the Endangered Species Act of 1973 to provide for the review and recommendation by the National Academy of Sciences of species that should be removed from lists of endangered species and threatened species; to the Committee on Resources.

By Mr. DAVIS of Florida (for himself, Mr. ROEMER, Mr. ETHERIDGE, Mr.

GONZALEZ, Mr. FORD, Mr. SHOWS, Mr. BENTSEN, Mr. MARTINEZ, Mrs. MINK of Hawaii, Mr. KUCINICH, Ms. SANCHEZ, Mr. FATTAH, Mr. HOLT, Ms. WOOLSEY, Mr. ROMERO-BARCELÓ, Mr. SCARBOROUGH, Mr. FOLEY, Mr. HINOJOSA, Ms. STABENOW, Ms. BERKLEY, Mrs. THURMAN, Mr. KIND, Mr. SMITH of Washington, Mr. LAMPSON, and Mr. WYNN):

H.R. 2344. A bill to provide funds to assist high-poverty school districts meet their teaching needs; to the Committee on Education and the Workforce, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. DELAURO (for herself, Mrs. LOWEY, Mr. ROEMER, Mr. BONIOR, Mr. FROST, Ms. KAPTUR, Mr. HINCHEY, Mr. SERRANO, Mr. CROWLEY, Mr. MCDERMOTT, Ms. ROYBAL-ALLARD, Mr. MCGOVERN, Ms. KILPATRICK, Mr. WAXMAN, Mr. DOYLE, Mr. FALEOMAVAEGA, Mr. PALLONE, Mr. WYNN, Mr. KILDEE, Mr. LATHAM, Mr. DAVIS of Illinois, Mr. LIPINSKI, and Mr. CUMMINGS):

H.R. 2345. A bill to consolidate in a single independent agency in the executive branch the responsibilities regarding food safety, labeling, and inspection currently divided among several Federal agencies; to the Committee on Armed Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. EHLERS (for himself, Mr. COBLE, Mr. DINGELL, Mr. UPTON, Mr. HOBSON, Mr. HOEKSTRA, Mr. TRAFICANT, and Mr. CAMPBELL):

H.R. 2346. A bill to authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment; to the Committee on Commerce.

By Mr. ENGLISH (for himself, Mr. HILL of Montana, and Mr. NETHERCUTT):

H.R. 2347. A bill to amend the Internal Revenue Code of 1986 to provide that the look-back method shall not apply to construction contracts required to use the percentage of completion method; to the Committee on Ways and Means.

By Mr. HANSEN (for himself, Mr. COOK, Mr. CANNON, Mr. UDALL of Colorado, Mr. MCINNIS, Mr. SCHAFFER, Mr. TANCREDO, and Mrs. CUBIN):

H.R. 2348. A bill to authorize the Bureau of Reclamation to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins; to the Committee on Resources.

By Mr. HERGER (for himself and Ms. DUNN):

H.R. 2349. A bill to amend the Internal Revenue Code of 1986 to provide an inflation adjustment of the unified credit against the estate and gift taxes; to the Committee on Ways and Means.

By Mr. SAM JOHNSON of Texas (for himself, Mr. MCINTOSH, Mr. DOOLITTLE, Mr. ISTOOK, Mr. BURTON of Indiana, Mr. HILLEARY, Mr. HOSTETTLER, Mrs. CHENOWETH, Mr. GRAHAM, Mr. BARTLETT of Maryland, Mr. TANCREDO, Mr. PITTS, Mr. DICKEY, Mr. JONES of North Carolina, Mr. SUNUNU, Mr. HANSEN, Mr. SOUDER, Mr. WELDON of Florida, Mr. CHABOT, Mrs. CUBIN, Mr. DEMINT, Mr. HERGER, Mr. MCINNIS, Mr. WATKINS, Mr. HULSHOF, Mr. HAYWORTH, Mr. DELAY, Mr. PAUL, Mr. MANZULLO, Mrs. MYRICK, Mr. SKEEN, Mr. BILIRAKIS, Mr. HEFLEY, Mr. ROHRABACHER, Mr. MILLER of Florida, Mr. THORNBERRY, Mr. BONILLA, Mr. COBURN, Mr. POMBO, Mr. ISAKSON, Mr. SESSIONS, Mr. PICKERING, Mr. RYUN of Kansas, Mr. GREEN of Wisconsin, Mr. RILEY, Mr. SHADEGG, Mr. RYAN of Wisconsin, Mr. DREIER, Mr. HOBSON, Mr. HYDE, Mr. SPENCE, and Mr. METCALF):

H.R. 2350. A bill to amend the Internal Revenue Code of 1986 to repeal taxes on American Values; to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LAFALCE (for himself, Mr. WATT of North Carolina, Mr. VENTO, Mr. FRANK of Massachusetts, Mrs. MALONEY of New York, Mr. GUTIERREZ, Mr. GEORGE MILLER of California, and Mr. LUTHER):

H.R. 2351. A bill to amend the Truth in Lending Act to prohibit the distribution of any check or other negotiable instrument as part of a solicitation by a creditor for an extension of credit, to limit the liability of consumers in conjunction with such solicitations, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. MCCOLLUM (for himself and Mr. SHAW):

H.R. 2352. A bill to provide for a judicial remedy for United States persons injured as a result of violations by foreign states of their arbitral obligations under international law; to the Committee on the Judiciary.

H.R. 2353. A bill to direct the President to withhold extension of the WTO Agreement to any country that is not complying with its obligations under the New York Convention, and for other purposes; to the Committee on Ways and Means.

By Mr. RAHALL (for himself and Mr. GIBBONS):

H.R. 2354. A bill to grant a federal charter to the Association of American State Geologists; to the Committee on the Judiciary.

By Mr. SHAYS (for himself, Mr. FRANK of Massachusetts, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BAIRD, Mr. BALDACCI, Ms. BALDWIN, Mr. BARRETT of Wisconsin, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mrs. BIGGERT, Mr. BLAGOJEVICH, Mr. BLUMENAUER, Mr. BOEHLERT, Mr. BONIOR, Mr. BRADY of Pennsylvania, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CAMPBELL, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Ms. CARSON, Mrs. CHRISTENSEN, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Mr. CONYERS, Mr. COYNE, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DEUTSCH, Mr. DICKS, Mr. DIXON, Mr. DOOLEY of California, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FILNER, Mr. FORBES, Mr. FORD, Mr. FRELINGHUYSEN, Mr. FROST, Mr. GEJDENSON, Mr. GEPHARDT, Mr. GILMAN, Mr. GONZALEZ, Mr. GREENWOOD, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HILLIARD, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOEFFEL, Mr. HOLT, Ms. HOOLEY of Oregon, Mr. HORN, Mr. HOYER, Mr. INSLEE, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JOHNSON of Connecticut, Mrs. JONES of Ohio, Mrs. KELLY, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KLINK, Mr. KOLBE, Mr. KUCINICH, Mr. KUYKENDALL, Mr. LAFALCE, Mr. LANTOS, Mr. LARSON, Mr. LEACH, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Mr. LUTHER, Mrs. MCCARTHY of New York, Mr. MCDERMOTT, Mr. MCGOVERN, Ms. MCKINNEY, Mr. MCNULTY, Mrs. MALONEY of New York, Mr. MALONEY of Connecticut, Mr. MARKEY, Mr. MARTINEZ, Mr. MATSUI, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MEEKS of New York, Mr. MENENDEZ, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. MOORE, Mr. MORAN of Virginia, Mrs. MORELLA, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Ms. PRYCE of Ohio, Mr. RANGEL, Mr. REYES, Ms. RIVERS, Mr. RODRIGUEZ, Mr. ROTHman, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Ms. SANCHEZ, Mr. SANDERS, Mr. SAWYER, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SMITH of Washington, Ms. STABENOW, Mr. STARK, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mrs. THURMAN, Mr. TIERNEY, Mr. TOWNS, Mr. TRAFICANT, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. UNDERWOOD, Mr. VENTO, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, Mr. WEINER, Mr. WEXLER, Mr. WEYGAND, Ms. WOOLSEY, Mr. WU, and Mr. WYNN):

H.R. 2355. A bill to prohibit employment discrimination on the basis of sexual orientation; to the Committee on Education and the Workforce, and in addition to the Committees on House Administration, Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THOMAS (for himself, Mr. STARK, Mrs. JOHNSON of Connecticut, Mr. MCCRERY, Mr. SAM JOHNSON of Texas, Mr. CAMP, Mr. RAMSTAD, Mr. ENGLISH, Mr. MCINTOSH, and Mr. LOBIONDO):

H.R. 2356. A bill to amend title XVIII of the Social Security Act to improve review procedures under the Medicare Program by making those procedures more equitable and efficient for beneficiaries and other claimants, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TRAFICANT:

H.R. 2357. A bill to designate the United States Post Office located at 3675 Warrensville Center Road in Shaker Heights, Ohio, as the ''Louise Stokes Post Office''; to the Committee on Government Reform.

By Mr. VISCLOSKY (for himself, Mr. BURTON of Indiana, Mr. ROEMER, Mr. BUYER, Ms. CARSON, Mr. MCINTOSH, Mr. HILL of Indiana, Mr. HOSTETTLER, Mr. SOUDER, and Mr. PEASE):

H.R. 2358. A bill to designate the United States Post Office located at 3813 Main Street in East Chicago, Indiana, as the

''Lance Corporal Harold Gomez Post Office''; to the Committee on Government Reform.

By Mr. YOUNG of Alaska (for himself, Mr. GEORGE MILLER of California, Mr. KILDEE, Mr. FROST, Ms. PELOSI, Mr. ABERCROMBIE, Mr. FOLEY, Mr. MCINNIS, Mr. UDALL of Colorado, Mr. PALLONE, Mr. WATKINS, Mr. HAYWORTH, Mr. KENNEDY of Rhode Island, Mr. SMITH of Washington, Mr. OBERSTAR, Mr. FALEOMAVAEGA, Mr. HOUGHTON, Mr. TOWNS, Ms. WATERS, Mr. NETHERCUTT, and Mr. STUPAK):

H.R. 2359. A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of Settlement Trusts established pursuant to the Alaska Native Claims Settlement Act; to the Committee on Ways and Means.

By Mr. SANDERS (for himself and Mr. BURTON of Indiana):

H.R. 2360. A bill to provide that benefits under chapter 89 of title 5, United States Code, may be afforded for covered services provided by a licensed or certified chiropractor, acupuncturist, massage therapist, naturopathic physician, or midwife, without supervision or referral by another health practitioner; to the Committee on Government Reform.

By Mr. SANDERS:

H.R. 2361. A bill to repeal the interim payment system for home health services furnished under the Medicare Program, to eliminate the mandatory 15 percent reduction in payment amounts for such services under the prospective payment system, to continue periodic interim payments for such services, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

## ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 8: Mr. LAMPSON, Ms. GRANGER, Mr. BAKER, Mr. BONILLA, Mr. BURR of North Carolina, and Mr. CANNON.

H.R. 25: Mr. SANDERS.

H.R. 72: Mr. SCHAFFER.

H.R. 82: Mr. CLEMENT.

H.R. 148: Mr. ORTIZ and Mr. SWEENEY.

H.R. 172: Mr. DEAL of Georgia.

H.R. 175: Mr. SAXTON, Mr. LOBIONDO, Mr. STUPAK, and Mr. BLILEY.

H.R. 220: Mr. WAMP.

H.R. 303: Mr. PETERSON of Minnesota.

H.R. 323: Mr. CONYERS.

H.R. 355: Mr. MEEHAN.

H.R. 357: Mr. GORDON.

H.R. 405: Mr. DICKEY.

H.R. 406: Mr. OBERSTAR.

H.R. 486: Mr. WYNN, Mr. HILLIARD, Mr. LOBIONDO, and Mr. KANJORSKI.

H.R. 490: Mr. JOHN, Mr. WATTS of Oklahoma, Mr. STENHOLM, Mr. BENTSEN, Mr. COOK, Mr. GREEN of Texas, Mr. SHOWS, Mr. SESSIONS, Mr. SANDLIN, Mr. ISTOOK, Mr. SHIMKUS, Mr. HALL of Texas, Mr. SCHAFFER, Mr. SAM JOHNSON of Texas, and Mr. MANZULLO.

H.R. 516: Mr. PETERSON of Minnesota.

H.R. 518: Mr. PETERSON of Minnesota.

H.R. 555: Mr. GEORGE MILLER of California.

H.R. 597: Ms. GRANGER, Ms. KAPTUR, Mr. ROEMER, and Ms. SCHAKOWSKY.

H.R. 614: Mr. MILLER of Florida.

H.R. 623: Mr. SKELTON and Mr. SYNDER.

H.R. 628: Mr. GOODE.

H.R. 639: Mr. PHELPS.

H.R. 655: Mr. MALONEY of Connecticut.

H.R. 664: Mr. CLEMENT.

H.R. 675: Mr. MANZULLO.

H.R. 692: Mr. BAKER.

H.R. 742: Mr. DEUTSCH, Mr. GORDON, Mr. MENENDEZ, and Mr. QUINN.

H.R. 756: Mr. PITTS.

H.R. 765: Mr. CLEMENT and Mr. COSTELLO.

H.R. 783: Mr. BROWN of California and Mr. SHAYS.

H.R. 784: Mrs. MCCARTHY of New York.

H.R. 797: Mr. GUTIERREZ and Mr. TRAFICANT.

H.R. 804: Mr. COSTELLO and Mr. KIND.

H.R. 835: Mr. LAMPSON and Mr. SPRATT.

H.R. 853: Mr. RYAN of Wisconsin.

H.R. 864: Mr. FOSSELLA, Mr. LUTHER, Mr. JOHN, Mr. BOSWELL, Mrs. CHRISTENSEN, Mr. STUPAK, Mr. DEFAZIO, Mr. LOBIONDO, Mr. CONYERS, Mr. SAXTON, and Mr. COLLINS.

H.R. 865: Mr. RANGEL and Mr. SISISKY.

H.R. 903: Mr. CALVERT.

H.R. 922: Mr. GOODLING.

H.R. 976: Mr. GORDON and Mr. DOOLITTLE.

H.R. 1020: Mr. STUPAK, Ms. WOOLSEY, Ms. EDDIE BERNICE JOHNSON of Texas, and Mrs. THURMAN.

H.R. 1046: Mr. MCHUGH.

H.R. 1052: Mr. MCINTOSH, Mr. WEINER, and Mr. GOODLATTE.

H.R. 1070: Mr. COOKSEY, Mr. HEFLEY, Mr. ENGLISH, and Mr. SAXTON.

H.R. 1081: Mr. HOLDEN.

H.R. 1083: Mr. GOODE and Mr. JEFFERSON.

H.R. 1090: Mr. GILMAN, Mr. CLYBURN, Mr. CLAY, Ms. VELÁZQUEZ, and Mr. STUPAK.

H.R. 1092: Mrs. CAPPS.

H.R. 1103: Mr. BECERRA, Mr. BORSKI, Mr. BOYD, Ms. BROWN of Florida, Mr. CAPUANO, Mr. DAVIS of Illinois, Mr. DOOLEY of California, Mr. ENGEL, Ms. ESHOO, Mr. FRANK of Massachusetts, Mr. KING, Mrs. LOWEY, Mr. MEEKS of New York, Ms. MCCARTHY of Missouri, Ms. MILLENDER-MCDONALD, Mr. OLVER, Mr. OWENS, Mr. RAHALL, Mr. VISCLOSKY, and Mr. BLUMENAUER.

H.R. 1144: Mr. GIBBONS.

H.R. 1176: Ms. RIVERS.

H.R. 1180: Mr. KUCINICH, Mr. HOYER, Mr. BECERRA, and Mr. YOUNG of Alaska.

H.R. 1182: Mr. BAKER.

H.R. 1188: Mr. BOUCHER.

H.R. 1193: Mr. DEUTSCH and Mr. MURTHA.

H.R. 1218: Mr. PHELPS.

H.R. 1221: Mr. SKEEN and Mr. SHAW.

H.R. 1222: Mr. PHELPS.

H.R. 1247: Ms. SCHAKOWSKY.

H.R. 1260: Ms. BROWN of Florida.

H.R. 1264: Mr. SENSENBRENNER.

H.R. 1271: Mr. HINCHEY, Mr. MALONEY of Connecticut, Mr. FROST, Mr. NADLER, Ms. LEE, Mr. BROWN of Ohio, Mr. RAHALL, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DAVIS of Illinois, Ms. KAPTUR, Ms. BROWN of Florida, Mr. BRADY of Pennsylvania.

H.R. 1287: Mr. TERRY.

H.R. 1300: Mr. HUTCHINSON and Mrs. ROUKEMA.

H.R. 1323: Mr. SMITH of Washington, Mr. BLUNT, and Mr. SKEEN.

H.R. 1329: Mr. MANZULLO and Mr. ANDREWS.

H.R. 1344: Mr. TAYLOR of North Carolina and Mr. DICKEY.

H.R. 1352: Ms. LOFGREN, Mr. ROTHMAN, Mr. KENNEDY of Rhode Island, Mr. CUMMINGS, Mr. EVANS, Ms. DANNER, Mrs. LOWEY, Mr. ALLEN, Ms. DELAURO, and Ms. PELOSI.

H.R. 1407: Mr. HOLT.

H.R. 1412: Ms. KAPTUR.

H.R. 1422: Mr. BISHOP, Ms. SCHAKOWSKY, Mr. DEFAZIO, Mr. LANTOS, Mr. INSLEE, Ms. JACKSON-LEE of Texas, Mr. FRANK of Massachusetts, Mr. DAVIS of Illinois, Mr. MCGOVERN, Mr. RAHALL, Mr. FROST, Ms. VELAZQUEZ, Ms. MILLENDER-MCDONALD, Mrs. EMERSON, Ms. KAPTUR, and Mr. EVANS.

H.R. 1443: Mr. BLUMENAUER.

H.R. 1450: Mr. JEFFERSON.

H.R. 1477: Mr. WEINER, Mr. JEFFERSON, and Mr. KNOLLENBERG.

H.R. 1495: Mr. GILCHREST and Mr. SHOWS.

H.R. 1505: Mr. KASICH and Mr. FOLEY.

H.R. 1507: Mr. DOOLITTLE.

H.R. 1523: Mr. MCINNIS, Mr. WATKINS, and Mr. ROHRABACHER.

H.R. 1524: Mr. BOYD.

H.R. 1525: Mrs. MALONEY of New York and Mr. CAPUANO.

H.R. 1543: Ms. KILPATRICK, Mr. FROST, Mr. GUTIERREZ, and Mr. BENTSEN.

H.R. 1592: Mr. DOOLEY of California and Mrs. FOWLER.

H.R. 1622: Mrs. LOWEY and Ms. BALDWIN.

H.R. 1634: Mr. JEFFERSON and Mr. COOKSEY.

H.R. 1645: Mr. HINCHEY.

H.R. 1650: Mr. CASTLE, Mr. BOEHNER, Mr. CLYBURN, Mr. MCNULTY, Mr. GONZALEZ, and Mr. JACKSON of Illinois.

H.R. 1671: Mr. WEXLER.

H.R. 1681: Mr. CUMMINGS, Mr. CONYERS, Mr. MEEKS of New York, Ms. KILPATRICK, Mr. DAVIS of Illinois, Mr. JEFFERSON, Mrs. CLAYTON, Mrs. CHRISTENSEN, Mr. FRANK of Massachusetts, Mr. TOWNS, Mr. CLYBURN, Mr. JACKSON of Illinois, Mr. PAYNE, Ms. NORTON, Mr. HASTINGS of Florida, Mrs. MEEK of Florida, Mr. SCOTT, Mr. WATT of North Carolina, Ms. BROWN of Florida, Ms. LEE, Mrs. JONES of Ohio, Mr. RANGEL, and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 1728: Mr. RODRIGUEZ.

H.R. 1730: Mr. ENGLISH, Ms. LOFGREN, Mr. MCHUGH, Mr. FALEOMAVAEGA, and Mr. DEUTSCH.

H.R. 1732: Mr. THOMPSON of California.

H.R. 1736: Mr. THOMPSON of Mississippi and Mr. BALDACCI.

H.R. 1760: Mrs. MORELLA and Ms. STABENOW.

H.R. 1785: Mrs. MALONEY of New York, Mr. NADLER, Mr. DAVIS of Illinois, Mr. RAHALL, Mr. CROWLEY, Mr. OLIVER, Ms. MCCARTHY of Missouri, and Mr. BLUMENAUER.

H.R. 1788: Mr. WAXMAN, Mrs. MYRICK, Mr. SNYDER, Mr. DOYLE, Mr. GONZALEZ, Mr. ENGLISH, Mr. SHERMAN, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. MCNULTY, and Mr. TIAHRT.

H.R. 1791: Mr. STENHOLM.

H.R. 1793: Mr. UPTON and Mr. CAMPBELL.

H.R. 1794: Mr. BEREUTER, Mr. LANTOS, Mr. ACKERMAN, Mr. BERMAN, Mr. WEXLER, Mr FALEOMAVAEGA, and Mr. DAVIS of Florida.

H.R. 1795: Mrs. MORELLA, Mr. BOUCHER, Mr. LOBIONDO, Mr. GREEN of Texas, Mr. GUTIERREZ, Mr. FILNER, and Mr.OBERSTAR.

H.R. 1837: Mr. GOODE, Mr. HALL Of Texas, Mr. BALDACCI, Mr. OXLEY, Mrs. JOHNSON of Connecticut, and Mr. MCGOVERN.

H.R. 1839: Mr. BARCIA.

H.R. 1841: Mr. NADLER, Ms. SCHAKOWSKY, Mr. UNDERWOOD, and Ms. LOFGREN.

H.R. 1884: Mr. FROST, and Ms. LEE

H.R. 1899: Mr. THOMPSON of Mississippi, Ms. MILLENDER-MCDONALD, Mr. ENGEL, Mr. SMITH, of New Jersey, Mr. LAMPSON, Mr. RAHALL, Mr. WALSH, Mr. DAVIS of Illinois, Ms. KAPTUR, Mr. DIXON, Mr. BROWN of California, and Mr. DAVIS of Florida.

H.R. 1929: Mr. JEFFERSON.

H.R. 1935: Mr. LUTHER.

H.R. 1966: Mr. BONIOR, Mr. FOLEY, Mr. LANTOS, and Mr. BORSKI.

H.R. 1994: Mr. BEREUTER.

H.R. 2013: Mr. WAMP.

H.R. 2021: Mr. FROST, Mr. WEINER, Mr. CUMMINGS, Ms. PELOSI, and Ms. SCHAKOWSKY.

H.R. 2025: Ms. SCHAKOWSKY.

H.R. 2031: Mr. GILLMOR, Mr. GARY MILLER of California, Mr. SKELTON, Mr. BAKER, Mr. KILDEE, Mr. GUTKNECHT, and Mr. HILLIARD.

H.R. 2038: Mr. MCINNIS and Mr. SHIMKUS.

H.R. 2086: Mr. CAMPBELL, Mr. LARSON, Mr. COSTELLO, Mr. BARTON of Texas, and Mr. LAMPSON.

H.R. 2101: Mr. CHAMBLISS.

H.R. 2106: Mr. PALLONE.

H.R. 2116: Mr. SMTIH of New Jersey and Mr. BILIRAKIS.

H.R. 2136: Mr. SHOWS and Mr. MCHUGH.

H.R. 2170: Mrs. THURMAN, Mr. RAHALL, Mr. MOAKLEY, Mr. PORTMAN, Mr. SISISKY, and Mr. REYES.

H.R. 2174: Ms. LEE and Mr. THOMPSON of Mississippi.

H.R. 2202: Mr. KIND and Mr. JONES of North Carolina.

H.R. 2227: Mr. SANDERS, Mr. FRANK of Massachusetts, Mr. WAXMAN, Mr. FROST, Ms. PELOSI, and Mrs. MINK of Hawaii.

H.R. 2243: Mr. MCHUGH.

H.R. 2247: Mr. LATOURETTE, Mr. TIAHRT, and Mr. GOODE.

H.R. 2252: Mr. BARTON of Texas.

H.R. 2260: Mr. TAYLOR of Mississippi, Mr. HUNTER, Mr. PACKARD, and Mr. EHLERS.

H.R. 2265: Mr. GILMAN, Mrs. JONES of Ohio, Ms. PELOSI, Mr. MASCARA, and Mr. BARCIA.

H.R. 2280: Mr. RODRIGUEZ, Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. SANDLIN, Mr. REYES, Ms. BROWN of Florida, Mr. DOYLE, Ms. CARSON, Mr. SNYDER, Mr. SHOWS, Mr. ABERCROMBIE, Mr. PASCRELL, Mr. CRAMER, Mr. OLVER, Mr. GUTIERREZ, and Mr. HILL of Indiana.

H.R. 2283: Mrs. MEEK of Florida, Ms. CARSON, Ms. LEE, and Mr. GREEN of Texas.

H.R. 2287: Ms. SANCHEZ, Mr. FORD, Mr. FROST, Mr. GUTIERREZ, Ms. ROS-LEHTINEN, Mr. LEWIS of Georgia, and Mr. MEEKS of New York.

H.R. 2306: Mr. FROST, Ms. MILLENDER-MCDONALD, Ms. DELAURO, and Mr. GREEN of Texas.

H.J. Res. 34: Mr. PASCRELL.

H.J. Res. 55: Mr. KUYKENDALL and Mr. PACKARD.

H. Con. Res. 60: Mr. TANNER, Mr. MENENDEZ, and Mr. BARRETT of Wisconsin.

H. Con. Res. 64: Ms. BALDWIN, and Mrs. JONES of Ohio.

H. Con. Res. 97: Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FATTAH, Ms. KILPATRICK, Mr. MINGE, Mr. ENGLISH, Mr. GUTIERREZ, Mr. HOEFFEL, Mr. BLAGOJEVICH, Mr. BARRETT of Wisconsin, Mr. BROWN of Ohio, Mr. CONYERS, Mr. HINCHEY, Mr. BERMAN, Mr. MCNULTY, Ms. LOFGREN, and Mr. OBERSTAR.

H. Con. Res. 111: Mr. STARK, Ms. PELOSI, Ms. VELAZQUEZ, Mr. MARTINEZ, and Mr. BECERRA.

H. Con. Res. 124: Ms. RIVERS, Mr. BECERRA, and Ms. WOOLSEY.

H. Con. Res. 128: Mrs. LOWEY, Mr. KENNEDY of Rhode Island, Mr. SALMON, Ms. WOOLSEY, Mr. CUNNINGHAM, Mr. GUTKNECHT, Mr. DELAHUNT, Mr. TALENT, Mr. FORD, Mr. KING, Mr. BILBRAY, and Mr. HUNTER.

H. Con. Res. 131: Ms. WOOLSEY, Mr. ROTHMAN, Mr. SHOWS, Mr. FROST, Mr. CROWLEY, Mr. ANDREWS, Mrs. NORTHUP, Mr. SHERMAN, Mr. WAXMAN, and Mr. FOLEY.

H. Con. Res. 132: Ms. LEE, Mr. KUCINICH, Mr. JACKSON of Illinois, Mr. STARK, and Ms. WATERS.

H. Res. 41: Mr. BARTLETT of Maryland, Mr. LATOURETTE, and Ms. SCHAKOWSKY.

H. Res. 184: Mr. BRADY of Texas, Mr. BROWN of California, Mr. ENGEL, and Ms. MCKINNEY.

H. Res. 201: Mr. BURR of North Carolina, Mr. MOAKLEY, Mr. FROST, and Mr. FRANKS of New Jersey.

H. Res. 214: Mr. STUPAK and Mr. TANCREDO.

H. Res. 215: Mr. KING.

## DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 222: Mrs. MYRICK.

H.R. 1145: Mrs. MYRICK.

## AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 10

OFFERED BY: MR. DREIER

**(Amendment in the Nature of a Substitute)**

AMENDMENT NO. 1: Strike out all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the ''Financial Services Act of 1999''.

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

(1) To enhance competition in the financial services industry, in order to foster innovation and efficiency.

(2) To ensure the continued safety and soundness of depository institutions.

(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.

(4) To avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination.

(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.

(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

(7) To enhance the competitiveness of United States financial service providers internationally.

(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

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

Sec. 1. Short title; purposes; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.
Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.
Sec. 103. Financial holding companies.
Sec. 104. Operation of State law.
Sec. 105. Mutual bank holding companies authorized.
Sec. 105A. Public meetings for large bank acquisitions and mergers.
Sec. 106. Prohibition on deposit production offices.
Sec. 107. Clarification of branch closure requirements.
Sec. 108. Amendments relating to limited purpose banks.
Sec. 109. GAO study of economic impact on community banks, other small financial institutions, insurance agents, and consumers.
Sec. 110. Responsiveness to community needs for financial services.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.
Sec. 112. Elimination of application requirement for financial holding companies.
Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
Sec. 114. Prudential safeguards.
Sec. 115. Examination of investment companies.
Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
Sec. 117. Equivalent regulation and supervision.
Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.
Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
Sec. 120. Technical amendment.

Subtitle C—Subsidiaries of National Banks

Sec. 121. Permissible activities for subsidiaries of national banks.
Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.
Sec. 123. Misrepresentations regarding depository institution liability for obligations of affiliates.
Sec. 124. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

Sec. 131. Wholesale financial holding companies established.
Sec. 132. Authorization to release reports.
Sec. 133. Conforming amendments.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
Sec. 142. Interagency data sharing.
Sec. 143. Clarification of status of subsidiaries and affiliates.
Sec. 144. Annual GAO report.

Subtitle F—National Treatment

Sec. 151. Foreign banks that are financial holding companies.
Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.
Sec. 153. Representative offices.
Sec. 154. Reciprocity.

Subtitle G—Federal Home Loan Bank System Modernization

Sec. 161. Short title.
Sec. 162. Definitions.
Sec. 163. Savings association membership.
Sec. 164. Advances to members; collateral.
Sec. 165. Eligibility criteria.
Sec. 166. Management of banks.
Sec. 167. Resolution Funding Corporation.
Sec. 168. Capital structure of Federal home loan banks.

Subtitle H—ATM Fee Reform

Sec. 171. Short title.
Sec. 172. Electronic fund transfer fee disclosures at any host ATM.
Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.

Sec. 174. Feasibility study.
Sec. 175. No liability if posted notices are damaged.
Subtitle I—Direct Activities of Banks
Sec. 181. Authority of national banks to underwrite certain municipal bonds.
Subtitle J—Deposit Insurance Funds
Sec. 186. Study of safety and soundness of funds.
Sec. 187. Elimination of SAIF and DIF special reserves.
Subtitle K—Miscellaneous Provisions
Sec. 191. Termination of ''know your customer'' regulations.
Sec. 192. Study and report on Federal electronic fund transfers.
Sec. 193. General Accounting Office study of conflicts of interest.
Sec. 194. Study of cost of all Federal banking regulations.
Sec. 195. Study and report on adapting existing legislative requirements to online banking and lending.
Sec. 196. Regulation of uninsured State member banks.
Sec. 197. Clarification of source of strength doctrine.
Sec. 198. Interest rates and other charges at interstate branches.
Subtitle L-Effective Date of Title
Sec. 199. Effective date.
TITLE II—FUNCTIONAL REGULATION
Subtitle A—Brokers and Dealers
Sec. 201. Definition of broker.
Sec. 202. Definition of dealer.
Sec. 203. Registration for sales of private securities offerings.
Sec. 204. Information sharing.
Sec. 205. Treatment of new hybrid products.
Sec. 206. Definition of excepted banking product.
Sec. 207. Additional definitions.
Sec. 208. Government securities defined.
Sec. 209. Effective date.
Sec. 210. Rule of construction.
Subtitle B—Bank Investment Company Activities
Sec. 211. Custody of investment company assets by affiliated bank.
Sec. 212. Lending to an affiliated investment company.
Sec. 213. Independent directors.
Sec. 214. Additional SEC disclosure authority.
Sec. 215. Definition of broker under the Investment Company Act of 1940.
Sec. 216. Definition of dealer under the Investment Company Act of 1940.
Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
Sec. 220. Interagency consultation.
Sec. 221. Treatment of bank common trust funds.
Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
Sec. 223. Statutory disqualification for bank wrongdoing.
Sec. 224. Conforming change in definition.
Sec. 225. Conforming amendment.
Sec. 226. Church plan exclusion.
Sec. 227. Effective date.
Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies
Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.
Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products
Sec. 241. Improved and consistent disclosure.
TITLE III—INSURANCE
Subtitle A—State Regulation of Insurance
Sec. 301. State regulation of the business of insurance.
Sec. 302. Mandatory insurance licensing requirements.
Sec. 303. Functional regulation of insurance.
Sec. 304. Insurance underwriting in national banks.
Sec. 305. Title insurance activities of national banks and their affiliates.
Sec. 306. Expedited and equalized dispute resolution for Federal regulators.
Sec. 307. Consumer protection regulations.
Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.
Sec. 309. Interagency consultation.
Sec. 310. Definition of State.
Subtitle B—National Association of Registered Agents and Brokers
Sec. 321. State flexibility in multistate licensing reforms.
Sec. 322. National Association of Registered Agents and Brokers.
Sec. 323. Purpose.
Sec. 324. Relationship to the Federal Government.
Sec. 325. Membership.
Sec. 326. Board of directors.
Sec. 327. Officers.
Sec. 328. Bylaws, rules, and disciplinary action.
Sec. 329. Assessments.
Sec. 330. Functions of the NAIC.
Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
Sec. 332. Elimination of NAIC oversight.
Sec. 333. Relationship to State law.
Sec. 334. Coordination with other regulators.
Sec. 335. Judicial review.
Sec. 336. Definitions.
Subtitle C—Rental Car Agency Insurance Activities
Sec. 341. Standard of regulation for motor vehicle rentals.
Subtitle D—Confidentiality
Sec. 351. Confidentiality of health and medical information.
TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES
Sec. 401. Prohibition on new unitary savings and loan holding companies.
Sec. 402. Retention of ''Federal'' in name of converted Federal savings association.
TITLE V—PRIVACY
Subtitle A—Privacy Policy
Sec. 501. Depository institution privacy policies.
Sec. 502. Study of current financial privacy laws.
Subtitle B—Fraudulent Access to Financial Information
Sec. 521. Privacy protection for customer information of financial institutions.
Sec. 522. Administrative enforcement.
Sec. 523. Criminal penalty.
Sec. 524. Relation to State laws.
Sec. 525. Agency guidance.
Sec. 526. Reports.
Sec. 527. Definitions.

## TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

### Subtitle A—Affiliations

**SEC. 101. GLASS-STEAGALL ACT REFORMED.**

(a) SECTION 20 REPEALED.—Section 20 of the Banking Act of 1933 (12 U.S.C. 377) (commonly referred to as the ''Glass-Steagall Act'') is repealed.

(b) SECTION 32 REPEALED.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is repealed.

**SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.**

(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:

''(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);''.

(b) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking '', to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,''.

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: ''as of the day before the date of enactment of the Financial Services Act of 1999.''.

**SEC. 103. FINANCIAL HOLDING COMPANIES.**

(a) IN GENERAL.—The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:

**''SEC. 6. FINANCIAL HOLDING COMPANIES.**

''(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).

''(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

''(1) IN GENERAL.—No bank holding company may engage in any activity or directly or indirectly acquire or retain shares of any company under this section unless the bank holding company meets the following requirements:

''(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

''(B) All of the subsidiary depository institutions of the bank holding company are well managed.

''(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution;

''(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A), (B), and (C).

''(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital and other operating standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository

institution acquired by a bank holding company during the 12-month period preceding the submission of a notice under paragraph (1)(D) and any depository institution acquired after the submission of such notice may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

''(A) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution; and

''(B) the plan has been accepted by such agency.

''(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

''(1) FINANCIAL ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order and in accordance with subparagraph (B)) to be—

''(i) financial in nature or incidental to such financial activities; or

''(ii) complementary to activities authorized under this subsection to the extent that the amount of such complementary activities remains small.

''(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

''(i) PROPOSALS RAISED BEFORE THE BOARD.—

''(I) CONSULTATION.—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection, including a regulation or order proposed under paragraph (4), for a determination of whether an activity is financial in nature or incidental to such a financial activity.

''(II) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity.

''(ii) PROPOSALS RAISED BY THE TREASURY.—

''(I) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

''(II) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, in the event that the Board determines not to seek public comment on the proposal, the reasons for that determination.

''(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

''(A) the purposes of this Act and the Financial Services Act of 1999;

''(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

''(C) changes or reasonably expected changes in the technology for delivering financial services; and

''(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—

''(i) compete effectively with any company seeking to provide financial services in the United States;

''(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

''(iii) offer customers any available or emerging technological means for using financial services.

''(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

''(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

''(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

''(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

''(E) Underwriting, dealing in, or making a market in securities.

''(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

''(G) Engaging, in the United States, in any activity that—

''(i) a bank holding company may engage in outside the United States; and

''(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

''(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the bank holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

''(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

''(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

''(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

''(4) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Board shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

''(B) Providing any device or other instrumentality for transferring money or other financial assets.

''(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

''(5) POST-CONSUMMATION NOTIFICATION.—

''(A) IN GENERAL.—A financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

''(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under

paragraph (4), without prior approval of the Board.

''(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

''(A) IN GENERAL.—No financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

''(i) is engaged in activities permitted under this subsection or subsection (g); and

''(ii) has consolidated total assets in excess of $40,000,000,000,

unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

''(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

''(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

''(ii) whether the proposed combination represents an undue aggregation of resources;

''(iii) whether the proposed combination poses a risk to the deposit insurance system;

''(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

''(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities;

''(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public; and

''(vii) whether, and the extent to which, the proposed combination poses an undue risk to the stability of the financial system in the United States.

''(C) REQUIRED INFORMATION.—The Board may disapprove any prior notice filed under this paragraph if the company submitting such notice neglects, fails, or refuses to furnish to the Board all relevant information required by the Board.

''(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—

''(i) IN GENERAL.—Upon receiving a prior notice under this paragraph, in order to provide for the submission of their views and recommendations, the Board shall give notice of the proposal to—

''(I) the appropriate Federal banking agency of any bank involved;

''(II) the appropriate functional regulator of any functionally regulated nondepository institution (as defined in section 5(c)(1)(C)) involved; and

''(III) the Secretary of the Treasury, the Attorney General, and the Federal Trade Commission.

''(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.

''(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

''(1) IN GENERAL.—If the Board finds, after notice from or consultation with the appropriate Federal banking agency, that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the Board shall give notice of such finding to the company.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

''(3) AUTHORITY TO IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected—

''(A) the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances; and

''(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or subsidiary of a depository institution as the appropriate Federal banking agency determines to be appropriate under the circumstances.

''(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company does not—

''(A) execute and implement an agreement in accordance with paragraph (2);

''(B) comply with any limitations imposed under paragraph (3);

''(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or

''(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

''(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies.

''(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

''(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions or wholesale financial institution from such risks;

''(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions and wholesale financial institutions; and

''(3) the holding company complies with this section.

''(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

''(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

''(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

''(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

''(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1997, and other activities permissible under this Act.

''(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

''(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

''(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

''(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

''(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

''(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).

''(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

''(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to

this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

''(g) DEVELOPING ACTIVITIES.—A financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

''(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

''(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

''(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

''(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

''(5) neither the Board nor the Secretary of the Treasury has determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

''(6) the holding company is not required to provide prior written notice of the transaction to the Board under subsection (c)(6); and

''(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.''.

(b) FACTORS FOR CONSIDERATION IN REVIEWING APPLICATION BY FINANCIAL HOLDING COMPANY TO ACQUIRE BANK.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

''(6) 'TOO BIG TO FAIL' FACTOR.—In considering an acquisition, merger, or consolidation under this section involving a financial holding company or a company that would be any such holding company upon the consummation of the transaction, the Board shall consider whether, and the extent to which, the proposed acquisition, merger, or consolidation poses an undue risk to the stability of the financial system of the United States.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

''(p) INSURANCE COMPANY.—For purposes of sections 5, 6, and 10, the term 'insurance company' includes any person engaged in the business of insurance to the extent of such activities.''.

(2) Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)) is amended—

(1) in paragraph (1)(A), by inserting ''or in any complementary activity under section 6(c)(1)(B)'' after ''subsection (c)(8) or (a)(2)''; and

(2) in paragraph (3)—

(A) by inserting '', other than any complementary activity under section 6(c)(1)(B),'' after ''to engage in any activity''; and

(B) by inserting ''or a company engaged in any complementary activity under section 6(c)(1)(B)'' after ''insured depository institution''.

(d) REPORT.—

(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act and every 4 years thereafter, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities which are financial in nature, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (c)(1) or (f) of section 6 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

(2) OTHER CONTENTS.—Each report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies which are incidental to activities financial in nature or complementary to such financial activities.

(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

(C) An analysis and discussion of the effect of mergers and acquisitions under section 6 of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

(D) An analysis and discussion, by the Board and the Secretary in consultation with the other Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), of the impact of the implementation of this Act, and the amendments made by this Act, on the extent of meeting community credit needs and capital availability under the Community Reinvestment Act of 1977.

**SEC. 104. OPERATION OF STATE LAW.**

(a) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, as authorized or permitted by this Act or any other provision of Federal law.

(2) INSURANCE.—With respect to affiliations between insured depository institutions or wholesale financial institutions, or any subsidiary or affiliate thereof, and persons or entities engaged in the business of insurance, paragraph (1) does not prohibit—

(A) any State from requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the ''insurer'') to furnish to the insurance regulatory authority of that State, not later than 60 days before the effective date of the proposed acquisition—

(i) the name and address of each person by whom, or on whose behalf, the affiliation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the ''acquiring party'');

(ii) if the acquiring party is an individual, his or her principal occupation and all offices and positions held during the 5 years preceding the date of notification, and any conviction of crimes other than minor traffic violations during the 10 years preceding the date of notification;

(iii) if the acquiring party is not an individual—

(I) a report of the nature of its business operations during the 5 years preceding the date of notification, or for such shorter period as such person and any predecessors thereof shall have been in existence;

(II) an informative description of the business intended to be done by the acquiring party and any subsidiary thereof; and

(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each such individual, the information required by clause (ii);

(iv) the source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were, or are to be, obtained for any such purpose, and the identity of persons furnishing such consideration, except that, if a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(v) fully audited financial information as to the earnings and financial condition of each acquiring party for the 5 fiscal years preceding the date of notification of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days before the date of notification, except that, in the case of an acquiring party that is an insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited, but such audit may be required if the need therefor is determined by the insurance regulatory authority of the State;

(vi) any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets, or to merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(vii) the number of shares of any security of the insurer that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at;

(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(ix) a full description of any contracts, arrangements, or understandings with respect to any security of the insurer in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, and identification of the persons with whom such contracts, arrangements, or understandings have been entered into;

(x) a description of the purchase of any security of the insurer during the 12-month period preceding the date of notification by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid, or agreed to be paid, therefor;

(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange

any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) in the case of a person engaged in the business of insurance which is the subject of an acquisition or change or continuation in control, the State of domicile of such person from reviewing or taking action (including approval or disapproval) with regard to the acquisition or change or continuation in control, as long as the State reviews and actions—

(i) are completed by the end of the 60-day period beginning on the later of the date the State received notice of the proposed action or the date the State received the information required under State law regarding such acquisition or change or continuation in control;

(ii) do not have the effect of discriminating, intentionally or unintentionally, against an insured depository institution or affiliate thereof or against any other person based upon affiliation with an insured depository institution; and

(iii) are based on standards or requirements relating to solvency or managerial fitness;

(C) any State from requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the entity, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A);

(D) any State from taking actions with respect to the receivership or conservatorship of any insurance company;

(E) any State from restricting a change in the ownership of stock in an insurance company, or a company formed for the purpose of controlling such insurance company, for a period of not more than 3 years beginning on the date of the conversion of such company from mutual to stock form; or

(F) any State from requiring an organization which has been eligible at any time since January 1, 1987, to claim the special deduction provided by section 833 of the Internal Revenue Code of 1986 to meet certain conditions in order to undergo, as determined by the State, a reorganization, recapitalization, conversion, merger, consolidation, sale or other disposition of substantial operating assets, demutualization, dissolution, or to undertake other similar actions and which is governed under a State statute enacted on May 22, 1998, relating to hospital, medical, and dental service corporation conversions.

(3) PRESERVATION OF STATE ANTITRUST AND GENERAL CORPORATE LAWS.—

(A) IN GENERAL.—Subject to subsection (c) and the nondiscrimination provisions contained in such subsection, no provision in paragraph (1) shall be construed as affecting State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws.

(B) DEFINITION.—The term ''antitrust laws'' has the same meaning as in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition.

(b) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other entity or person, in any activity authorized or permitted under this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.

(B) CERTAIN STATE LAWS PRESERVED.—Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions which are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by an insured depository institution, wholesale financial institution, or any subsidiary or affiliate thereof, solely because the policy has been issued or underwritten by any person who is not associated with such insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, when such insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by an insured depository institution, wholesale financial institution, or any subsidiary or affiliate thereof, unless such charge would be required when the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by an insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that would cause a reasonable person to believe mistakenly that—

(I) a State or the Federal Government is responsible for the insurance sales activities of, or stands behind the credit of, the institution, affiliate, or subsidiary; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution, affiliate, or subsidiary;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof) to any person or entity other than an officer, director, employee, agent, subsidiary, or affiliate of an insured depository institution or a wholesale financial institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurance company, agent, or broker; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from an insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or broker, other than a prohibition that would prevent any insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from

the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from an insured depository institution or wholesale financial institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution or any affiliate or subsidiary thereof, that a written disclosure be provided to the consumer or prospective customer indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured depository institution or wholesale financial institution may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by the insured depository institution or wholesale financial institution or, if appropriate, its subsidiaries or affiliates or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution, or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 306(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (c) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 116 S. Ct. 1103 (1996) with respect to a State statute, regulation, order, interpretation, or other action that is not described in subparagraph (B).

(iv) LIMITATION ON INFERENCES.—Nothing in this paragraph shall be construed to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations, orders, and other actions shall not be preempted under subsection (b)(1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act of March 9, 1945 (commonly known as the ''McCarran-Ferguson Act'');

(B) apply only to persons or entities that are not insured depository institutions or wholesale financial institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross-marketing activities; and

(D) are not prohibited under subsection (c).

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, interpretation, order, or other action shall be preempted under subsection (b)(1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (d); and

(D) it—

(i) does not distinguish by its terms between insured depository institutions, wholesale financial institutions, and subsidiaries and affiliates thereof engaged in the activity at issue and other persons or entities engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof engaged in the activity at issue, or any person or entity affiliated therewith, that is substantially more adverse than its impact on other persons or entities engaged in the same activity that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(iii) does not effectively prevent a depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(c) NONDISCRIMINATION.—Except as provided in any restrictions described in subsection (b)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of an insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other persons or entities engaged in such activities, in a manner that is in any way adverse to any such insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, that is substantially more adverse than its impact on other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution or wholesale financial institution, or subsidiary or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and persons and entities engaged in the business of insurance.

(d) LIMITATION.—Subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(1) to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(2) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A).

(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(2) STATE.—The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

**SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.**

Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

''(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.''.

**SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISITIONS AND MERGERS.**

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)(2)) is amended—

(1) by striking ''FACTORS.—In every case'' and inserting ''FACTORS.—

''(A) IN GENERAL.—In every case''; and

(2) by adding at the end the following new subparagraph:

''(B) PUBLIC MEETINGS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Board believes, in the sole discretion of the Board, there will be a substantial public impact.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

''(12) PUBLIC MEETINGS.—In each merger transaction involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the responsible agency shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the agency believes, in the sole discretion of the agency, there will be a substantial public impact.''.

(c) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by adding at the end the following new section:

**''SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.**

''In each case of a consolidation or merger under this Act involving 1 or more banks each of which has total assets of $1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Comptroller believes, in the sole discretion of the Comptroller, there will be a substantial public impact.''.

(d) HOME OWNERS' LOAN ACT.—Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1463) is amended by adding at the end the following new paragraph:

''(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Director believes, in the sole discretion of the Director, there will be a substantial public impact.''.

**SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.**

(a) IN GENERAL.—Section 109(d) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(d)) is amended—

(1) by inserting '', the Financial Services Act of 1999,'' after ''pursuant to this title''; and

(2) by inserting ''or such Act'' after ''made by this title''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 109(e)(4) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4)) is amended by inserting ''and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

**SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.**

Section 42(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting ''and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

**SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.**

(a) IN GENERAL.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

(1) in paragraph (2)(A)(ii)—

(A) by striking ''and'' at the end of subclause (IX);

(B) by inserting ''and'' after the semicolon at the end of subclause (X); and

(C) by inserting after subclause (X) the following new subclause:

''(XI) assets that are derived from, or are incidental to, consumer lending activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage,'';

(2) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraphs:

''(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

''(C) any bank subsidiary of such company both—

''(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

''(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

''(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).''; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

''(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—

''(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

''(B) such overdraft—

''(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

''(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

''(C) such overdraft—

''(i) is incurred on behalf of an affiliate solely in connection with an activity that is so closely related to banking, or managing or controlling banks, as to be a proper incident thereto, to the extent the bank incurring the overdraft and the affiliate on whose behalf the overdraft is incurred each document that the overdraft is incurred for such purpose; and

''(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a member bank, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a nonmember bank.

''(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

''(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

''(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

The issuance of any notice under this paragraph that relates to the activities of a bank shall not be construed as affecting the authority of the bank to continue to engage in such activities until the expiration of such 180-day period.''.

(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting before the period at the end '', or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1)''.

**SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS, OTHER SMALL FINANCIAL INSTITUTIONS, INSURANCE AGENTS, AND CONSUMERS.**

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the projected economic impact and the actual economic impact that the enactment of this Act will have on financial institutions, including community banks, registered brokers and dealers and insurance companies, which have total assets of $100,000,000 or less, insurance agents, and consumers.

(b) REPORTS TO THE CONGRESS.—

(1) IN GENERAL.—The Comptroller General of the United States shall submit reports to the Congress, at the times required under paragraph (2), containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(2) TIMING OF REPORTS.—The Comptroller General shall submit—

(A) an interim report before the end of the 6-month period beginning after the date of the enactment of this Act;

(B) another interim report before the end of the next 6-month period; and

(C) a final report before the end of the 1-year period after such second 6-month period,''

**SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.**

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.

(b) REPORT.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal banking agencies, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977.

**Subtitle B—Streamlining Supervision of Financial Holding Companies**

**SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.**

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

''(c) REPORTS AND EXAMINATIONS.—

''(1) REPORTS.—

''(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

''(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) compliance by the company or subsidiary with applicable provisions of this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

''(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

''(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

''(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

''(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—

''(i) a broker or dealer registered under the Securities Exchange Act of 1934;

''(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

''(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

''(2) EXAMINATIONS.—

''(A) EXAMINATION AUTHORITY.—

''(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

''(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

''(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

''(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

''(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

''(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

''(ii) inform the Board of—

''(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

''(II) the systems for monitoring and controlling such risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

''(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

''(i) the bank holding company; and

''(ii) any subsidiary of the holding company that, because of—

''(I) the size, condition, or activities of the subsidiary; or

''(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company,

could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

''(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

''(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

''(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

''(ii) any investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law;

''(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

''(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

''(3) CAPITAL.—

''(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

''(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

''(ii) is registered as an investment adviser under the Investment Advisers Act of 1940, or with any State, whichever is required by law; or

''(iii) is licensed as an insurance agent with the appropriate State insurance authority.

''(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

''(i) activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities; or

''(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

''(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

''(i) a bank holding company; or

''(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

''(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

''(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

''(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

''(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;

''(ii) approve or disapprove applications or transactions under section 3;

''(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

''(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

''(C) AGENCY ORDERS.—Section 9 of this Act and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

''(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

''(A) the Securities and Exchange Commission with regard to all interpretations of,

and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

''(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of brokers, dealers, and investment advisers required to be registered under State law; and

''(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.''.

**SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.**

(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: ''A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.''.

(b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(1)) is amended—

(1) by striking ''Financial Institutions Supervisory Act of 1966, order'' and inserting ''Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

''(A) order''; and

(2) by striking ''shareholders of the bank holding company. Such distribution'' and inserting ''shareholders of the bank holding company; or

''(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A)''.

**SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.**

(a) BANK HOLDING COMPANIES.—Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

''(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

''(A) such funds or assets are to be provided by—

''(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

''(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State ; and

''(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

''(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

''(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

''(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.''.

(b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

**''SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the appropriate Federal banking agency which requires a subsidiary to provide funds or other assets to an insured depository institution shall not be effective nor enforceable with respect to an entity described in paragraph (1) if—

''(1) such funds or assets are to be provided by a subsidiary which is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

''(2) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, the investment company, or the investment adviser, as the case may be, determines in writing sent to the insured depository institution and the appropriate Federal banking agency that the subsidiary shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

''(b) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the appropriate Federal banking agency requires a subsidiary, which is an insurance company, a broker or dealer, an investment company, or an investment adviser (solely with respect to investment advisory activities or activities incidental thereto) described in subsection (a)(1) to provide funds or assets to an insured depository institution pursuant to any regulation, order, or other action of the appropriate Federal banking agency referred to in subsection (a), the appropriate Federal banking agency shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

''(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If the appropriate Federal banking agency receives a notice described in subsection (a)(2) from a State insurance authority or the Securities and Exchange Commission with regard to a subsidiary referred to in that subsection, the appropriate Federal banking agency may order the insured depository institution to divest the subsidiary not later than 180 days after receiving the notice, or such longer period as the appropriate Federal banking agency determines consistent with the safe and sound operation of the insured depository institution.

''(d) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the appropriate Federal banking agency under subsection (c) to an insured depository institution and ending on the date the divestiture is complete, the appropriate Federal banking agency may impose any conditions or restrictions on the insured depository institution's ownership of the subsidiary including restricting or prohibiting transactions between the insured depository institution and the subsidiary, as are appropriate under the circumstances.''.

**SEC. 114. PRUDENTIAL SAFEGUARDS.**

(a) COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank which the Comptroller finds are consistent with the public interest, the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks, and the standards in paragraph (2).

(2) STANDARDS.—The Comptroller of the Currency may exercise authority under paragraph (1) if the Comptroller finds that such action will have any of the following effects:

(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

(B) Enhance the financial stability of banks.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of the national bank or any subsidiary of the bank.

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank,

which the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies or State banks (as the case may be), and the standards in paragraph (2).

(2) STANDARDS.—The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

(B) Enhance the financial stability of bank holding companies.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of the State member bank or any subsidiary of the bank.

(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.

(4) FOREIGN BANKS.—

(A) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States, and the standards in paragraphs (2) and (3).

(B) EVASION.—In the event that the Board determines that there may be circumstances that would result in an evasion of this paragraph, the Board may also impose restrictions or requirements on relationships or transactions between operations of a foreign bank outside the United States and any affiliate in the United States of such foreign bank that are consistent with national treatment and equality of competitive opportunity.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank which the Corporation finds are consistent with the public interest, the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks and the standards in paragraph (2).

(2) STANDARDS.—The Federal Deposit Insurance Corporation may exercise authority under paragraph (1) if the Corporation finds that such action will have any of the following effects:

(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

(B) Enhance the financial stability of banks.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of the State nonmember bank or any subsidiary of the bank.

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Federal Deposit Insurance Corporation shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Corporation finds is no longer required for such purposes.

**SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(2) PROHIBITION ON BANKING AGENCIES.—Except as provided in paragraph (3), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(3) CERTAIN EXAMINATIONS AUTHORIZED.—Nothing in this subsection prevents the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(2) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(3) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' has the same meaning as in section 3(z) of the Federal Deposit Insurance Act.

(4) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company which is registered with the Commission under the Investment Company Act of 1940.

(5) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the same meaning as in section 10(a)(1)(D) of the Home Owners' Loan Act.

**SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 10 the following new section:

**''SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

''(a) LIMITATION ON DIRECT ACTION.—

''(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

''(A) the financial safety, soundness, or stability of an affiliated depository institution; or

''(B) the domestic or international payment system.

''(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

''(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

''(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

''(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated

subsidiary' means any company that is not a bank holding company and is—

''(1) a broker or dealer registered under the Securities Exchange Act of 1934;

''(2) an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(3) an investment company registered under the Investment Company Act of 1940;

''(4) an insurance company or an insurance agency, with respect to the insurance activities and activities incidental to such insurance activities, subject to supervision by a State insurance commission, agency, or similar authority; or

''(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.''.

**SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 (as amended by this Act) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on bank holding companies and their nonbank subsidiaries or that require deference to other regulators; and

(2) section 10A of the Bank Holding Company Act of 1956 (as added by this Act) that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to bank holding companies and their nonbank subsidiaries,

shall also limit whatever authority that a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.

(b) CERTAIN EXAMINATIONS AUTHORIZED.—No provision of this section shall be construed as preventing the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

**SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.**

Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking ''to benefit any shareholder of'' and inserting ''to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act), or subsidiary of''.

**SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.**

Section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

''(f) [Repealed].''.

**SEC. 120. TECHNICAL AMENDMENT.**

Section 2(o)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by striking ''section 38(b)'' and inserting ''section 38''.

**Subtitle C—Subsidiaries of National Banks**

**SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS.**

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

**''SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

''(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

''(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes of the United States shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

''(A) is not permissible for a national bank to engage in directly; or

''(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank, unless a national bank is specifically authorized by the express terms of a Federal statute and not by implication or interpretation to acquire shares of or an interest in, or to control, such subsidiary, such as by paragraph (2) of this subsection and section 25A of the Federal Reserve Act.

''(2) SPECIFIC AUTHORIZATION TO CONDUCT ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—Subject to paragraphs (3) and (4), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, that is controlled by insured depository institutions or subsidiaries thereof.

''(3) ELIGIBILITY REQUIREMENTS.—A national bank may control or hold an interest in a company pursuant to paragraph (2) only if—

''(A) the national bank and all depository institution affiliates of the national bank are well capitalized;

''(B) the national bank and all depository institution affiliates of the national bank are well managed;

''(C) the national bank and all depository institution affiliates of such national bank have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such bank or institution; and

''(D) the bank has received the approval of the Comptroller of the Currency.

''(4) ACTIVITY LIMITATIONS.—In addition to any other limitation imposed on the activity of subsidiaries of national banks, a subsidiary of a national bank may not, pursuant to paragraph (2)—

''(A) engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than in connection with credit-related insurance) or in providing or issuing annuities;

''(B) engage in real estate investment or development activities; or

''(C) engage in any activity permissible for a financial holding company under paragraph (3)(I) of section 6(c) of the Bank Holding Company Act of 1956 (relating to insurance company investments).

''(5) SIZE FACTOR WITH REGARD TO FREE-STANDING NATIONAL BANKS.—Notwithstanding paragraph (2), a national bank which has total assets of $10,000,000,000 or more may not control a subsidiary engaged in financial activities pursuant to such paragraph unless such national bank is a subsidiary of a bank holding company.

''(6) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes an affiliate of a national bank during the 12-month period preceding the date of an approval by the Comptroller of the Currency under paragraph (3)(D) for such bank, and any depository institution which becomes an affiliate of the national bank after such date, may be excluded for purposes of paragraph (3)(C) during the 12-month period beginning on the date of such affiliation if—

''(A) the national bank or such depository institution has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution; and

''(B) the plan has been accepted by such agency.

''(7) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(A) COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.—The terms 'company', 'control', 'affiliate', and 'subsidiary' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

''(B) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company which is a subsidiary of an insured bank and is engaged in financial activities that have been determined to be financial in nature or incidental to such financial activities in accordance with subsection (b) or permitted in accordance with subsection (b)(4), other than activities that are permissible for a national bank to engage in directly or that are authorized under the Bank Service Company Act, section 25 or 25A of the Federal Reserve Act, or any other Federal statute (other than this section) that specifically authorizes the conduct of such activities by its express terms and not by implication or interpretation.

''(C) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

''(D) WELL MANAGED.—The term 'well managed' means—

''(i) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

''(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

''(II) at least a rating of 2 for management, if that rating is given; or

''(ii) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

''(E) INCORPORATED DEFINITIONS.—The terms 'appropriate Federal banking agency' and 'depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

''(1) FINANCIAL ACTIVITIES.—

''(A) IN GENERAL.—For purposes of subsection (a)(7)(B), an activity shall be considered to have been determined to be financial in nature or incidental to such financial activities only if—

''(i) such activity is permitted for a financial holding company pursuant to section 6(c)(3) of the Bank Holding Company Act of 1956 (to the extent such activity is not otherwise prohibited under this section or any other provision of law for a subsidiary of a national bank engaged in activities pursuant to subsection (a)(2)); or

''(ii) the Secretary of the Treasury determines the activity to be financial in nature or incidental to such financial activities in accordance with subparagraph (B) or paragraph (3).

''(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

''(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

''(I) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this subsection, including any regulation or order proposed under paragraph (3), for a determination of whether an activity is financial in nature or incidental to such a financial activity.

''(II) BOARD VIEW.—The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate in light of the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity.

''(ii) PROPOSALS RAISED BY THE BOARD.—

''(I) BOARD RECOMMENDATION.—The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity (other than an activity which the Board has sole authority to regulate under subparagraph (C)).

''(II) TIME PERIOD FOR SECRETARIAL ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

''(C) AUTHORITY OVER MERCHANT BANKING.—The Board shall have sole authority to prescribe regulations and issue interpretations to implement this paragraph with respect to activities described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

''(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Secretary shall take into account—

''(A) the purposes of this Act and the Financial Services Act of 1999;

''(B) changes or reasonably expected changes in the marketplace in which banks compete;

''(C) changes or reasonably expected changes in the technology for delivering financial services; and

''(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

''(i) compete effectively with any company seeking to provide financial services in the United States;

''(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

''(iii) offer customers any available or emerging technological means for using financial services.

''(3) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

''(B) Providing any device or other instrumentality for transferring money or other financial assets.

''(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

''(4) DEVELOPING ACTIVITIES.—Subject to subsection (a)(2), a financial subsidiary of a national bank may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Secretary has not determined to be financial in nature or incidental to financial activities under this subsection if—

''(A) the subsidiary reasonably concludes that the activity is financial in nature or incidental to financial activities;

''(B) the gross revenues from all activities conducted under this paragraph represent less than 5 percent of the consolidated gross revenues of the national bank;

''(C) the aggregate total assets of all companies the shares of which are held under this paragraph do not exceed 5 percent of the national bank's consolidated total assets;

''(D) the total capital invested in activities conducted under this paragraph represents less than 5 percent of the consolidated total capital of the national bank;

''(E) neither the Secretary of the Treasury nor the Board has determined that the activity is not financial in nature or incidental to financial activities under this subsection; and

''(F) the national bank provides written notice to the Secretary of the Treasury describing the activity commenced by the subsidiary or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

''(c) PROVISIONS APPLICABLE TO NATIONAL BANKS THAT FAIL TO MEET REQUIREMENTS.—

''(1) IN GENERAL.—If a national bank or depository institution affiliate is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (a)(3), the appropriate Federal banking agency shall notify the Comptroller of the Currency, who shall give notice of such finding to the national bank.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank and any relevant affiliated depository institution shall execute an agreement acceptable to the Comptroller of the Currency and the other appropriate Federal banking agencies, if any, to comply with the requirements applicable under subsection (a)(3).

''(3) COMPTROLLER OF THE CURRENCY MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a national bank under paragraph (1) are corrected—

''(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the bank as the Comptroller of the Currency determines to be appropriate under the circumstances; and

''(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or any subsidiary of the depository institution as such agency determines to be appropriate under the circumstances.

''(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a national bank and other affiliated depository institutions do not—

''(A) execute and implement an agreement in accordance with paragraph (2);

''(B) comply with any limitations imposed under paragraph (3);

''(C) in the case of a notice of failure to comply with subsection (a)(3)(A), restore the national bank or any depository institution affiliate of the bank to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the national bank (or such other period permitted by the Comptroller of the Currency); or

''(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (a)(3), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Comptroller of the Currency determines to be appropriate,

the Comptroller of the Currency may require such national bank, under such terms and conditions as may be imposed by the Comptroller of the Currency and subject to such extension of time as may be granted in the Comptroller of the Currency's discretion, to divest control of any subsidiary engaged in activities pursuant to subsection (a)(2) or, at the election of the national bank, instead to cease to engage in any activity conducted by a subsidiary of the national bank pursuant to subsection (a)(2).

''(5) CONSULTATION.—In taking any action under this subsection, the Comptroller of the Currency shall consult with all relevant Federal and State regulatory agencies.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136C; and

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Subsidiaries of national banks.''.

**SEC. 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES.**

(a) PURPOSES.—The purposes of this section are—

(1) to protect the safety and soundness of any insured bank that has a financial subsidiary;

(2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and

(3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—

(A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and

(B) the bank holding company used the proceeds of the dividend to make an equity

investment in a subsidiary that was engaged in the same activities as the financial subsidiary of the bank.

(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 45 (as added by section 113(b) of this title) the following new section:

**"SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.**

''(a) LIMITING THE EQUITY INVESTMENT OF A BANK IN A SUBSIDIARY.—

''(1) CAPITAL DEDUCTION.—In determining whether an insured bank complies with applicable regulatory capital standards—

''(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

''(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

''(2) INVESTMENT LIMITATION.—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

''(3) TREATMENT OF RETAINED EARNINGS.—The amount of any net earnings retained by a financial subsidiary of an insured depository institution shall be treated as an outstanding equity investment of the bank in the subsidiary for purposes of paragraph (1).

''(b) OPERATIONAL AND FINANCIAL SAFEGUARDS FOR THE BANK.—An insured bank that has a financial subsidiary shall maintain procedures for identifying and managing any financial and operational risks posed by the financial subsidiary.

''(c) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.—

''(1) IN GENERAL.—Each insured bank shall ensure that the bank maintains and complies with reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

''(2) EXAMINATIONS.—The appropriate Federal banking agency, as part of each examination, shall review whether an insured bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

''(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term 'financial subsidiary' has the meaning given to such term in section 5136A(a)(7)(B) of the Revised Statutes of the United States.

''(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.''.

(c) TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARIES AND OTHER AFFILIATES.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' means a company which is a subsidiary of a bank and is engaged in activities that are financial in nature or incidental to such financial activities pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

''(A) shall be an affiliate of the bank and any other subsidiary of the bank which is not a financial subsidiary; and

''(B) shall not be treated as a subsidiary of the bank.

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term 'affiliate' shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly or which are authorized by any Federal law other than section 5136A of the Revised Statutes of the United States.

''(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.''.

(d) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: ''For purposes of this section, a subsidiary of a national bank which engages in activities pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''.

**SEC. 123. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.**

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following new section:

**"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates**

''(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

''(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 5 years, or both.

''(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' has the same meaning as in section 3 of the Federal Deposit Insurance Act and any reference in that section shall also be deemed to refer to a subsidiary or affiliate of an insured depository institution.

''(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

''1008. Misrepresentations regarding financial institution liability for obligations of affiliates.''.

**SEC. 124. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.**

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as ''(m)'' and inserting ''(m) [Repealed]''.

## Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

## CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

**SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.**

Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

**"SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

''(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—

''(A) is registered as a bank holding company;

''(B) is predominantly engaged in financial activities as defined in section 6(f)(2);

''(C) controls 1 or more wholesale financial institutions;

''(D) does not control—

''(i) a bank other than a wholesale financial institution;

''(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or

''(iii) a savings association; and

''(E) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

''(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

''(b) SUPERVISION BY THE BOARD.—

''(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

''(2) REPORTS.—

''(A) IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

''(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

''(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

''(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

''(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

''(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

''(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

''(II) The primary business of the company.

''(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

''(3) EXAMINATIONS.—

''(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—

''(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

''(ii) inform the Board regarding—

''(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and

''(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.

''(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—

''(i) the holding company; and

''(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

''(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

''(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

''(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

''(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

''(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

''(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

''(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

''(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

''(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, the wholesale financial holding company.

''(4) CAPITAL ADEQUACY GUIDELINES.—

''(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

''(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

''(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

''(I) is not a depository institution; and

''(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

''(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

''(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

''(I) a bank holding company; or

''(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

''(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

''(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

''(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

''(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

''(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

''(1) GRANDFATHERED ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

''(i) on the date of the enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

''(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

''(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

''(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

''(2) COMMODITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

''(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

''(3) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—

''(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

''(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

''(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

''(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company other than for purposes of subsection (c), subject to such conditions as the Board considers appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

''(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:

''(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate (other than an institution described in subparagraph (D) or (F) of section 2(c)(2)) are insured under the Federal Deposit Insurance Act.

''(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested, directly or indirectly, and which engages in any activity pursuant to subsection (c) or (g) of section 6, comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

''(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(4) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

''(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

''(6) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a wholesale financial holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.''.

**SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: ''The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.''.

(b) COMMODITY FUTURES TRADING COMMISSION.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(7) of the (12 U.S.C. 3401(7))—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting after subparagraph (F) the following new subparagraph:

''(G) the Commodity Futures Trading Commission; or''; and

(2) in section 1112(e), by striking ''and the Securities and Exchange Commission'' and inserting '', the Securities and Exchange Commission, and the Commodity Futures Trading Commission''.

**SEC. 133. CONFORMING AMENDMENTS.**

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by inserting after subsection (p) (as added by section 103(b)(1)) the following new subsections:

''(q) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(r) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

''(s) DEPOSITORY INSTITUTION.—The term 'depository institution'—

''(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

''(2) includes a wholesale financial institution.''.

(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:

''(C) A wholesale financial institution.''.

(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting '''insured bank','' after '''in danger of default',''.

(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: ''This subsection shall not apply to a wholesale financial institution.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

''(A) any State member insured bank (except a District bank) and any wholesale financial institution subject to section 9B of the Federal Reserve Act;''.

## CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

**SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A (as added by section 121(a) of this title) the following new section:

**''SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.**

''(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

''(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the

Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

''(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

''5136B. National wholesale financial institutions.''.

(b) WHOLESALE FINANCIAL INSTITUTIONS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

**''SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

''(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

''(1) APPLICATION REQUIRED.—

''(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a State wholesale financial institution, or to the Comptroller of the Currency to become a national wholesale financial institution, and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

''(B) TREATMENT AS MEMBER BANK.—Any application under subparagraph (A) shall be treated as an application under, and shall be subject to the provisions of, section 9.

''(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

''(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks or national banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

''(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

''(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions;

''(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution, and to the Board, in the case of all other wholesale financial institutions; and

''(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from the risks associated with the operation and activities of wholesale financial institutions.

''(3) ENFORCEMENT AUTHORITY.—Section 3(u), subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks or national banks, as the case may be, and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.

''(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

''(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank or a national bank.

''(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by, and with the approval of—

''(A) the Board, in the case of a State-chartered wholesale financial institution; and

''(B) the Comptroller of the Currency, in the case of a national bank wholesale financial institution.

''(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—A State-chartered wholesale financial institution shall be deemed to be a State bank and an insured State bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

''(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

''(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

''(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

''(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

''(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) LIMITATIONS ON DEPOSITS.—

''(A) MINIMUM AMOUNT.—

''(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

''(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

''(B) NO DEPOSIT INSURANCE.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

''(C) ADVERTISING AND DISCLOSURE.—The Board and the Comptroller of the Currency shall prescribe jointly regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

''(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

''(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

''(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

''(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

''(A) limitations on transactions, direct or indirect, with affiliates to prevent—

''(i) the transfer of risk to the deposit insurance funds; or

''(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

''(B) special clearing balance requirements; and

''(C) any additional requirements that the Board determines to be appropriate or necessary to—

''(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(ii) prevent the transfer of risk to the deposit insurance funds; or

''(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is consistent with—

''(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(B) the protection of the deposit insurance funds; and

''(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

''(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting

the Board's authority over member banks or the authority of the Comptroller of the Currency over national banks under any other provision of law, or to create any obligation for any Federal Reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

''(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

''(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

''(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.

''(3) AGREEMENT TO RESTORE INSTITUTION.—Not later than 45 days after the date of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

''(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

''(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status not later than 180 days after the date of receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board subject to such extension of time as may be granted in the discretion of the Board, divest control of its subsidiary depository institutions.

''(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

''(e) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) CONSERVATORSHIP OR RECEIVERSHIP.—

''(A) APPOINTMENT.—The Board may appoint a conservator or receiver to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

''(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed under paragraph (1), and the wholesale financial institution for which it has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

''(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution) or the Board may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

''(f) BOARD BACKUP AUTHORITY.—

''(1) NOTICE TO THE COMPTROLLER.—Before taking any action under section 8 of the Federal Deposit Insurance Act involving a wholesale financial institution that is chartered as a national bank, the Board shall notify the Comptroller and recommend that the Comptroller take appropriate action. If the Comptroller fails to take the recommended action or to provide an acceptable plan for addressing the concerns of the Board before the close of the 30-day period beginning on the date of receipt of the formal recommendation from the Board, the Board may take such action.

''(2) EXIGENT CIRCUMSTANCES.—Notwithstanding paragraph (1), the Board may exercise its authority without regard to the time period set forth in paragraph (1) where the Board finds that exigent circumstances exist and the Board notifies the Comptroller of the Board's action and of the exigent circumstances.

''(g) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.''.

(c) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—

(1) SECTION 8 DESIGNATIONS.—Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

(2) VOLUNTARY TERMINATION OF INSURED STATUS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 8 the following new section:

**''SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.**

''(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

''(1) the bank provides written notice of the bank's intent to terminate such insured status—

''(A) to the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, not less than 6 months before the effective date of such termination; and

''(B) to all depositors at such bank, not less than 6 months before the effective date of the termination of such status; and

''(2) either—

''(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

''(B) the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

''(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

''(1) an insured savings association; or

''(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978.

''(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

''(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(e) EXIT FEES.—

''(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

''(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

''(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

''(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

''(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

''(g) ADVERTISEMENTS.—

''(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

''(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous,

prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

''(h) NOTICE REQUIREMENTS.—

''(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

''(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

''(A) sent to each depositor's last address of record with the bank; and

''(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.''.

(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting '', or any wholesale financial institution subject to section 9B of this Act'' after ''such Act''.

(d) TECHNICAL AND CONFORMING AMENDMENTS TO THE BANKRUPTCY CODE.—

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking ''; or'' and inserting the following: '', except that—

''(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

''(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or''.

(2) CHAPTER 7 DEBTORS.—Section 109(d) of title 11, United States Code, is amended to read as follows:

''(d) Only a railroad and a person that may be a debtor under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.''.

(3) DEFINITION OF FINANCIAL INSTITUTION.—Section 101(22) of title 11, United States Code, is amended to read as follows:

''(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,''.

(4) SUBCHAPTER V OF CHAPTER 7.—

(A) IN GENERAL.—Section 103 of title 11, United States Code, is amended—

(i) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(ii) by inserting after subsection (d) the following:

''(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.''.

(B) WHOLESALE BANK LIQUIDATION.—Chapter 7 of title 11, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

**''§ 781. Definitions for subchapter**

''In this subchapter—

''(1) the term 'Board' means the Board of Governors of the Federal Reserve System;

''(2) the term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any wholesale bank;

''(3) the term 'national wholesale financial institution' means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and

''(4) the term 'wholesale bank' means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

**''§ 782. Selection of trustee**

''(a) Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

''(b) Whenever the Comptroller of the Currency or the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Comptroller or the Board, as applicable, in the same way and to the same extent that they apply to a United States trustee.

**''§ 783. Additional powers of trustee**

''(a) The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and Iv of this chapter.

''(b) The trustee under this subchapter may, after notice and a hearing—

''(1) sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);

''(2) merge the wholesale bank with a depository institution;

''(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

''(4) transfer assets or liabilities to a depository institution;

''(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), (6), and (9) through (13), and subparagraphs (A) through (H) and (K) of paragraph (4) of section 11(n) of the Federal Deposit Insurance Act, except that—

''(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

''(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

''(c) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

**''§ 784. Right to be heard**

''The Comptroller of the Currency (in the case of a national wholesale financial institution), the Board (in the case of any wholesale bank), or a Federal Reserve bank (in the case of a wholesale bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

(C) CONFORMING AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

''781. Definitions for subchapter.

''782. Selection of trustee.

''783. Additional powers of trustee.

''784. Right to be heard.''.

(e) RESOLUTION OF EDGE CORPORATIONS.—The 16th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 624) is amended to read as follows:

''(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

''(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

''(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.''.

## Subtitle E—Preservation of FTC Authority

**SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.**

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting ''and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval'' before the period at the end of the first sentence.

**SEC. 142. INTERAGENCY DATA SHARING.**

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

**SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.**

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART–SCOTT–RODINO AMENDMENTS.—

(1) BANKS.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956".

(2) BANK HOLDING COMPANIES.—Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is amended by inserting before the semicolon at the end the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 4 of the Bank Holding Company Act of 1956".

**SEC. 144. ANNUAL GAO REPORT.**

(a) IN GENERAL.—By the end of the 1-year period beginning on the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit a report to the Congress on market concentration in the financial services industry and its impact on consumers.

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;

(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial services or products and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

(c) SUNSET.—This section shall not apply after the end of the 5-year period beginning on the date of the enactment of this Act.

**Subtitle F—National Treatment**

**SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.**

Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end the following new paragraph:

"(3) TERMINATION OF GRANDFATHERED RIGHTS.—

"(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) or receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 114 of the Financial Services Act.".

**SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.**

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

"(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.".

**SEC. 153. REPRESENTATIVE OFFICES.**

(a) DEFINITION OF "REPRESENTATIVE OFFICE".—Section 1(b)(15) of the International Banking Act of 1978 (12 U.S.C. 3101(15)) is amended by striking "State agency, or subsidiary of a foreign bank" and inserting "or State agency".

(b) EXAMINATIONS.—Section 10(c) of the International Banking Act of 1978 (12 U.S.C. 3107(c)) is amended by adding at the end the following: "The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or other applicable Federal banking law.".

**SEC. 154. RECIPROCITY.**

(a) NATIONAL TREATMENT REPORTS.—

(1) REPORT REQUIRED IN THE EVENT OF CERTAIN ACQUISITIONS.—

(A) IN GENERAL.—Whenever a person from a foreign country announces its intention to acquire or acquires a bank, a securities underwriter, broker, or dealer, an investment adviser, or insurance company that ranks within the top 50 firms in that line of business in the United States, the Secretary of Commerce, in the case of an insurance company, or the Secretary of the Treasury, in the case of a bank, a securities underwriter, broker, or dealer, or an investment adviser, shall, within the earlier of 6 months of such announcement or such acquisition and in consultation with other appropriate Federal and State agencies, prepare and submit to the Congress a report on whether a United States person would be able, de facto or de jure, to acquire an equivalent sized firm in the country in which such person from a foreign country is located.

(B) ANALYSIS AND RECOMMENDATIONS.—If a report submitted under subparagraph (A) states that the equivalent treatment referred to in such subparagraph, de facto and de jure, is not provided in the country which is the subject of the report, the Secretary of Commerce or the Secretary of the Treasury, as the case may be and in consultation with other appropriate Federal and State agencies, shall include in the report analysis and recommendations as to how that country's laws and regulations would need to be changed so that reciprocal treatment would exist.

(2) REPORT REQUIRED BEFORE FINANCIAL SERVICES NEGOTIATIONS COMMENCE.—The Secretary of Commerce, with respect to insurance companies, and the Secretary of the Treasury, with respect to banks, securities underwriters, brokers, dealers, and investment advisers, shall, not less than 6 months before the commencement of the financial services negotiations of the World Trade Organization and in consultation with other appropriate Federal and State agencies, prepare and submit to the Congress a report containing—

(A) an assessment of the 30 largest financial services markets with regard to whether reciprocal access is available in such markets to United States financial services providers; and

(B) with respect to any such financial services markets in which reciprocal access is not available to United States financial services providers, an analysis and recommendations as to what legislative, regulatory, or enforcement changes would be required to ensure full reciprocity for such providers.

(3) PERSON OF A FOREIGN COUNTRY DEFINED.—For purposes of this subsection, the term "person of a foreign country" means a person, or a person which directly or indirectly owns or controls that person, that is a resident of that country, is organized under the laws of that country, or has its principal place of business in that country.

(b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

(1) NOTICE.—Before preparing any report required under subsection (a), the Secretary of Commerce or the Secretary of the Treasury, as the case may be, shall publish notice that a report is in preparation and seek comment from United States persons.

(2) PRIVILEGED SUBMISSIONS.—Upon the request of the submitting person, any comments or related communications received by the Secretary of Commerce or the Secretary of the Treasury, as the case may be, with regard to the report shall, for the purposes of section 552 of title 5, of the United States Code, be treated as commercial information obtained from a person that is privileged or confidential, regardless of the medium in which the information is obtained. This confidential information shall be the property of the Secretary and shall be privileged from disclosure to any other person. However, this privilege shall not be construed as preventing access to that confidential information by the Congress.

(3) PROHIBITION OF UNAUTHORIZED DISCLOSURES.—No person in possession of confidential information, provided under this section may disclose that information, in whole or

in part, except for disclosure made in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the confidential information of any person.

**Subtitle G—Federal Home Loan Bank System Modernization**

**SEC. 161. SHORT TITLE.**

This subtitle may be cited as the ''Federal Home Loan Bank System Modernization Act of 1999''.

**SEC. 162. DEFINITIONS.**

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) in paragraph (1), by striking ''term 'Board' means'' and inserting ''terms 'Finance Board' and 'Board' mean'';

(2) by striking paragraph (3) and inserting the following:

''(3) STATE.—The term 'State', in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''; and

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

''(13) COMMUNITY FINANCIAL INSTITUTION.—

''(A) IN GENERAL.—The term 'community financial institution' means a member—

''(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

''(ii) that has, as of the date of the transaction at issue, less than $500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

''(B) ADJUSTMENTS.—The $500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.''.

**SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

Section 5(f) of the Home Owners' Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

''(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.''.

**SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

(a) IN GENERAL.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately;

(2) by striking ''(a) Each'' and inserting the following:

''(a) IN GENERAL.—

''(1) ALL ADVANCES.—Each'';

(3) by striking the 2d sentence and inserting the following:

''(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

''(A) providing funds to any member for residential housing finance; and

''(B) providing funds to any community financial institution for small business, agricultural, rural development, or low-income community development lending.'';

(4) by striking ''A Bank'' and inserting the following:

''(3) COLLATERAL.—A Bank'';

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—

(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking ''Deposits'' and inserting ''Cash or deposits'';

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the 2d sentence; and

(C) by inserting after subparagraph (D) (as so redesignated by paragraph (1) of this subsection) the following new subparagraph:

''(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.'';

(6) in paragraph (5)—

(A) in the 2d sentence, by striking ''and the Board'';

(B) in the 3d sentence, by striking ''Board'' and inserting ''Federal home loan bank''; and

(C) by striking ''(5) Paragraphs (1) through (4)'' and inserting the following:

''(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)''; and

(7) by adding at the end the following:

''(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

''(6) DEFINITIONS.—For purposes of this subsection, the terms 'small business', 'agriculture', 'rural development', and 'low-income community development' shall have the meanings given those terms by rule or regulation of the Finance Board.''.

(b) CLERICAL AMENDMENT.—The section heading for section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

**''SEC. 10. ADVANCES TO MEMBERS.''.**

(c) CONFORMING AMENDMENTS RELATING TO MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—The 1st of the 2 subsections designated as subsection (e) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(1)) is amended—

(1) in the last sentence of paragraph (1), by inserting ''or, in the case of any community financial institution, for the purposes described in subsection (a)(2)'' before the period; and

(2) in paragraph (5)(C), by inserting ''except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m))'' before the period.

**SEC. 165. ELIGIBILITY CRITERIA.**

Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) in paragraph (2)(A), by inserting, ''(other than a community financial institution)'' after ''institution''; and

(2) by adding at the end the following new paragraph:

''(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).''.

**SEC. 166. MANAGEMENT OF BANKS.**

(a) BOARD OF DIRECTORS.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) by striking ''(d) The term'' and inserting the following:

''(d) TERMS OF OFFICE.—The term''; and

(2) by striking ''shall be two years''.

(b) COMPENSATION.—Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking '', subject to the approval of the board''.

(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(d) SECTION 12.—Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended—

(1) in subsection (a)—

(A) by striking '', but, except'' and all that follows through ''ten years'';

(B) by striking ''subject to the approval of the Board'' the first place that term appears;

(C) by striking ''and, by its Board of directors,'' and all that follows through ''agent of such bank,'' and inserting ''and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank''; and

(D) by striking ''Board of directors'' where such term appears in the penultimate sentence and inserting ''board of directors''; and

(2) in subsection (b), by striking ''loans banks'' and inserting ''loan banks''.

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Section 2B(a) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)) is amended by adding at the end the following new paragraphs:

''(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive officer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

''(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

''(7) To sue and be sued, by and through its own attorneys.''.

(2) TECHNICAL AMENDMENT.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended

by striking ''Federal Home Loan Bank Board,'' and inserting ''Director of the Office of Thrift Supervision, ''the Federal Housing Finance Board,''.

(f) ELIGIBILITY TO SECURE ADVANCES.—

(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the 2d sentence, by striking ''with the approval of the Board''; and

(B) in the 3d sentence, by striking '', subject to the approval of the Board,''.

(2) SECTION 10.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) in subsection (c)—

(i) in the 1st sentence, by striking ''Board'' and inserting ''Federal home loan bank''; and

(ii) by striking the 2d sentence;

(B) in subsection (d)—

(i) in the 1st sentence, by striking ''and the approval of the Board''; and

(ii) by striking ''Subject to the approval of the Board, any'' and inserting ''Any''; and

(C) in subsection (j)(1)—

(i) by striking ''to subsidize the interest rate on advances'' and inserting ''to provide subsidies, including subsidized interest rates on advances'';

(ii) by striking ''Pursuant'' and inserting the following:

''(A) ESTABLISHMENT.—Pursuant''; and

(iii) by adding at the end the following new subparagraph:

''(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.''.

(g) SECTION 16.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) in the 3d sentence—

(A) by striking ''net earnings'' and inserting ''previously retained earnings or current net earnings''; and

(B) by striking '', and then only with the approval of the Federal Housing Finance Board''; and

(2) by striking the 4th sentence.

(h) SECTION 18.—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

**SEC. 167. RESOLUTION FUNDING CORPORATION.**

(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:

''(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

''(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

''(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

''(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

''(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on January 1, 1999. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act, as amended by this section.

**SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:

**''SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

''(a) REGULATIONS.—

''(1) CAPITAL STANDARDS.—Not later than 1 year after the date of enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

''(A) the leverage requirement specified in paragraph (2); and

''(B) the risk-based capital requirements, in accordance with paragraph (3).

''(2) LEVERAGE REQUIREMENT.—

''(A) IN GENERAL.—The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.

''(B) TREATMENT OF STOCK AND RETAINED EARNINGS.—In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock shall be multiplied by 1.5, the paid-in value of the outstanding Class C stock and the amount of retained earnings shall be multiplied by 2.0, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

''(3) RISK-BASED CAPITAL STANDARDS.—

''(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

''(i) the credit risk to which the Federal home loan bank is subject; and

''(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

''(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

''(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by the Finance Board under paragraph (1) shall—

''(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

''(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

''(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares; and

''(iii) Class C stock, which shall be nonredeemable;

''(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

''(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

''(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

''(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

''(A) permanent capital of a Federal home loan bank shall include (as determined in accordance with generally accepted accounting principles)—

''(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

''(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

''(iii) the retained earnings of the bank; and

''(B) total capital of a Federal home loan bank shall include—

''(i) permanent capital;

''(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

''(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

''(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

''(6) TRANSITION PERIOD.—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of enactment of the Federal

Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

''(b) CAPITAL STRUCTURE PLAN.—

''(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

''(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

''(B) meets the requirements of subsection (c); and

''(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

''(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

''(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

''(1) MINIMUM INVESTMENT.—

''(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

''(B) INVESTMENT ALTERNATIVES.—

''(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

''(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

''(I) a stock purchase based on a percentage of the total assets of a member; or

''(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

''(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

''(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

''(2) TRANSITION RULE.—

''(A) IN GENERAL.—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of enactment of the Financial Services Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

''(B) INTERIM PURCHASE REQUIREMENTS.—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

''(3) DISPOSITION OF SHARES.—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

''(4) CLASSES OF STOCK.—

''(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

''(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

''(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

''(D) LIQUIDATION OF CLAIMS.—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

''(5) LIMITED TRANSFERABILITY OF STOCK.—The capital structure plan of a Federal home loan bank shall—

''(A) provide that—

''(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

''(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

''(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

''(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

''(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

''(B) at least 1 major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

''(d) TERMINATION OF MEMBERSHIP.—

''(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

''(2) INVOLUNTARY WITHDRAWAL.—

''(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

''(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

''(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for the member.

''(B) STOCK DISPOSITION.—An institution, the membership of which is terminated in accordance with subparagraph (A)—

''(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

''(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

''(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

''(C) COMMENCEMENT OF NOTICE PERIOD.—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

''(i) the date of such termination; or

''(ii) the date on which the member has provided notice of its intent to redeem such stock.

''(3) LIQUIDATION OF INDEBTEDNESS.—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

''(e) REDEMPTION OF EXCESS STOCK.—

''(1) IN GENERAL.—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

''(2) EXCESS STOCK.—Shares of stock held by a member shall not be deemed to be 'excess stock' for purposes of this subsection by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

''(3) PRIORITY.—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period,

unless the member has no Class A stock outstanding that could be redeemed as excess.

''(f) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

''(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

''(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

''(h) TREATMENT OF RETAINED EARNINGS.—

''(1) IN GENERAL.—The holders of the Class C stock of a Federal home loan bank, and any other classes of nonredeemable stock approved by the Finance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

''(2) NO NONREDEEMABLE CLASSES OF STOCK.—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership in, and a private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

''(3) EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

''(4) LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.''.

## Subtitle H—ATM Fee Reform

### SEC. 171. SHORT TITLE.

This subtitle may be cited as the ''ATM Fee Reform Act of 1999''.

### SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following new paragraph:

''(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

''(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

''(i) the fact that a fee is imposed by such operator for providing the service; and

''(ii) the amount of any such fee.

''(B) NOTICE REQUIREMENTS.—

''(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

''(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

''(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

''(i) the consumer receives such notice in accordance with subparagraph (B); and

''(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

''(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

''(i) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

''(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term 'automated teller machine operator' means any person who—

''(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

''(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

''(iii) HOST TRANSFER SERVICES.—The term 'host transfer services' means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.''.

### SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking ''and'' at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting ''; and''; and

(3) by inserting after paragraph (9) the following new paragraph:

''(10) a notice to the consumer that a fee may be imposed by—

''(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

''(B) any national, regional, or local network utilized to effect the transaction.''.

### SEC. 174. FEASIBILITY STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic fund transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee which will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(3)(D)(ii) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

(2) Implementation and operating costs.

(3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.

(4) The period of time which would be reasonable for implementing any such notice requirement.

(5) The extent to which consumers would benefit from any such notice requirement.

(6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.

(c) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and

(2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, how such requirement should be implemented.

### SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.

Section 910 of the Electronic Fund Transfer Act (15 U.S.C 1693h) is amended by adding at the end the following new subsection:

''(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).''.

## Subtitle I—Direct Activities of Banks

### SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: ''In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a

State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).''.

**Subtitle J—Deposit Insurance Funds**

**SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

(a) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.

(3) MERGER ISSUES.—Issues relating to the planned merger of the funds, including the cost of merging the funds and the manner in which such costs will be distributed among the members of the respective funds.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress on the study conducted pursuant to subsection (a).

(2) CONTENTS OF REPORT.—The report shall include—

(A) detailed findings of the Board of Directors with regard to the issues described in subsection (a);

(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and

(C) such recommendations for legislative and administrative action as the Board of Directors determines to be necessary or appropriate to preserve the safety and soundness of the deposit insurance funds, reduce the risks to such funds, provide for an efficient merger of such funds, and for other purposes.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act.

(2) BIF AND SAIF MEMBERS.—The terms ''Bank Insurance Fund member'' and ''Savings Association Insurance Fund member'' have the same meanings as in section 7(l) of the Federal Deposit Insurance Act.

**SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES.**

(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) DIF SPECIAL RESERVES.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking ''(6) and (7)'' and inserting ''(5), (6), and (7)''; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following:

''(ii) by redesignating paragraph (8) as paragraph (5).''.

**Subtitle K—Miscellaneous Provisions**

**SEC. 191. TERMINATION OF ''KNOW YOUR CUSTOMER'' REGULATIONS.**

(a) IN GENERAL.—None of the proposed regulations described in subsection (b) may be published in final form and, to the extent any such regulation has become effective before the date of the enactment of this Act, such regulation shall cease to be effective as of such date.

(b) PROPOSED REGULATIONS DESCRIBED.—The proposed regulations referred to in subsection (a) are as follows:

(1) The regulation proposed by the Comptroller of the Currency to amend part 21 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(2) The regulation proposed by the Director of the Office of Thrift Supervision to amend part 563 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(3) The regulation proposed by the Board of Governors of the Federal Reserve System to amend parts 208, 211, and 225 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(4) The regulation proposed by the Federal Deposit Insurance Corporation to amend part 326 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

**SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC FUND TRANSFERS.**

(a) STUDY.—The Secretary of the Treasury shall conduct a feasibility study to determine—

(1) whether all electronic payments issued by Federal agencies could be routed through the Regional Finance Centers of the Department of the Treasury for verification and reconciliation;

(2) whether all electronic payments made by the Federal Government could be subjected to the same level of reconciliation as United States Treasury checks, including matching each payment issued with each corresponding deposit at financial institutions;

(3) whether the appropriate computer security controls are in place in order to ensure the integrity of electronic payments;

(4) the estimated costs of implementing, if so recommended, the processes and controls described in paragraphs (1), (2), and (3); and

(5) a possible timetable for implementing those processes if so recommended.

(b) REPORT TO CONGRESS.—Not later than October 1, 2000, the Secretary of the Treasury shall submit a report to Congress containing the results of the study required by subsection (a).

(c) DEFINITION.—For purposes of this section, the term ''electronic payment'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tapes so as to order, instruct, or authorize a debit or credit to a financial account.

**SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST**

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

(b) SPECIFIC CONFLICT REQUIRED TO BE ADDRESSED.—In the course of the study required under subsection (a), the Comptroller General shall address the conflict of interest faced by the Board of Governors of the Federal Reserve System between the role of the Board as a regulator of the payment system, generally, and its participation in the payment system as a competitor with private entities who are providing payment services.

(c) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study required under this section, together with such recommendations for such legislative or administrative actions as the Comptroller General may determine to be appropriate, including recommendations for resolving any such conflict of interest.

**SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REGULATIONS.**

(a) IN GENERAL.—In accordance with the finding in the Board of Governors of the Federal Reserve System Staff Study Numbered 171 (April, 1998) that ''Further research covering more and different types of regulations and regulatory requirements is clearly needed to make informed decisions about regulations'', the Board of Governors of the Federal Reserve System, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall conduct a comprehensive study of the total annual costs and benefits of all Federal financial regulations and regulatory requirements applicable to banks.

(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit a comprehensive report to the Congress containing the findings and conclusions of the Board in connection with the study required under subsection (a) and such recommendations for legislative and administrative action as the Board may determine to be appropriate.

**SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.**

(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) REPORT REQUIRED.—Within 1 year of the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) DEFINITION.—For purposes of this section, the term ''Federal banking agencies'' means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

**SEC. 196. REGULATION OF UNINSURED STATE MEMBER BANKS.**

Section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph:

''(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.''.

**SEC. 197. CLARIFICATION OF SOURCE OF STRENGTH DOCTRINE.**

Section 18 of the Federal Deposit Insurance Act (21 U.S.C. 1828) is amended by adding at the end the following new subsection:

''(t) LIMITATION ON CLAIMS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law other than paragraph (2), no person shall have any claim for monetary damages or return of assets or other property against any Federal banking agency (including in its capacity as conservator or receiver) relating to the transfer of money, assets, or other property to increase the capital of an insured depository institution by any depository institution holding company or controlling shareholder for such depository institution, or any affiliate or subsidiary of such depository institution, if at the time of the transfer—

''(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

''(B) the depository institution is undercapitalized, significantly undercapitalized, or critically undercapitalized (as defined in section 38 of this Act); and

''(C) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

''(2) EXCEPTION.—No provision of this subsection shall be construed as limiting—

''(A) the right of an insured depository institution, a depository institution holding company, or any other agency or person to seek direct review of an order or directive issued by a Federal banking agency under this Act, the Bank Holding Company Act of 1956, the National Bank Receivership Act, the Bank Conservation Act, or the Home Owners' Loan Act;

''(B) the rights of any party to a contract pursuant to section 11(e) of this Act; or

''(C) the rights of any party to a contract with a depository institution holding company or a subsidiary of a depository institution holding company (other than an insured depository institution).''

**SEC. 198. INTEREST RATES AND OTHER CHARGES AT INTERSTATE BRANCHES.**

Section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

''(f) APPLICABLE RATE AND OTHER CHARGE LIMITATIONS.—

''(1) IN GENERAL.—Except as provided for in paragraph (3), upon the establishment of a branch of any insured depository institution in a host State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by any insured depository institution in such State shall be equal to not more than the greater of—

''(A) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution, statutory, or other lows of the home State of the insured depository institution establishing any such branch, without reference to this section, as such maximum interest rate or amount of interest may change from time to time; or

''(B) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by an insured depository institution under the constitution, statutory, or other laws of the host State, without reference to this section.

''(2) PREEMPTION.—The limitations established under paragraph (1) shall apply only in any State that has a constitutional provision that sets a maximum lawful rate of interest on any contract at not more than 5 percent per annum above the Federal Reserve Discount Rate or 90-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which the State is located.

''(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as superseding section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980.

**Subtitle L-Effective Date of Title**

**SEC. 199. EFFECTIVE DATE.**

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

**TITLE II—FUNCTIONAL REGULATION**

**Subtitle A—Brokers and Dealers**

**SEC. 201. DEFINITION OF BROKER.**

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

''(4) BROKER.—

''(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

''(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

''(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

''(I) such broker or dealer is clearly identified as the person performing the brokerage services;

''(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

''(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

''(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

''(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

''(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

''(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

''(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

''(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

''(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee or fiduciary capacity in its trust department, or another department where the trust or fiduciary activity is regularly examined by bank examiners under the same standards and in the same way as such activities are examined in the trust department, and—

''(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

''(II) does not solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

''(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(iv) CERTAIN STOCK PURCHASE PLANS.—

''(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar

benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

''(bb) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

''(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

''(III) ISSUER PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's plan for the purchase or sale of that issuer's shares, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

''(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

''(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1999; or

''(bb) otherwise permitted by the Commission.

''(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

''(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate (as defined in section 2 of the Bank Holding Company Act of 1956) of the bank other than—

''(I) a registered broker or dealer; or

''(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

''(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

''(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

''(II) at any time after the date that is 1 year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

''(III) effects transactions exclusively with qualified investors.

''(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

''(I) IN GENERAL.—The bank, as part of customary banking activities—

''(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

''(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

''(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

''(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer.

''(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

''(ix) EXCEPTED BANKING PRODUCTS.—The bank effects transactions in excepted banking products, as defined in section 206 of the Financial Services Act of 1999.

''(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

''(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

''(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

''(i) the bank directs such trade to a registered broker or dealer for execution;

''(ii) the trade is a cross trade or other substantially similar trade of a security that—

''(I) is made by the bank or between the bank and an affiliated fiduciary; and

''(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

''(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

''(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—

''(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

''(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

''(iii) in any other similar capacity.

''(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

''(i) was, immediately prior to the enactment of the Financial Services Act of 1999, subject to section 15(e) of this title; and

''(ii) is subject to such restrictions and requirements as the Commission considers appropriate.''.

**SEC. 202. DEFINITION OF DEALER.**

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

''(5) DEALER.—

''(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

''(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

''(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

''(I) for the bank; or

''(II) for accounts for which the bank acts as a trustee or fiduciary.

''(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

''(I) the bank;

''(II) an affiliate of any such bank other than a broker or dealer; or

''(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

''(iv) EXCEPTED BANKING PRODUCTS.—The bank buys or sells excepted banking products, as defined in section 206 of the Financial Services Act of 1999.

''(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

''(I) to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

''(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

''(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).''.

**SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.**

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (i) the following new subsection:

''(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.''.

**SEC. 204. INFORMATION SHARING.**

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

''(t) RECORDKEEPING REQUIREMENTS.—

''(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

''(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.''.

**SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

''(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

''(1) LIMITATION.—The Commission shall not—

''(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

''(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A);

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

''(2) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (1) of this subsection with respect to any new hybrid product unless the Commission determines that—

''(A) the new hybrid product is a security; and

''(B) imposing such requirement is necessary or appropriate in the public interest and for the protection of investors, consistent with the requirements of section 3(f).

''(3) CONSIDERATIONS.—In making a determination under paragraph (2), the Commission shall consider—

''(A) the nature of the new hybrid product; and

''(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

''(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the Board of Governors of the Federal Reserve System regarding the nature of the new hybrid product, the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws, and the impact of the proposed rule on the banking industry.

''(5) NEW HYBRID PRODUCT.—For purposes of this subsection, the term 'new hybrid product' means a product that—

''(A) was not subjected to regulation by the Commission as a security prior to the date of enactment of this subsection; and

''(B) is not an excepted banking product, as such term is defined in section 206 of the Financial Services Act of 1999.''.

**SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.**

(a) DEFINITION OF EXCEPTED BANKING PRODUCT.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5)), the term ''excepted banking product'' means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker's acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

(6) a derivative instrument that involves or relates to—

(A) currencies, except options on currencies that trade on a national securities exchange;

(B) interest rates, except interest rate derivative instruments that—

(i) are based on a security or a group or index of securities (other than government securities or a group or index of government securities);

(ii) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange; or

(C) commodities, other rates, indices, or other assets, except derivative instruments that—

(i) are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities);

(ii) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange.

(b) CLASSIFICATION LIMITED.—Classification of a particular product as an excepted banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(c) INCORPORATED DEFINITIONS.—For purposes of this section—

(1) the terms ''bank'', ''qualified investor'', and ''securities laws'' have the same meanings given in section 3(a) of the Securities Exchange Act of 1934, as amended by this Act; and

(2) the term ''government securities'' has the meaning given in section 3(a)(42) of such Act (as amended by this Act), and, for purposes of this section, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities.

**SEC. 207. ADDITIONAL DEFINITIONS.**

Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraphs:

''(54) DERIVATIVE INSTRUMENT.—

''(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include an excepted banking product, as defined in paragraphs (1) through (5) of section 206(a) of the Financial Services Act of 1999.

''(B) CLASSIFICATION LIMITED.—Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

''(55) QUALIFIED INVESTOR.—

''(A) DEFINITION.—For purposes of this title, the term 'qualified investor' means—

''(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

''(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

''(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

''(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

''(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

''(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

''(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

''(viii) any associated person of a broker or dealer other than a natural person;

''(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

''(x) the government of any foreign country;

''(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(xii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

''(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

''(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.''.

**SEC. 208. GOVERNMENT SECURITIES DEFINED.**

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; or''; and

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

''(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.''.

**SEC. 209. EFFECTIVE DATE.**

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

**SEC. 210. RULE OF CONSTRUCTION.**

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

## Subtitle B—Bank Investment Company Activities

**SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.**

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking ''(f) Every registered'' and inserting the following:

''(f) CUSTODY OF SECURITIES.—

''(1) Every registered'';

(3) by redesignating the second, third, fourth, and fifth sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

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

''(6) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.''.

(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

''(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).''.

(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (2) the following:

''(3) as custodian.''.

**SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.**

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—

(1) by striking ''or'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; or''; and

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

''(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.''.

**SEC. 213. INDEPENDENT DIRECTORS.**

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) the investment company;

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

''(III) any account over which the investment company's investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) the investment company;

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

''(III) any account for which the investment company's investment adviser has borrowing authority,''.

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) any investment company for which the investment adviser or principal underwriter serves as such;

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

''(III) any account over which the investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) any investment company for which the investment adviser or principal underwriter serves as such;

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

''(III) any account for which the investment adviser has borrowing authority,''.

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking ''bank, except'' and inserting ''bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

**SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

''(a) MISREPRESENTATION OF GUARANTEES.—

''(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

''(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

''(B) has been insured by the Federal Deposit Insurance Corporation; or

''(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

''(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose

that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

''(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the same meanings given in section 3 of the Federal Deposit Insurance Act.''.

**SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

''(6) The term 'broker' has the same meaning given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.''.

**SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

''(11) The term 'dealer' has the same meaning given in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

**SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.**

(a) INVESTMENT ADVISER.—Section 202(a)(11)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(A)) is amended by striking ''investment company'' and inserting ''investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser''.

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

''(26) The term 'separately identifiable department or division' of a bank means a unit—

''(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

''(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.''.

**SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

''(3) The term 'broker' has the same meaning given in section 3 of the Securities Exchange Act of 1934.''.

**SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

''(7) The term 'dealer' has the same meaning given in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

**SEC. 220. INTERAGENCY CONSULTATION.**

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

**''SEC. 210A. CONSULTATION.**

''(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

''(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

''(A) of any—

''(i) bank holding company;

''(ii) bank; or

''(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

''(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

''(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

''(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any other provision of law.

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning given in section 3 of the Federal Deposit Insurance Act.''.

**SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking ''or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian'' and inserting ''or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

''(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: '', if—

''(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public; and

''(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law''.

**SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.**

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:

''(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

''(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

''(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

''(i) transfer the power to vote the shares of the investment company through to—

''(I) the beneficial owners of the shares;

''(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

''(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

''(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

''(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

''(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).''.

**SEC. 223. STATUTORY DISQUALIFICATION FOR BANK WRONGDOING.**

Section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and (2) by striking ''securities dealer, transfer agent,'' and inserting ''securities dealer, bank, transfer agent,''.

**SEC. 224. CONFORMING CHANGE IN DEFINITION.**

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking ''(A) a banking institution organized under the laws of the United States'' and inserting ''(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)''.

**SEC. 225. CONFORMING AMENDMENT.**

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:

''(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

**SEC. 226. CHURCH PLAN EXCLUSION.**

Section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

(1) by redesignating clauses (i) and (ii) of subparagraph (B) as subclauses (I) and (II), respectively;

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

(3) by inserting ''(A)'' after ''(14)''; and

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

''(B) If a registered investment company would be excluded from the definition of investment company under this subsection but for the fact that some of the company's assets do not satisfy the condition of subparagraph (A)(ii) of this paragraph, then any investment adviser to the company or affiliated person of such investment adviser shall not be subject to the requirements of section 15(g)(1)(B) with respect to shares of the investment company.''.

**SEC. 227. EFFECTIVE DATE.**

This subtitle shall take effect 90 days after the date of the enactment of this Act.

## Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

**SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.**

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by redesignating subsection (i) as subsection (k); and

(2) by inserting after subsection (h) the following new subsection:

''(i) INVESTMENT BANK HOLDING COMPANIES.—

''(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

''(A) IN GENERAL.—An investment bank holding company that is not—

''(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association;

''(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

''(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

''(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

''(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

''(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

''(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

''(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

''(A) RECORDKEEPING AND REPORTING.—

''(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

''(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

''(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

''(I) a balance sheet and income statement;

''(II) an assessment of the consolidated capital of the supervised investment bank holding company;

''(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

''(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

''(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

''(C) EXAMINATION AUTHORITY.—

''(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

''(I) inform the Commission regarding—

''(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

''(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

''(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

''(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.

''(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

''(I) the company; and

''(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

''(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

''(4) HOLDING COMPANY CAPITAL.—

''(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

''(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

''(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

''(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

''(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

''(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

''(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

''(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

''(6) DEFINITIONS.—For purposes of this subsection:

''(A) The term 'investment bank holding company' means—

''(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

''(ii) the associated persons of the investment bank holding company.

''(B) The term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

''(C) The terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', 'savings association', and 'wholesale financial institution' have the same meanings given in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

''(D) The term 'insured bank' has the same meaning given in section 3 of the Federal Deposit Insurance Act.

''(E) The term 'foreign bank' has the same meaning given in section 1(b)(7) of the International Banking Act of 1978.

''(F) The terms 'person associated with an investment bank holding company' and 'associated person of an investment bank holding company' mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.''.

''(j) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraph:

''(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

''(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

''(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

''(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

''(iv) the Commission in the case of all other such institutions.''.

(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking ''this title'' and inserting ''law''; and

(B) by inserting '', examination reports'' after ''financial records''.

### Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products

#### SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.

(a) REVISED REGULATIONS REQUIRED.—Within one year after the date of enactment of this Act, each Federal financial regulatory authority shall prescribe rules, or revisions to its rules, to improve the accuracy, simplicity, and completeness, and to make more consistent, the disclosure of information by persons subject to the jurisdiction of such regulatory authority concerning any commissions, fees, or other costs incurred by customers in the acquisition of financial products.

(b) CONSULTATION.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consult with each other and with appropriate State financial regulatory authorities.

(c) CONSIDERATION OF EXISTING DISCLOSURES.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consider the sufficiency and appropriateness of then existing laws and rules applicable to persons subject to their jurisdiction, and may prescribe exemptions from the rules and revisions required by subsection (a) to the extent appropriate in light of the objective of this section to increase the consistency of disclosure practices.

(d) ENFORCEMENT.—Any rule prescribed by a Federal financial regulatory authority pursuant to this section shall, for purposes of enforcement, be treated as a rule prescribed by such regulatory authority pursuant to the statute establishing such regulatory authority's jurisdiction over the persons to whom such rule applies.

(e) DEFINITION.—As used in this section, the term ''Federal financial regulatory authority'' means the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and any self-regulatory organization under the supervision of any of the foregoing.

## TITLE III—INSURANCE

### Subtitle A—State Regulation of Insurance

#### SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled ''An Act to express the intent of the Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the ''McCarran-Ferguson Act'' remains the law of the United States.

#### SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104.

#### SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the 11th undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

#### SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 305, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term ''insurance'' means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

**SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.**

(a) GENERAL PROHIBITION.—No national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance.

(b) NONDISCRIMINATION PARITY EXCEPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agency, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) COORDINATION WITH ''WILDCARD'' PROVISION.—A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) GRANDFATHERING WITH CONSISTENT REGULATION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) ''AFFILIATE'' AND ''SUBSIDIARY'' DEFINED.—For purposes of this section, the terms ''affiliate'' and ''subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) RULE OF CONSTRUCTION.—No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

**SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.**

(a) FILING IN COURT OF APPEALS.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance, as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) STANDARD OF REVIEW.—The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

**SEC. 307. CONSUMER PROTECTION REGULATIONS.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 46 (as added by section 122(b) of this Act) the following new section:

**''SEC. 47. CONSUMER PROTECTION REGULATIONS.**

''(a) REGULATIONS REQUIRED.—

''(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of the Financial Services Act of 1999, consumer protection regulations (which the agencies jointly determine to be appropriate) that—

''(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

''(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

''(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

''(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

''(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

''(1) the purchase of an insurance product from the institution or any of its affiliates; or

''(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

''(1) DISCLOSURES.—

''(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

''(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

''(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

''(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

''(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

''(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

''(i) 'NOT FDIC–INSURED'.

''(ii) 'NOT GUARANTEED BY THE BANK'.

''(iii) 'MAY GO DOWN IN VALUE'.

''(iv) 'NOT INSURED BY ANY GOVERNMENT AGENCY'.

''(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

''(D) CONSUMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

''(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

''(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or

''(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.

''(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

''(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

''(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following:

''(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

''(B) REFERRALS.—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

''(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

''(e) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

''(1) establish a group within each regulatory agency to receive such complaints;

''(2) develop procedures for investigating such complaints;

''(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

''(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

''(f) EFFECT ON OTHER AUTHORITY.—

''(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

''(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

''(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

''(2) COORDINATION WITH STATE LAW.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

''(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.

''(h) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term 'insurance product' includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.''.

**SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.**

Except as provided in section 104(a)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

**SEC. 309. INTERAGENCY CONSULTATION.**

(a) PURPOSE.—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator

may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) APPROPRIATE FEDERAL BANKING AGENCY; INSURED DEPOSITORY INSTITUTION.—The terms ''appropriate Federal banking agency'' and ''insured depository institution'' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms ''Board'', ''financial holding company'', and ''wholesale financial institution'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

**SEC. 310. DEFINITION OF STATE.**

For purposes of this subtitle, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

**Subtitle B—National Association of Registered Agents and Brokers**

**SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.**

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of enactment of this Act, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

**SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.**

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the ''Association'').

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

**SEC. 323. PURPOSE.**

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

**SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the ''NAIC'').

**SEC. 325. MEMBERSHIP.**

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

**SEC. 326. BOARD OF DIRECTORS.**

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the ''Board'') for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

**SEC. 327. OFFICERS.**

(a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

**SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall

take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) for such longer period as to which the Association consents.

(4) STANDARDS FOR REVIEW.—

(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) ALTERNATE PROCEDURE.—

(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.

(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as ''disciplinary action''), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

**SEC. 329. ASSESSMENTS.**

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

**SEC. 330. FUNCTIONS OF THE NAIC.**

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) REPORT BY ASSOCIATION.—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

**SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.**

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

**SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

**SEC. 333. RELATIONSHIP TO STATE LAW.**

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) PROHIBITED ACTIONS.—No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

**SEC. 334. COORDINATION WITH OTHER REGULATORS.**

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

**SEC. 335. JUDICIAL REVIEW.**

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

**SEC. 336. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) HOME STATE.—The term ''home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) INSURANCE.—The term ''insurance'' means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) INSURANCE PRODUCER.—The term ''insurance producer'' means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) STATE.—The term ''State'' includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) STATE LAW.—The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

**Subtitle C—Rental Car Agency Insurance Activities**

**SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHICLE RENTALS.**

(a) PROTECTION AGAINST RETROACTIVE APPLICATION OF REGULATORY AND LEGAL ACTION.—Except as provided in subsection (b), during the 3-year period beginning on the date of the enactment of this Act, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) PREEMINENCE OF STATE INSURANCE LAW.—No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) SCOPE OF APPLICATION.—This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) MOTOR VEHICLE DEFINED.—For purposes of this section, the term ''motor vehicle'' has the meaning given to such term in section 13102 of title 49, United States Code.

**Subtitle D—Confidentiality**

**SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.**

(a) IN GENERAL.—A company which underwrites or sells annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than credit-related insurance) and any subsidiary or affiliate thereof shall maintain a practice of protecting the confidentiality of individually identifiable customer health and medical and genetic information and may disclose such information only—

(1) with the consent, or at the direction, of the customer;

(2) for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance

claims, administering insurance benefits (including utilization review activities), providing information to the customer's physician or other health care provider, participating in research projects, enabling the purchase, transfer, merger, or sale of any insurance-related business, or as otherwise required or specifically permitted by Federal or State law; or

(3) in connection with—

(A) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means;

(B) the transfer of receivables, accounts, or interest therein;

(C) the audit of the debit, credit, or other payment information;

(D) compliance with Federal, State, or local law;

(E) compliance with a properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities as governed by the requirements of this section; or

(F) fraud protection, risk control, resolving customer disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.

(b) STATE ACTIONS FOR VIOLATIONS.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, State insurance regulator, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction.

(c) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), subsection (a) shall take effect on February 1, 2000.

(2) SUNSET.—Subsection (a) shall not take effect if, or shall cease to be effective on and after the date on which, legislation is enacted that satisfies the requirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(d) CONSULTATION.—While subsection (a) is in effect, State insurance regulatory authorities, through the National Association of Insurance Commissioners, shall consult with the Secretary of Health and Human Services in connection with the administration of such subsection.

## TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

### SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND LOAN HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) TERMINATION OF EXPANDED POWERS FOR NEW UNITARY HOLDING COMPANY.—

''(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

''(i) under paragraph (1)(C) or (2); or

''(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

''(B) EXISTING UNITARY HOLDING COMPANIES AND THE SUCCESSORS TO SUCH COMPANIES.—Subparagraph (A) shall not apply, and paragraph (3) shall continue to apply, to a company (or any subsidiary of such company) that—

''(i) either—

''(I) acquired 1 or more savings associations described in paragraph (3) pursuant to applications at least 1 of which was filed on or before March 4, 1999; or

''(II) subject to subparagraph (C), became a savings and loan holding company by acquiring control of the company described in subclause (I); and

''(ii) continues to control the savings association referred to in clause (i)(II) or the successor to any such savings association.

''(C) NOTICE PROCESS FOR NONFINANCIAL ACTIVITIES BY A SUCCESSOR UNITARY HOLDING COMPANY.—

''(i) NOTICE REQUIRED.—Subparagraph (B) shall not apply to any company described in subparagraph (B)(i)(II) which engages, directly or indirectly, in any activity other than activities described in clauses (i) and (ii) of subparagraph (A), unless—

''(I) in addition to an application to the Director under this section to become a savings and loan holding company, the company submits a notice to the Board of Governors of the Federal Reserve System of such nonfinancial activities in the same manner as a notice of nonbanking activities is filed with the Board under section 4(j) of the Bank Holding Company Act of 1956; and

''(II) before the end of the applicable period under such section 4(j), the Board either approves or does not disapprove of the continuation of such activities by such company, directly or indirectly, after becoming a savings and loan holding company.

''(ii) PROCEDURE.—Section 4(j) of the Bank Holding Company Act of 1956, including the standards for review, shall apply to any notice filed with the Board under this subparagraph in the same manner as it applies to notices filed under such section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(3)) is amended by striking ''Notwithstanding'' and inserting ''Except as provided in paragraph (9) and notwithstanding''.

(c) CONFORMING AMENDMENT.—Section 10(o)(5) of the Home Owners' Loan Act (12 U.S.C. 1467a(o)(5)) is amended—

(1) in subparagraph (E), by striking '', except subparagraph (B)''; and

(2) by adding at the end the following new subparagraph:

''(F) In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.''.

### SEC. 402. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.

Section 2 of the Act entitled ''An Act to enable national banking associations to increase their capital stock and to change their names or locations'', approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

''(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term 'Federal' in the name of such institution if such depository institution remains an insured depository institution.

''(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings as in section 3 of the Federal Deposit Insurance Act.''.

## TITLE V—PRIVACY

### Subtitle A—Privacy Policy

### SEC. 501. DEPOSITORY INSTITUTION PRIVACY POLICIES.

Section 6 of the Bank Holding Company Act of 1956 (as added by section 103 of this title) is amended by adding at the end the following new subsection:

''(h) DEPOSITORY INSTITUTION PRIVACY POLICIES.—

''(1) DISCLOSURE REQUIRED.—In the case of any insured depository institution which becomes affiliated under this section with a financial holding company, the privacy policy of such depository institution shall be clearly and conspicuously disclosed—

''(A) with respect to any person who becomes a customer of the depository institution any time after the depository institution becomes affiliated with such company, to such person at the time at which the business relationship between the customer and the institution is initiated; and

''(B) with respect to any person who already is a customer of the depository institution at the time the depository institution becomes affiliated with such company, to such person within a reasonable time after the affiliation is consummated.

''(2) INFORMATION TO BE INCLUDED.—The privacy policy of an insured depository institution which is disclosed pursuant to paragraph (1) shall include—

''(A) the policy of the institution with respect to disclosing customer information to third parties, other than agents of the depository institution, for marketing purposes; and

''(B) the disclosures required under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act with regard to the right of the customer, at any time, to direct that information referred to in such section not be shared with affiliates of the depository institution.

''(3) APPLICABILITY.—For purposes of section 10 of the Home Owners' Loan Act, this subsection and subsection (i) shall apply with regard to a savings and loan holding company and any affiliate or insured depository institution subsidiary of such holding company to the same extent and in the same manner this subsection and subsection (i) apply with respect to a financial holding company, affiliate of a financial holding company, or insured depository institution subsidiary of a financial holding company.''.

### SEC. 502. STUDY OF CURRENT FINANCIAL PRIVACY LAWS.

(a) IN GENERAL.—The Federal banking agencies shall conduct a study of whether existing laws which regulate the sharing of customer information by insured depository institutions with affiliates of such institutions adequately protect the privacy rights of customers of such institutions.

(b) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress containing the findings and conclusions of the agency with respect to the study required under subsection (a), together with such recommendations for legislative or administrative action as the agencies may determine to be appropriate.

(c) DEFINITIONS.—For purposes of this section, the terms ''affiliate'', ''Federal banking agency'', and ''insured depository institution'' have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

**Subtitle B—Fraudulent Access to Financial Information**

**SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

(g) NONAPPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

**SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

(b) NOTICE OF ACTIONS.—The Federal Trade Commission shall—

(1) notify the Securities and Exchange Commission whenever the Federal Trade Commission initiates an investigation with respect to a financial institution subject to regulation by the Securities and Exchange Commission;

(2) notify the Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such Federal banking agency; and

(3) notify the appropriate State insurance regulator whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such regulator.

**SEC. 523. CRIMINAL PENALTY.**

(a) IN GENERAL.—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

**SEC. 524. RELATION TO STATE LAWS.**

(a) IN GENERAL.—This subtitle shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Commission, on its own motion or upon the petition of any interested party.

**SEC. 525. AGENCY GUIDANCE.**

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

**SEC. 526. REPORTS.**

(a) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) ANNUAL REPORT BY ADMINISTERING AGENCIES.—The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

**SEC. 527. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) CUSTOMER.—The term ''customer'' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term ''customer information of a financial institution'' means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) DOCUMENT.—The term ''document'' means any information in any form.

(4) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term ''financial institution'' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term ''financial institution'' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) SECURITIES INSTITUTIONS.—For purposes of subparagraph (B)—

(i) the terms ''broker'' and ''dealer'' have the meanings provided in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term ''investment adviser'' has the meaning provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); and

(iii) the term ''investment company'' has the meaning provided in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission,

may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

H.R. 1658

OFFERED BY: MS. JACKSON-LEE OF TEXAS

AMENDMENT NO. 28: Page 2, line 16, strike ''60'' and insert ''10''.

H.R. 1658

OFFERED BY: MS. JACKSON-LEE OF TEXAS

AMENDMENT NO. 29: Page 3, line 24, strike ''90'' and insert ''30''.

H.R. 1658

OFFERED BY: MS. JACKSON-LEE OF TEXAS

AMENDMENT NO. 30: Page 5, line 20, strike ''by clear and convincing evidence'' and insert ''by a preponderance of the evidence''.

H.R. 1658

OFFERED BY: MS. JACKSON-LEE OF TEXAS

AMENDMENT NO. 31: Page 10, lines 23 and 24 strike ''30'' and insert ''10''.