fact that many good provisions were taken out of the final bill by the House-Senate conference committee. The provisions I want to talk about were intended to improve our ability to enforce immigration law in the interior and to secure the border to protect the homeland.

First, I want to talk about the amendment I pushed for during Senate consideration of the appropriations bill. It would have given businesses the tools to ensure that they have a legal workforce. My amendment would have allowed employers to voluntarily check their existing workforce and make sure their workers are legally in this country to work. It said that if an employer chooses to verify the status of all their workers—not just new hires—then they should be allowed to do so. And, it had protections in place. If an employer were to elect to check all workers, they would have to notify the Secretary of Homeland Security that they plan to verify their existing workforce. The employer would then have 10 days to check all workers. This short time period would prevent employers from targeting certain workers by claiming that they are ''still working on'' verifying the remainder of their workforce. And, my amendment would have required the employer to check all individuals if they plan to check their existing workforce. If they check one, they check them all.

Employers want to abide by the law and hire people that are legally in this country. Right now, E-Verify only allows them to check prospective employees. But, we should be allowing employers to access this free, online database system to check all their workers.

Second, while I am grateful that the committee recognizes the need to keep E-Verify operational and that the bill includes a three year reauthorization of the program, I am disappointed that the conference committee stripped an amendment to permanently reauthorize E-Verify. The amendment authored by Senator SESSIONS was passed with bipartisan support. The administration and the majority leadership claim they fully back the E-Verify program, but their actions don't show it. Our businesses need to know that this program will be around for the long-term, and that they can rely on the Federal Government to make sure that the workers they hire are legally in this country.

The third amendment stripped by the conference committee would have increased our ability to secure the border by putting funds into fencing to reduce illegal pedestrian border crossings. The DeMint provision would have required 700 miles of reinforced pedestrian fencing to be built along the southern border by December 31, 2010.

Finally, an amendment to allow the Department of Homeland Security to go forward with the ''no match'' rule was stripped. This amendment by Senator VITTER would have blocked the Obama administration from gutting the ''no-match'' rule put in place in 2008 to notify employers when their employees are using a Social Security number that does not match their name. These ''no match'' letters help employers who want to follow the law and make sure they are employing legally authorized individuals.

I voted for this bill on the Senate floor because homeland security is not something we should play politics with. Defending our country is our No. 1 constitutional priority. Taxpayers expect us to get these bills passed and we have that responsibility. I voted for this bill today because it includes funding for essential border security and interior security efforts. However, there are a number of problems with this bill despite my vote for it. I am concerned that the House and Senate conference committee did a disservice to the American people by taking out language preventing illegal aliens from gaining work in this country. The conference committee, had they kept the provisions I talked about, would have helped many Americans who are looking for work and struggling to make ends meet. The provisions would have also held employers accountable for their hiring practices. It's my hope that this body will work harder to beef up our immigration enforcement efforts, and ensure that Americans are given a priority over illegal aliens during this time of high unemployment.

MORNING BUSINESS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NAKED SHORT SELLING

Mr. KAUFMAN. Mr. President, I rise to applaud the SEC's Enforcement Division for recently bringing two actions for insider trading against Wall Street actors. While our judicial system must run its course, I am nonetheless pleased that the investigators and prosecutors are working together to target Wall Street wrongdoing.

In white-collar crime, securities fraud, and insider trading, enforcement is critical to deterrence. In turn, deterrence is critical to maintaining the integrity of our capital markets.

The importance of these cases extends beyond deterring and punishing criminal conduct. By identifying, prosecuting, and punishing alleged criminals on Wall Street, we are restoring the public's faith in our financial markets and the rule of law.

So while the Enforcement Division is sending a strong signal about insider trading, it still has not brought any enforcement actions against naked short sellers. This is despite the fact that naked short selling is widely acknowledged by many on Wall Street to have helped manipulate downward the prices of Lehman Brothers and Bear Stearns in their final days. Their resulting failure served as a catalyst for the ensuing financial crisis that affected millions of Americans.

I am pleased the SEC has flashed a red light in front of insider trading. But until it brings a case or makes the naked short selling that took place last year an investigative priority, the Commission is leaving a green light in front of naked short sellers. When you have a red light on one road and a green light on another road, everyone knows where the cars are going to go.

This concern is not mine alone. In the words of the Dow Jones Market Watch, in a recent article entitled ''SEC Loses Taste for Short Selling Fight:''

> More than a year after short sellers allegedly sucked the broader market lower by concentrating negative bets in troubled financial firms, the Nation's securities regulators appear to be backing off curbing the practice.

In a piece on the naked short-selling debate, Forbes magazine noted:

> We have become a nation that ponders everything without resolution.

This is critical because the SEC's current rule against naked short selling—a reasonable belief standard that the underlying stock would be available if it is needed—is widely viewed as unenforceable. The market has recently been showing promise in moving upward, but if it goes south—and I am sorry to say eventually it will again—the bear raiders who destroyed our economy a year ago and made millions in the process will strike again.

If you know you can sell 5,000 umbrellas on a rainy day in New York, you are going to be out on the street with 5,000 umbrellas the next time it rains. The next time one of our TARP banks or other financial institutions look vulnerable, naked short sellers will seize the opportunity to profit again, and this time it could cost the taxpayers directly. The SEC will have no ability to stop them or punish them after the fact.

Given what is at stake, why have we not had action? Frankly, it is a story emblematic of problems on Wall Street. The story starts in July 2007, when the SEC decided to remove the uptick rule which forces short sellers to wait until a stock ticks up at least once before being allowed to sell without putting anything effective in its place.

When I was at Wharton back in the midsixties, the uptick rule was an article of faith. But a couple years ago, the 70-year-old uptick rule became another casualty of deregulation, an impediment to market liquidity, they said.

A little over a year later, two of the Nation's biggest banks—Bear Stearns and Lehman Brothers—had collapsed. Lehman's failure alone, with $613 billion in debt, was far and away the largest bankruptcy in U.S. history. Both banks were victims of their own risky behavior and their own poor judgment. Their thinking was clouded by an aura of invincibility—willingly taking highly leveraged positions in what turned out to be toxic assets.

But while Bear and Lehman certainly are responsible for their actions, naked short selling played a crucial role in accelerating their fate.

I wish to make an important distinction. Short selling is a well-established market practice. It can enhance market efficiency and price discovery. I, myself, have sold stock short on many occasions, but I always had to borrow the stock first before I could sell into the market.

Naked short selling is another matter altogether. It occurs when someone sells a stock they do not own and have not borrowed. Naked short selling creates two risks in the marketplace. The seller may not be able to deliver the necessary shares on delivery date and bad actors can manipulate stocks downward, repeatedly selling something they do not own.

Naked short selling, without first borrowing or obtaining a so-called hard locate of the shares, essentially increases the number of shares in the market, which tends to lower the value of the stock.

It is exactly as if I made three copies of my car's title and then sold the title to three different people. By the time I sold my third title, it would likely be impossible to deliver the car to the third buyer and its value would also have declined.

When Bear Stearns and Lehman started to crumble, many believed manipulative naked short sellers, using a series of large and frequent short sales known as bear raids, helped drive both firms into the ground. Bear Stearns' stock dropped from $57 to $3 in 3 days. Let me repeat. Bear Stearns' stock dropped from $57 to $3 in just 3 days.

When Lehman collapsed, an astonishing 32.8 million shares in the company had been sold short and not delivered on time.

The SEC has proven incapable of both preventing market manipulation from happening and punishing those responsible for it. We cannot allow this to continue.

Since March, a bipartisan group of Senators and I have been calling on the Commission to reinstate some form of the uptick rule and put a rule in place that the SEC Enforcement Division could use to stop naked short sellers dead in their tracks.

At a recent SEC roundtable, major problems with the current regulatory structure were exposed. Even panelists heavily stacked in favor of industry admitted that compliance with the requirement is widely ignored. Commissioner Elisse Walter acknowledged, prosecuting naked short sellers on the reasonable belief standard is a ''very difficult case to bring.''

Because the ''reasonable belief'' standard is unenforceable, abusive short sellers are essentially free to engage in criminal activities without fear of facing criminal prosecution.

The SEC's silence speaks volumes. They have given no indication that there will ever be action. Nothing—from the SEC's strategic plan to various speeches by SEC executives—acknowledges that this is a priority. The SEC has taken action on insider trading; it should devote the same intensity of purpose to stopping abusive naked short selling.

I suspect the problem is that our financial institutions, which can now trade stocks with previously unimaginable speed and frequency, simply are unwilling to support any regulation that will slow down their profit- maximizing programs. High-frequency traders balk at the suggestion that they wait in line and get their ticket punched—by first obtaining a ''hard locate'' of the stock—before selling short. If that is the case, then we are letting technological developments on Wall Street dictate our regulatory and enforcement destiny rather than vice versa. That philosophy is simply unacceptable.

Clearly, the cost of inaction in this area is too great to ignore. Accordingly, I urge my colleagues to join Senators ISAKSON, TESTER, SPECTER, CHAMBLISS, and me as cosponsors of S. 605, which requires the SEC to move quickly to address naked short selling by reinstating the substance of the prior uptick rule and requiring traders to obtain a contractual hard locate before selling short. We need to send a strong message to the SEC that the Congress will not tolerate inaction on this critical issue.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona, the Republican whip.

HEALTH CARE REFORM

Mr. KYL. Mr. President, the goal shared by all of us in the Senate is to make health care more affordable for Americans. Some ask why there hasn't been more support for medical liability reform—a popular, cost-free measure that would unquestionably yield significant savings for patients and doctors. The most honest answer to that question came from former Vermont Governor and Democratic National Party Chairman Howard Dean, who said at an August townhall meeting in Virginia that medical liability reform has not been included in any of the Democrats' bills because they don't want to take on the trial lawyers.

Protecting trial lawyers should not be the goal of health care reform. Their multimillion-dollar ''jackpot justice'' lawsuits drive up the cost of health care for everyone and are a big reason America's health care premiums have soared. Why? To help guard themselves from ruinous lawsuits, physicians must purchase expensive medical liability insurance, often at a cost of $200,000 a year or more for some specialists such as obstetricians and anesthesiologists.

Because doctors pay for this insurance, patients do too. Hudson Institute economist Diana Furchtgott-Roth estimates that 10 cents of every dollar paid for health care goes toward the cost of doctors' medical liability insurance. Dr. Stuart Weinstein, the former president of the American Academy of Orthopedic Surgeons, has written about the extra cost of delivering a baby because of the high cost of these premiums. If a doctor delivers 100 babies a year and pays $200,000 for medical liability insurance, then ''$2,000 of the delivery cost for each baby goes to pay the cost of the medical liability premium,'' Dr. Weinstein wrote. So the costs of this insurance, passed on to patients, are real.

An even bigger cost related to the threat of lawsuits is doctors' use of defensive medicine. The looming specter of lawsuits makes most doctors feel they have no choice but to take extra or defensive precaution when treating patients. A 2005 survey published in the Journal of the American Medical Association found that 92 percent of doctors said they had made unnecessary referrals or ordered unnecessary tests and procedures solely to shield themselves from medical liability litigation.

To say the costs of defensive medicine are high is an understatement. Sally Pipes, president of the Pacific Research Institute, has found that defensive medicine costs $214 billion per year. A new study by PricewaterhouseCoopers reveals similar findings, pegging the annual cost at $239 billion. So you have the approximate amount here—$214 billion and $239 billion. In any event, defensive medicine imposes a huge cost on the American public.

Medical liability reform would work to bring down health care costs for patients and doctors. Among the ways to do it are capping noneconomic damage awards and attorney's fees and implementation of stricter criteria for expert witnesses who are testifying in these medical liability lawsuits. Trial lawyers frequently use their own experts to criticize the defendant doctor's practice. Well, the experts should have no relationship with or financial gain from the plaintiff's lawyer, and they should have real expertise in the area of medicine at issue.

Some States, including my home State of Arizona, have already implemented medical liability reform measures with positive results.