sales windows. This practice only makes it more easy for a drunk driver to purchase alcohol and contributes heavily to the DWI fatality rate in my home State and throughout the country. Eliminating these drive-up liquor windows is essential to reducing these injuries and fatalities.

Tomorrow I will introduce legislation entitled the ''Drunk Driving Casualty Prevention Act of 1998'' to prohibit the sale of alcohol through drive-up sales windows. I hope to have some cosponsors for that provision at that time.

Mr. President, this ban will make a difference. According to one study, there are 26 States that do not permit drive-up windows. In 1996, these States had, as a combined effort, a 15-percent lower average drunk driving fatality rate than the 24 States that permit sales through drive-up windows.

In the States with the ban, the average rate was 4.6 for 100,000 people as opposed to 5.46 in all other States. On a percentage basis, States with a ban had a 14.5 percent lower drunk driving fatality rate than States that permit sales through windows.

In 1996, comparing 19 Western States in particular, the nine States that have a ban in place had a 31 percent lower average drunk driving fatality rate than the States that permit sales.

In 1995, there were 231 drunk driving fatalities in my home State of New Mexico. Based on the 14 percent lower drunk driving fatality rate, it is estimated that closing drive-up liquor windows could have saved between 32 and 35 lives in that year in my State. Nowhere is it more true that if we can save one life by closing these windows, we need to do that.

The difference can be explained because there are three main benefits that accrue when you close drive-up liquor windows.

First, once the windows are closed, it is easier and more accurate to check the identification when the customers have to purchase their liquor over the counter. Minors have testified that it is very easy to illegally purchase alcohol at a drive-up window where it is difficult to determine their age.

A second benefit is that it is easier to visually observe a customer for clues that that customer is impaired by alcohol or other substances if they have to walk into a well-lighted establishment to make their purchase.

In one municipal court in New Mexico, 33 percent of the DWI offenders reported having purchased their liquor at drive-up windows. Some members of Alcoholics Anonymous say they now realize they could have known each other years earlier if they only looked in their rearview mirror while waiting in line at the drive-up window to buy their liquor.

And third, it sends a clear message to the population that drinking and driving will not be allowed to mix.

The Behavior Health Research Center of the Southwest conducted a study, the purpose of which was to determine the characteristics and the arrest circumstances of DWI offenders who bought alcohol at drive-up liquor windows compared to those who obtained it elsewhere. Nearly 70 percent of the offenders studied reported having purchased the alcohol that they drank prior to arrest. Of those offenders, 42 percent bought packaged liquor, and the drive-up window was the preferred place of purchase.

The study showed that drive-up window users were 68 percent more likely to have a serious alcohol problem than other offenders. Drive-up window users also are 67 percent more likely to be drinking in their vehicle prior to arrest than other offenders are.

Mr. President, we have had one sort of test case in New Mexico, and that is in McKinley County. It was one county in our State that had a terrible problem with DWI and petitioned our legislature for permission to close the windows in that county, the drive-up windows. They did close those windows. Businesses in that community did not see their profits cut in two—the liquor businesses. In fact, they saw their profits jump. The DWI prevention strategy that was employed in McKinley County reduced the fatality rate from 272 per 100,000 in 1989 to 183 per 100,000 in 1997.

Mr. President, I believe we have a great opportunity here to reduce DWI injuries and fatalities. I plan to offer this amendment to the ISTEA legislation tomorrow or later this week. I urge my colleagues to join me in cosponsoring that legislation.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold suggesting the absence of a quorum?

Mr. BINGAMAN. I do withhold.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate now stands in recess.

Thereupon, at 12:34 p.m., the Senate recessed until 2:15; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Indiana, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, the pending business, as I understand it, is the Wellstone amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. I ask unanimous consent to set aside the Wellstone amendment for the consideration of a McCain amendment.

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

AMENDMENT NO. 1680 TO AMENDMENT NO. 1676

(Purpose: To deal with matters under the jurisdiction of the Committee on Commerce, Science, and Transportation)

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. HOLLINGS, proposes an amendment numbered 1680.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Mr. President, first of all, I thank Senator CHAFEE for all of his efforts on this ISTEA issue. He has done a remarkable job. He is a remarkable man. I had the privilege of working for him when he was Secretary of the Navy, and he sometimes felt he didn't provide me with enough leadership at that time. But I am grateful for everything that he has done, and I'm especially grateful for his leadership on this very, very important issue to our Governors, our mayors, our county supervisors, and our city councils.

I say to my friend from Rhode Island, about 50 county supervisors from my State were in yesterday, and this issue dominated their conversation. I am grateful that he has been able to work through this. So the small amount that we are responsible for in the Commerce Committee, I hope, adds to this bill and helps us to move forward as rapidly as possible.

This amendment contains the proposal of the Committee on Commerce, Science, and Transportation to reauthorize ISTEA programs through fiscal year 2003.

The amendment seeks to reauthorize the National Highway Traffic Safety Administration [NHTSA] State safety grant programs, the Motor Carrier State Assistance program, and the Hazardous Materials Transportation Safety Enforcement programs.

The amendment also authorizes new and innovative safety initiatives at the Department of Transportation, including programs focusing on performance-based safety standards and advanced information data analysis.

The amendment is designed to improve travel safety on our Nation's roads and waterways, promote the safe shipment of hazardous materials, protect underground pipelines and telecommunications cables from excavation damage, and ensure that our

Nation's commercial motor vehicle fleet is well maintained and safely operated.

Mr. President, this is a bipartisan product. It incorporates many of the proposals requested in the administration's ISTEA reauthorization submission. The committee product also includes a number of new transportation safety proposals.

Senator HOLLINGS and I have worked to accommodate as many Members' requests and concerns as possible, but there are some outstanding questions.

One of the more difficult areas we faced concerned the many requests we received to provide statutory exemptions for one industry or another from certain motor carrier safety rules. Exemptions were sought from hours-of-service regulations and commercial driver's license requirements. These requests are not new. We face them every time Congress considers legislation affecting Federal motor carrier safety regulations.

Senator HOLLINGS and I worked diligently to avoid any statutory exemptions or regulation carve outs for single industries but to ensure there is a fair process by which all requests can be considered appropriately.

Let me be clear. I agree that under certain circumstances, exemptions from regulations may make sense. For example, I believe it's appropriate to acknowledge the special transportation time constraints of farmers during the planting and harvesting seasons, and that we should recognize the need to permit infrastructure maintenance and repair to operate during weather emergencies.

But blanket exemptions and wholesale legislative carve outs for selected businesses and enterprises can weaken safety. The answer is a fair and credible administrative process.

The Secretary of Transportation currently has the authority to grant exemptions. However, the authority is relatively meaningless because prior to granting a waiver or exemption, it must first be proven the exemption would not diminish safety. That's an appropriate consideration, but how can DOT assess an exemption's safety risk if it can't first test the concept on a limited pilot basis?

In an attempt to address this problem and recognize the Secretary should be permitted to examine innovative approaches or alternatives to certain rules, Senator HOLLINGS and I have worked to define a process whereby the Secretary may more appropriately grant waivers and exemptions. This legislation would also authorize the Secretary to carry out pilot programs to test the affects of limited regulatory exemptions. I believe this pilot approach is reasonable and could be carried out in a structured manner that does not impose a risk on public safety.

The committee's amendment includes three amendments adopted by voice vote when the Committee considered the safety amendment. The three amendments incorporate exemptions for three industries.

When these three amendments were debated in the Commerce Committee, I pledged that I would work with the sponsor to craft a safe alternative to the exemptions. These efforts have not succeeded yet, and I want to inform my colleagues that there will be some proposals in the next hours or days to alter those exemptions.

Finally, I want to thank Senator HOLLINGS and the other members of the Commerce Committee who worked so long and hard to get to the Senate Floor today with this amendment.

I urge my colleagues to adopt this critical and comprehensive amendment.

Mr. President, before yielding the floor I want to comment briefly on the issue of airbags. Last year a compromise was reached on language to be inserted in the ISTEA legislation.

I want to thank Senator KEMPTHORNE for his leadership on this issue. He has done the nation a great service by leading the effort to ensure that airbags will not pose a risk to infants.

We are all aware of the tragic accident in Idaho last year where an infant was decapitated by an airbag and of the other infants and children whose lives have been taken. Senator KEMPTHORNE feels this issue personally and deeply and this amendment will help us address this very serious problem.

I would also like to thank Senator HOLLINGS, and Senators BRYAN, GORTON, ABRAHAM, ASHCROFT, and others without whose involvement and help this compromise would not be possible.

I also thank the Secretary of Transportation and the head of the National Highway Transportation Safety Administration.

I will submit a more detailed statement on this issue later, but I would like to quickly summarize what's happening. This amendment deletes the airbag provision in the pending measure and replaces it with an alternative that codifies the current rule suspending the unbelted crash barrier test and requires the Secretary to begin rulemaking on advanced airbags that are more protective of infants, children and other occupants no later than June 1, 1998.

The Secretary would complete the rulemaking next year and the rule will include a phase-in of advanced airbags beginning with model year 2001 and completed by no later than model year 2005.

The pace of the phase-in shall be determined by the Secretary and shall be as rapid as practicable, but does permit the Secretary to postpone benchmark dates by one year with cause. Any further delays would require an Act of Congress.

Again, I thank all Members who were a part of this effort. I believe it will contribute significantly to traffic safety and I will submit a more detailed statement for the RECORD at a later time.

I want to say, Mr. President, that Senator KEMPTHORNE saw that this issue entailed enormous tragedies. I don't know how one could see an infant being decapitated without being deeply moved. Unfortunately, it wasn't a single incident. There have been numerous fatalities of children. I think Senator KEMPTHORNE's amendment which he will be proposing will be shortly forthcoming.

Mr. President, pending the appearance of Senator KEMPTHORNE, I yield the floor.

Mr. HOLLINGS. Mr. President, I am pleased to offer along with Commerce Committee Chairman, Senator MCCAIN, the Commerce Committee amendment to S. 1173, the International Surface Transportation Efficiency Act (ISTEA).

Mr. President, the Commerce Committee has worked together, in a true showing of bipartisanship, to craft this amendment. In this amendment the Committee has developed proposals to improve travel safety on our nation's roads and waterways, promote the safe shipment of hazardous material, advance pipeline transportation safety, and ensure that our nation's commercial motor vehicle fleet is well maintained and operated. This is not to say that we have left all of our policy disagreements behind us with this amendment. There are several that remain to be resolved and we are still attempting to resolve those issues. But on balance we have an amendment with which we all may be proud. I will take a few minutes to outline the amendment's more important provisions.

The amendment reauthorizes various grant programs administered by the National Highway Traffic Safety Administration (NHTSA), designed to improve road safety. The amendment reauthorizes grants to develop countermeasures to alcohol-impaired driving. Two new grant programs are also created. One encourages States to provide for the primary enforcement of seat belt laws. The second encourages states to improve the quality of their highway safety data.

The amendment reauthorizes funding and strengthens the programs to ensure the safe transportation of hazardous materials. It expands hazardous materials training access by allowing states to use a portion of these grants to assist in training small businesses in complying with regulations. We also strengthen enforcement by giving the Secretary of Transportation the authority to issue emergency orders when it is determined that an unsafe condition poses an imminent hazard.

The amendment also reauthorizes the Motor Carrier Safety Assistance Program (MCSAP) which provides funding to the states for commercial driver and vehicle safety inspections, traffic enforcement, compliance reviews, and safety data collection. Moreover, the amendment removes many of the program's prescriptive requirements in favor of a performance based approach.

The Secretary will have the authority to order unsafe carriers to cease operations. We also authorize additional funds to ensure the timely and accurate exchange of important carrier and driver safety records.

Perhaps most importantly, we provide the Secretary with the authority to establish pilot programs and grant waivers of regulations to motor carriers. If carriers can show that an alternative approach to regulation will aid safety and be less burdensome, the Secretary can authorize such an alternative. Regulation can be tailored to specific circumstances rather than ''one-size-fits-all'' regulation.

In the area of rail and mass transportation safety as requested by the Administration we provide for criminal sanctions in cases of violent attacks against railroads, their employees, and passengers. The amendment also extends the basic Wallop-Breaux Aquatic Resources Trust Fund for boating safety and reauthorizes the Clean Vessel Act, allocating $10 million annually for state marine sanitation device projects and $10 million annually for state boating infrastructure projects.

As I noted earlier, not all of our policy disagreements have been solved. I continue to be concerned about three provisions which seem to undermine our efforts to achieve safer highways. These provisions would allow exemptions from federal regulations for utility drivers and those engaged in agribusiness. Specifically, the federal hours of service act which governs how long a driver may drive in any one day, the hazardous materials transportation requirement that ensures that emergency response teams have the necessary information to combat a hazard material incident, and the Commercial Driver's License (CDL) requirements are waived under these provisions.

I think these exemption provisions ''go the wrong way'' on safety. Indeed, the provisions are also unnecessary given the other provision that allows DOT to develop safe pilot programs and waivers for individuals, companies, and industries. I would like these provisions modified and I remain hopeful that we can work out these issues.

With that caveat I believe that the Commerce Committee has under the leadership of Senator MCCAIN, given us an ISTEA amendment that we all can support and I commend it to the Senate.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, let me just express my appreciation to the distinguished chairman of the committee for the leadership which he has provided us and for the bipartisan approach he has taken in crafting the amendment which is before us. I would like to associate myself with his comments and observations with respect to the so-called ''industry exceptions'' in airbag provisions.

There are generic provisions that provide for pilot projects which I think is appropriate. And, as the Senator has pointed out, a commitment was made during the markup to try to work out some of the concerns that have been voiced by some of our colleagues who want these wider exceptions in airbags. Unfortunately, as the Senator from Arizona has pointed out, we have not yet reached an agreement on those areas. But I want to work with him, and I pledge my support in trying to fashion a compromise that does not emasculate the safety provisions and give blanket exceptions and waivers under the provisions of the amendment which is currently part of the amendment which has been proffered.

Let me also acknowledge and compliment the chairman on his leadership in bringing those of us together who have worked for many years on the airbag legislation. That legislation has its genesis in the 1991 ISTEA markup, at which time the senior Senator from Washington and I worked to incorporate those airbag provisions into the legislation. We recognize, as do all Members, that the unexpected infant fatality count as a result of by and large the inappropriate placement of infant seats has caused the problem that we want to respond to. I believe, under Senator MCCAIN's leadership, he brought a group of us together, and through several sessions we have worked out a compromise that is part of this legislation. I am pleased to endorse it.

So I look forward to working with the distinguished Senator from Arizona as we process this part of the highway legislation.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent the amendment be considered as original text for the purposes of amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I thank the Chair.

Mr. President, I ask unanimous consent to speak as if in morning business for approximately 7 minutes. It is relevant to the bill but not to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized to speak as if in morning business for up to 10 minutes.

Mr. BRYAN. I thank the Chair.

Mr. President, I want to preface my remarks by thanking the leadership on both sides of the political aisle, the able and distinguished chairman, Senator CHAFEE, as well as the able and distinguished ranking member, Senator BAUCUS, for an agreement which has put an additional $26 billion in terms of contract authority into this legislation that we are processing. This is no inconsiderable accomplishment. I recognize that leadership effort lasted for a number of months. It involved Senators PHIL GRAMM, Senator BYRD, and others. But this is a very important thing. It is bipartisan. I am pleased to support that effort.

There are many Federal programs that provide important services to the States. But, as a former Governor, I can tell you that there is no Federal program that is more important than the highway program.

In addition, the funding mechanism for Federal transportation funding—the gas tax—creates an even great and moral and ethical obligation for us to do our work, and to provide a long-term reauthorization of ISTEA.

The mechanism that my colleague has chosen in putting this compromise together; namely, using the highway component of the additional 4.3 cent gas tax to provide this additional contract authority, I think is particularly appropriate and very sound and a sensible means to provide that enhanced contract authority.

Although Nevada is still small by the national standard, in the last decade we have experienced the most rapid growth rate of any State in the Nation.

Although there are still plenty of sparsely populated, wide-open spaces, we have also become the most heavily urbanized State. While in many respects this tremendous growth has been a positive development, the growth has brought with it a host of infrastructure demands that we are currently struggling to meet.

Perhaps the greatest current need in Nevada is highway improvements. Our limited interstate system and other Federal highways were largely designed in the 1950s and early 1960s when Nevada was a far different place than it is today. Despite a tremendous effort by State and local governments over the past decade, nearly every one of the major arteries is currently operating far beyond its capacity, and there is no end in sight to the increased demand.

We need more capacity on our highways, and the Federal Highway Program is a major partner in that effort. The highway needs of Nevada are even more acute when viewed in the context of our State's heavy dependency upon our largest industry, which is tourism.

Despite our increased reliance on air travel, highways, particularly roads that connect us to our major markets in California, are the key to Nevada's commerce. Some of these major arteries, particularly I–15, Las Vegas' major connection to southern California, operate so far beyond capacity that they threaten to become an impediment to Nevada's incredible economic success story.

In fact, one of the most important demonstration projects the Nevada delegation is pressing for in the pending

legislation is a project outside our borders, and that is the widening of Interstate 15 in California from Barstow to Victorville. The passage of this ISTEA legislation is imperative, and sooner better than later.

As we will recall, in the 1991 reauthorization we were successful in including funding for the ''Spaghetti Bowl,'' the most congested part of the downtown access in Las Vegas. Nearly 6 years later, the ground breaking for that project occurred late this last fall. That is an indicator of the time lag that it takes for us to get projects authorized and funded to contract and to construction. This time around, Nevada's highway needs are even greater than in 1991, and the projects we need to fund in the coming years dwarf the ''Spaghetti Bowl'' project which previously had been the largest highway project in our State's history.

Throughout the State, in both northern and southern Nevada, many large and vital highway projects will need to be financed, and financed soon, and the Federal Government through the ISTEA formula is going to be an essential partner.

In southern Nevada, the State plans to expand the major artery to the rapidly growing northwest sector of Clark County by greatly expanding the capacity of US–95. In northern Nevada, we need to complete the long-awaited connection between Reno and the State capital in Carson City along US–395, and Carson City itself needs a freeway bypass around the capital and commercial areas. We need money to build a new, safer bridge over the Colorado River, taking existing hazardous traffic off the Boulder Dam.

Highways and roads are not the only transportation solutions in the works in Nevada. To an extent which would have been unthinkable only a few short years ago, we are becoming increasingly dependent on mass transit. Both of our major metropolitan areas, Las Vegas and Reno, have significant public bus and paratransit systems which make a major contribution to both mobility and air quality in their respective communities.

The Citizen Area Transit system, or CAT, in southern Nevada, in particular, has been an incredible success story in only a few short years of operation, and it is currently planning on more than doubling its bus fleet in the next several years to more than 500 vehicles. CAT is also well along in the planning process for a major fixed guideway system serving the heavily traveled resort corridor.

Both the bus fleet expansions and the fixed guideway system are counting on their fair share of Federal transportation dollars, something that will simply not be there any time soon if we do not finish our work on ISTEA as quickly as possible.

The State of Nevada and the assorted local governments have all stepped up to the plate. We heard frequently in this partnership with the Federal and State and local governments that local governments must do their fair share. In Nevada, State and local governments have done their fair share. They have imposed some of the highest highway taxes in the Nation upon our residents to provide for those additional improvements which I have alluded to.

What we are currently lacking is a solid, long-term commitment from the Federal Government as part of the Federal Government's requirement to live up to its partnership responsibilities. In fact, the Federal highway and transit programs are just that, they are bargains, commitments made with the American people.

Unfortunately, in what has been a long source of frustration to me, first as a Governor and now as a U.S. Senator, the Federal Government has not lived up to its side of the bargain. Every time any one of us buys a gallon of gasoline, we pay 18.4 cents to the Federal Government, money that is supposed to be set aside and dedicated and spent for highway and transit improvements. As we all know, this is often not the case. Somehow, a good part of this funding never makes it back to the States for highway improvements.

The trust fund balance now stands at more than $20 billion. By the year 2003, the balance of the trust fund could exceed $70 billion, all of which has essentially been taken from the American people under false pretenses; that is, the money is collected for highway improvements but not fully allocated for that purpose. I am hopeful with the compromise that has been effected that we will work to address what I believe is a failure of Federal responsibility.

The time is right for us to increase transportation funding to levels that more accurately reflect the payments taxpayers have been making to the trust fund and to get to work on some of the very transportation and infrastructure problems facing our State and our Nation. Nothing can happen, of course, unless we complete ISTEA soon, and that is why I believe that it is one of the most important priorities for us to deal with in this session of the Congress.

Again, Mr. President, I thank my colleagues who have worked out the compromise that has increased the contract authority by some $26 billion. That is something that every State will benefit from, and a State such as my own with a backlog of infrastructure needs will need this additional funding in order to complete these projects.

WALLOP-BREAUX TRUST FUND

Mr. MCCAIN. Mr. President, the amendment to S. 1173 offered by me and Senator HOLLINGS, on behalf of the Commerce Committee, includes a subtitle relating to the Sport Fish Restoration and Recreational Boat Safety programs authorized and funded by several laws comprising the Federal Aid in Sport Fish Restoration Program. These laws include the Dingell-Johnson Act of 1950, the Wallop-Breaux Amendments of 1984, the Wetlands Restoration Act of 1990, and the Clean Vessel Act of 1992. These laws, and the provisions of subtitle F in the amendment that I am offering today, are admittedly under the jurisdiction not only of the Commerce Committee, but also the Committee on Environment and Public Works. However, for the sake of expediency in reauthorizing ISTEA, the provisions relating to the Dingell-Johnson/Wallop-Breaux program in the ISTEA bill are being considered through this amendment.

Mr. CHAFEE. I applaud my colleagues on the Commerce Committee, particularly the distinguished Chairman Senator MCCAIN, the ranking member Senator HOLLINGS, and Senators SNOWE and BREAUX for their hard work on these provisions. Although the subtitle regarding the Dingell-Johnson/Wallop-Breaux program is included in the amendment offered on behalf of the Commerce Committee, I would like to express my gratitude to my colleagues on that Committee for the opportunity to remain involved in the negotiations leading to the language in the subtitle, and for the recognition that jurisdiction for that subtitle remains within both Committees. Indeed, the Federal Aid in Sport Fish Restoration program, taken in its entirety, is primarily under the jurisdiction of the Environment and Public Works Committee.

Mr. MCCAIN. Our Committees have worked together on legislation relating to this program in the past, and on this particular amendment that we are offering today. Both the Committee on Environment and Public Works and the Committee on Commerce each maintain jurisdiction over different components of this program. Both the U.S. Fish and Wildlife Service and the U.S. Coast Guard implement different components of the program. The Aquatic Resources Trust Fund, which is the funding source for the Program, is divided into the Sport Fish Restoration Account and the Boat Safety Account, which are closely intertwined with each other. For example, funds for boat safety programs come not only from the Boat Safety Account but also from the Sport Fish Restoration Account. In addition, unexpended funds in the Boat Safety Account roll over into the Sport Fish Restoration Account. This complicated flow of funds makes the programs almost inseparable. It is my opinion that while each Committee maintains jurisdiction over different components of the program, both Committees should work closely and collaboratively on legislation relating to this program.

Mr. CHAFEE. I wholeheartedly agree with the distinguished Chairman of the Committee on Commerce.

Mr. MCCAIN. In engaging in this colloquy, Senator CHAFEE and I recognize that each committee maintains jurisdiction over different components of this program and different provisions relating to the program contained in

subtitle F, and further reaffirm our joint commitment, responsibility, and jurisdiction regarding the Dingell-Johnson/Wallop-Breaux program. I thank the distinguished Senator from Rhode Island for his cooperation on this matter.

Ms. SNOWE. Mr. President, I rise in support of the Commerce Committee Safety amendment, and wish to commend the Senator from Arizona, Mr. MCCAIN, for his efforts to bring this amendment to the floor. In particular, I commend him and the Committee for its incentive approach to the serious problem of drunk driving. The Committee amendment provides four grants that provide additional funding to states that take the zero tolerance approach to drunk driving. States that have already enacted tough laws, like my own State of Maine, are eligible for additional funding, while these grant programs will serve as an incentive for other states to pass the tough laws necessary to keep drunk drivers off the roads.

I would also like to briefing explain my provision in this amendment that requires Maine and the Department of Transportation to create a performance based system to evaluate a state trucking law to determine if it is a safety concern.

Maine has lost half of its Motor Carrier Safety Assistance Programs (MCSAP) for the last two years—$145,000 per year—because of a state law providing an exemption from motor carrier safety regulations for trucks traveling within 100 air mile radius of their home base. This loss of funding means that the State cannot hire more state troopers for the Motor Vehicle Enforcement Unit and in fact may have to lay off another trooper if this issue is not resolved soon.

The Maine law in question is used primarily by construction companies, farmers, loggers, sand and gravel, landscaping and local delivery vehicles. In another words, small businesses who do intrastate delivery work or must travel some distance to a work site. Maine did a study for Federal Highway to show that the exemption was not a safety problem, but Federal Highway would not give the state a waiver. The State's study, done by the Maine State Police found no safety problems. And in 1995, the Governor's Task Force on Motor Vehicle Safety, which reviewed Maine's truck laws, recommended that this exemption be kept because it did not have an impact on safety.

My language seeks to end this impasse in order to improve safety by first giving the state its full funding so it can hire more troopers and second to evaluate whether or not the exemption is a safety problem. The language requires the State and the Department to work together to establish a review system for the State to carry out to determine, based on empirical evidence, whether or not this exemption has a negative impact on safety.

The burden will be on Maine to show whether or not there are safety implications to this particular state law. I am confident that this cooperative effort will reassure the Department while at the same time allowing Maine to improve safety on our roadways.

Thank you.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MCCONNELL). Without objection, it is so ordered.

AMENDMENT NO. 1681 TO AMENDMENT NO. 1676

(Purpose: To improve airbag safety)

Mr. KEMPTHORNE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment will be laid aside. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes an amendment numbered 1681 to Amendment No. 1676.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 40, after line 10, insert the following:

**SEC. 3106. IMPROVING AIR BAG SAFETY.**

(a) SUSPENSION OF UNBELTED BARRIER TESTING.—The provision in Federal Motor Vehicle Safety Standard No. 208, Occupant crash protection, 49 CFR 571.208, that requires air bag-equipped vehicles to be crashed into a barrier using unbelted 50th percentile adult male dummies is suspended until either the rule issued under subsection (b) goes into effect or, prior to the effective date of the rule, the Secretary of Transportation, after reporting to the Commerce Committee of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, determines by rule that restoring the test is necessary to accomplish the purposes of subsection (b).

(b) RULEMAKING TO IMPROVE AIR BAGS.—

(1) NOTICE OF PROPOSED RULEMAKING.—Not later than June 1, 1998, the Secretary of Transportation shall issue a notice of proposed rulemaking to improve the occupant protection for all occupants provided by Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

(2) FINAL RULE.—The Secretary shall complete the rulemaking required by this subsection by issuing, not later than June 1, 1999, a final rule consistent with paragraph (1). If the Secretary determines that the final rule cannot be completed by that date to meet the purposes of paragraph (1), and advises the Congress of the reasons for this determination, the Secretary may extend the date for issuing the final rule by not more than one year. The Congress may, by joint resolution, grant a further extension of the date for issuing a final rule.

(3) METHODS TO ENSURE PROTECTION.—Notwithstanding subsection (a) of this section, the rule required by paragraph (2) may include such tests, including tests with dummies of different sizes, as the Secretary determines to be reasonable, practicable, and appropriate to meet the purposes of paragraph (1).

(4) EFFECTIVE DATE.—The final rule issued under this subsection shall become effective in phases as rapidly as practicable, beginning not earlier than September 1, 2001, and not later than September 1, 2002, and shall become effective not later than September 1, 2005, for all motor vehicles in which air bags are required to be installed. If the Secretary determines that the September 1, 2005, effective date is not practicable to meet the purposes of paragraph (1), the Secretary may extend the effective date for not more than one year. The Congress may, by joint resolution, grant a further extension of the effective date.

(c) REPORT ON AIR BAG IMPROVEMENTS.—Not later than 6 months after the enactment of this section, the Secretary of Transportation shall report to Congress on the development of technology to improve the protection given by air bags and reduce the risks from air bags. To the extent possible, the report shall describe the performance characteristics of advanced air bag devices, their estimated cost, their estimated benefits, and the time within which they could be installed in production vehicles.

On page 167, after the matter appearing after line 18, insert the following:

Strike section 1407 of the bill.

In the table of sections for the bill, strike the item relating to section 1407.

Amend the table of sections for the bill by inserting the following item at the appropriate place:

Sec. 3406. Improving air bag safety.

Mr. KEMPTHORNE. Mr. President, this amendment deals with the airbag issue. Before I describe this amendment, I want to commend and thank Senator MCCAIN, the chairman of the Commerce Committee, for all of his tremendous help and leadership and assistance on this issue of airbag safety, as well as Senator BRYAN of Nevada who has had a keen interest in this for a number of years also. I appreciate the comments Senator MCCAIN made a few moments ago about my involvement in this issue of airbag safety.

This amendment does a variety of things, but one of the things that is very important is that it affirms that airbags are to be supplemental restraint systems, which is stamped on all the cars, ''SRS,'' supplemental restraint systems. They are not the primary restraint system, which is your seatbelt. I think whatever source you may look to, you will find that the seatbelt is the safest device that you can use in your car.

With the airbags that have been placed in cars, we now see on the new cars it points out that this airbag may kill children. The tragedy is that, in fact, it has killed children. The numbers that just came out have indicated that 54 kids now have been killed by airbags, 36 drivers have been killed by airbags and four adult passengers, for a total of 94 individuals who have been killed by these airbags.

I am one who believes that airbags certainly can be a good safety device when they are designed to standards

that place them in their intended role as supplemental safety devices. This allows us now, and I will not go into the details because Senator MCCAIN has laid that out very well, but this now allows us to go through with the Secretary of Transportation the rulemaking and the testing. It allows us to have a testing of these airbags for all sizes of adults. It is going to allow us to now have safer bags that will save lives so that we will not see these costly tragic numbers that I have just recited, and it will protect occupants of all sizes.

I do believe that the National Highway Traffic Safety Administration, NHTSA, has had the authority to go forward with this. Their repeated conclusion is that they did not.

Mr. President, recognizing that Senator MCCAIN is the chairman of the Senate Commerce Committee with jurisdiction over issues related to traffic safety, is he aware that the National Highway Traffic Safety Administration says current law does not allow airbags to be regulated as supplemental restraint systems, and specifically that NHTSA does not have the legal authority to repeal the so called unbelted test standard?

As the Senator knows, the American Law Division of the Library of Congress has reviewed this issue and has concluded that NHTSA has ample legal authority to repeal the unbelted test. The view of the Library of Congress is supported by a number of other legal experts as well.

Mr. MCCAIN. I agree that NHTSA currently has the statutory authority to modify the testing methodology for airbags to advance their safety or efficiency.

Mr. KEMPTHORNE. Is it the Senator's view that this amendment is consistent with the statutory interpretation that airbags are supplemental restraint systems, not primary restraint systems, and should be regulated in such a fashion and do you agree that airbags do not substitute for lap and shoulder belts and that all occupants should always wear safety belts regardless of whether there is an inflatable restraint in the vehicle?

Mr. MCCAIN. The Senator raises an important point. Airbags are an important safety device, but they are designed to supplement the protection offered by safety belts. Safety belts are the primary safety device and should be worn by all vehicle occupants.

Mr. KEMPTHORNE. Does the Senator agree that the pending amendment affirms the responsibility of the Secretary of Transportation to improve the occupant safety of all occupants provided by Federal Motor Vehicle Standard No. 208 while minimizing the risk to infants, children, and other occupants from injuries and death caused by airbags and, in order to accomplish the rule making required by this amendment, the Secretary shall include tests with dummies of different sizes representing the full range of occupants from infants to adults? The amendment only allows the Secretary of Transportation to reimpose the current safety standard after giving full advance notice to Congress, after giving the public time and opportunity to comment and then only if he or she concludes that doing so would protect infants and children, as well as other occupants, from death and injury. This amendment does not change the policy that airbags are still a supplemental, not a primary restraint system.

Mr. MCCAIN. Airbags are certainly not a substitute for safety belts. I want to emphasize again that all vehicle occupants should always wear a safety belt.

Mr. KEMPTHORNE. Thank you. I ask unanimous consent to have printed in the RECORD two legal opinions that make clear NHTSA had and retains the legal authority to repeal or modify the unbelted seat belt standard.

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

MAYER, BROWN & PLATT,
*Washington, DC, January 22, 1997.*

MEMORANDUM

To: Phillip D. Brady.
From: Erika Z. Jones.
Re NHTSA's authority to repeal or suspend the unbelted test in FMVSS 208.

You asked for a legal analysis of the question of whether NHTSA could lawfully repeal or suspend the current requirement in Federal Motor Vehicle Safety Standard 208 requiring manufacturers to certify compliance in both the belted and unbelted conditions. We conclude that there are no legal constraints on NHTSA's authority to do so.

BACKGROUND

FMVSS 208 (49 C.F.R. Section 571.208) specifies performance standards for occupant protection in crashes. Among its requirements, FMVSS 208 currently requires manufacturers to certify compliance with the performance standards in two conditions: first, with the crash test dummy belted with the manual three-point safety belt, and second, with the dummy unbelted. See S10(b)(1) of FMVSS 208.

In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240). Part B of the ISTEA, cited as the National Highway Traffic Safety Administration Authorization Act of 1991, included Section 2508 which mandated that the Secretary of Transportation shall amend FMVSS 208 to provide that ''the automatic occupant crash protection system'' of each new passenger car and light truck ''shall be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1'' of FMVSS 208. The section continued that it ''supplements and revises, but does not replace, Federal Motor Vehicle Safety Standard 208, including the amendment to such Standard 208 of March 26, 1991 [citation omitted] extending the requirements for automatic crash protection . . . to trucks, buses and multipurpose passenger vehicles.''

In 1994, Congress enacted Public Law 103–272 on July 5, 1994. Section 1 of that Act explained that general and permanent ''laws related to transportation . . . are revised, codified, and eanacted . . . without substantive change.'' Thus, the codification Act transferred the provisions of the former National Traffic and Motor Vehicle Safety Act from Title 15 to Title 49. In the process of the codification, most provisions of the Act were restated, with some omitted as unnecessary or amended for clarity, although none of the omissions or amendments was intended to introduce substantive change.

The air bag mandate in the ISTEA found itself codified at 49 U.S.C. §30127, ''Automatic Occupant Crash Protection and Seat Belt Use.'' The codified language reads as follows:

''(b) Inflatable restraint requirements.—(1) . . . The amendment shall require that the automatic occupant crash protection system for both of the front outboard seating positions for [passenger cars and light trucks] be an inflatable restraint (with lap and shoulder belts) complying with the occupant protection requirements under section 4.1.2.1 of Standard 208.''

The codification also retains most of the statement of intent that originally appeared as part of the air bag mandate. The original statement of intent asserted that ''[t]his section supplements and revises, but does not replace, Federal Motor Vehicle Safety Standard 208 . . .''. In the codification, however, the new placement of this provision is in §30127(f), now stating that ''[t]his section revises, but does not replace, Standard 208 as in effect on December 18, 1991, . . .''. The reference to ''supplement[ing]'' FMVSS 208 was omitted in the codification, apparently due to a view that it was unnecessary.

In addition, the codification did not substantively change the ISTEA provisions that instructed NHTSA to amend FMVSS 208 to require that each owners' manual explain that ''the 'air bag' is a supplemental restraint and is not a substitute for lap and shoulder belts'' and that ''occupants should always wear their lap and shoulder belts, if available, or other safety belts, whether or not there is an inflatable restraint.'' §30127(c)(2) and (4).

The evidence suggests that the requirement for FMVSS 208 certification in the unbelted condition is dictating air bag inflation output that is greater than would be necessary if the unbelted certification test were eliminated or suspended. NHTSA has recently acknowledged that the substantial inflation output of current air bags designs can pose risks to some front seat occupants, particularly children and small statured adults. For example, NHTSA's recent rulemaking notices extending the air bag cutoff switch option in certain vehicles, proposing to permit depowering of air bags and proposing to authorize disconnection of air bags by dealers all contain substantial discussions of the ''adverse effects of current air bag designs.'' See 62 Fed. Reg. 798–844 (January 6, 1997).

In its original incarnation, FMVSS 208 was intended primarily to protect unbelted adult occupants, because safety belt use was very low. In 1984, when FMVSS 208 was reinstated, NHTSA observed that driver safety belt use in the front seat was approximately 14% nationwide. Today, however, adult safety belt use in the front seat is estimated to be close to 70%, due in large measure to the success of state safety belt usage laws, all of which were enacted within the last thirteen years. Today, all states but one require safety belt usage by vehicle occupants, and these requirements, coupled with seat belt usage education efforts, have been successful in raising safety belt usage to levels far in excess of those contemplated in 1984.

Of at least equal significance, there is no sign that Congress considered any evidence of the risks to children and small adult front seat occupants from air bags designed to meet the requirements of FMVSS 208 when the ISTEA was enacted in 1991.

* * * * *

NHTSA has now concluded that the ISTEA air bag mandate, as codified in Title 49, requires the agency to retain the unbelted compliance test because its repeal would eviscerate the requirement for ''automatic occupant crash protection system[s].'' In a letter dated January 13, 1997 to Senator Dirk Kempthorne, NHTSA Administrator Martinez explained the agency's reasoning as follows:

''If the unbelted test were eliminated from FMVSS No. 208, such that vehicles only had to satisfy the performance requirements of the standard with the manual belts attached, there would be no way to ensure that the air bags would in fact provide ''automatic'' protection to front seat occupants.''

NHTSA thus advised Senator Kempthorne that it ''lack[s] legal authority to eliminate the unbelted test''.

For reasons discussed in more detail below, we do not concur that NHTSA is so constrained in its authority to interpret the statute and the standard. In particular, NHTSA retains authority to interpret the statute and the standard in a manner that achieves the safety objectives of FMVSS 208 and the ISTEA mandate for an automatic crash protection system—which is an air bag as a supplemental restraint.

ANALYSIS

General principles of administrative law recognize that regulatory agencies ''must be given ample latitude to adapt their rules and policies to the demands of changing circumstances,'' as long as the changed policy is accompanied by a ''reasoned analysis for the change.'' *Motor Vehicle Manufacturers' Ass'n.* v. *State Farm*, 463 U.S. 29, 42 (1983) (internal quotations and citations omitted). Therefore, unless there is an explicit or implicit restriction in the Vehicle Safety Act, as amended by ISTEA, precluding NHTSA from responding to the newly acknowledged information about safety risks posed by current air bag designs, NHTSA retains ''ample latitude'' to amend FMVSS 208 to remove the unbelted test.

*1. The Vehicle Safety Act Does Not Explicitly Preclude NHTSA From Repealing or Suspending the Unbelted Test*

Nothing in 49 U.S.C. §30127 or in §2508 of ISTEA explicitly precludes NHTSA from repealing or suspending the unbelted certification test in FMVSS 208.

First, nothing in ISTEA §2508 amends, restricts or otherwise affects NHTSA's plenary authority to amend safety standards, authority which is incorporated in the general rulemaking authority to ''prescribe'' motor vehicle safety standards in 49 U.S.C. Section 30111(a). In fact, the ISTEA language carefully states that the amendment ''supplements and revises, but does not replace'' FMVSS 208. And, as discussed above, administrative law principles recognize the authority agencies have to amend their rules to reflect changed circumstances. Absent an explicit Congressional direction limiting that plenary authority in the case of FMVSS 208, NHTSA retains its general authority to amend its safety standards.

Second, when Congress wishes to ''freeze'' a regulation in place, it knows how to do so. For example, Section 216(7) of the Clean Air Act (42 U.S.C. §7550(7)) ''froze'' the then-existing EPA definitions for certain terms for purposes of the emission standards established by that Act, in the following way:

The terms ''vehicle curb weight,'' ''gross vehicle weight rating'' (GVWR), ''light-duty truck'' (LDT), ''light-duty vehicle,'' and ''loaded vehicle weight'' (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term. 42 U.S.C. §7550(7).

Since no such explicit restriction ''freezing'' the 1991 edition of FMVSS 208 in general, or S4.1.2.1 in particular, was incorporated into the ISTEA amendments, NHTSA is not precluded by statute from amending FMVSS 208, or interpreting it in such a way as to repeal or suspend the unbelted compliance test.

Althouth some may argue that the language is the codified Vehicle Safety Act referring to a revision to FMVSS 208 ''as in effect on December 18, 1991'' is tantamount to a ''freezing'' of the requirements of FMVSS 208 as stated on that date, such an argument cannot survive. First, the quoted language did not appear in the ISTEA itself. Since the codification expressly stated that it was not intended to introduce any substantive change, the inclusion of the December 18, 1991 effective date in the codification (but not the original enactment of ISTEA) cannot have any substantive meaning, and surely cannot convey an intent by Congress in 1991 or 1994 to ''freeze'' FMVSS 208 in the context of the December 18, 1991 provisions. Second, the quoted language does not appear in the substantive requirements for air bag installation, which appear in subsection (b) of Section 30127. Rather, the quoted reference to the December 18, 1991 version of FMVSS 208 appears in subsection (f) of that section, which states that the air bag mandate ''revises, but does not replace, Standard 208 as in effect on December 18, 1991.'' In that context, the citation to the December 18, 1991 version of Standard 208 is nothing more than a reference point, rather than a legislative desire to ''freeze'' the requirements. Finally, NHTSA has already compromised any theory that the December 1991 provisions of FMVSS 208 are legally ''frozen''; for example, NHTSA has already amended FMVSS 208 to allow air bag cutoff switches which clearly amended FMVSS 208 to allow air bag cutoff switches which clearly affect the ''automatic'' nature of the protection afforded by the air bag.

The ISTEA, as codified in Title 49, thus does not explicitly limit NHTSA's plenary authority to amend FMVSS 208 to respond to the concerns about air bag inflator output in general, or to repeal the unbelted test in particular.

*2. The Vehicle Safety Act Does Not Implicitly Preclude NHTSA From Repealing or Suspending the Unbelted Test*

For several reasons, there is no implicit constraint on NHTSA's authority to amend FMVSS 208, including S4.1.2.1 if necessary, to eliminate the requirement for certification with an unbelted test dummy.

First, as noted above, there was no express constraints included in ISTEA or the codified Vehicle Safety Act on NHTSA's authority to amend FMVSS 208 in any respect. As long as the proposed amendment otherwise satisfies the Vehicle Safety Act's criteria for rulemaking (objectively, practicability, safety necessity), nothing precludes NHTSA from promulgating such an amendment, particularly in light of Congress intent to consider air bags as supplemental restraints, as well as the more recent acknowledgement by the agency that current air bag designs may pose safety risks for some small front seat occupants.

Second, nothing precludes NHTSA from electing to test compliance with FMVSS 208 with a belted (as opposed to an unbelted) test dummy. In enacting ISTEA, Congress expressed a preference—indeed, a mandate—for an occupant protection system that included both an air bag and a ''lap/shoulder belt'', which NHTSA has interpreted to mean a manual, three-point seat belt. NHTSA has ample authority to revise FMVSS 208 to reflect supplemental occupant protection, and to decide to evaluate compliance in accordance with this Congressional preference, i.e., with air bags in combination with manual three-point seat belts. The literal language of the codified Vehicle Safety Act strongly supports this interpretation, noting that the automatic protection shall ''be in inflatable restraint (*with lap and shoulder belts*)'' (Emphasis supplied).

Third, even if NHTSA were not persuaded that it should interpret the ISTEA mandate to authorize (indeed, prefer) testing the air bag as a supplemental restraint in combination with lap/shoulder belts pursuant to the currently prescribed belted test, NHTSA has substantially overstated the concern (as expressed in the letter to Senator Kempthorne) that elimination of the unbelted test would mean that there would be ''no way to ensure that the air bags would in fact provide 'automatic' protection to front seat occupants. If NHTSA wished to assure that the air bag was providing some additional ''protection'' over and above the lap/shoulder belt, then the agency could modify the standard to evaluate in the belted test the incremental protection provided ''automatically'' (i.e., separately) by air bags. There is no legal reason why such a separate evaluation has to be an unbelted test measuring the same four injury criteria currently in force. For example, NHTSA could add to the belted test some injury criterion which likely could not be met in a vehicle without an air bag. NHTSA has not taken, and could not take, the position that it is without authority to change the injury criteria by which air bag performance is measured. Indeed, NHTSA is proposing elsewhere to do exactly that—revise the injury criteria for thorax acceleration—although that is being proposed for other reasons.

While it is true that NHTSA could not, consistent with the ISTEA mandate, amend FMVSS 208 in such a way as to eviscerate the air bag mandate entirely, an amendment of FMVSS 208 to eliminate the unbelted test would not be such a radical change to the standard. Indeed, there is nothing in ISTEA to suggest that Congress subscribed to the original FMVSS 208 notion that the occupant protection afforded by air bags should necessarily be evaluated without manual safety belts. The Congressional mandate that lap/shoulder belts (interpreted by NHTSA to mean manual three-point safety belts) be provided along with air bags—a substantial enlargement of the original requirements of FMVSS 208, which would have protected *unbelted* occupants—along with the mandate for owner's manual revisions regarding air bags as supplemental restraints, all suggest instead that Congress understood the modern view that air bags are supplemental, not primary, occupant protection and must be used along with manual safety belts for optimal protection. Given that Congress directed this substantial revision to FMVSS 208 as part of the ISTEA amendment, it would be entirely reasonable for NHTSA to conclude that compliance with the new FMVSS 208 requirements should be evaluated with a belted, not an unbelted, test dummy.

*3. NHTSA's Own Recent Rulemaking Actions Show That The Agency Retains Substantial Discretion to Amend FMVSS 208, Including With Respect to the Air Bag Mandate*

NHTSA has recently adopted an amendment to FMVSS 208 extending the previously authorized cutoff switch to vehicles manufactured after the affective date of the ISTEA mandate for ''automatic'' protection. This amendment belies any proffered limitation on NHTSA's authority to change the nature of the ''automatic'' protection provided

under FMVSS 208. Indeed, if NHTSA could not lawfully eliminate the unbelted compliance test, because it would leave unevaluated the Congressional mandate that ''automatic'' protection be provided by means of ''inflatable restraints,'' then how could NHTSA permit cutoff switches, which permit the ''automatic'' protection to be eliminated altogether when the switch is activated?

In fact, NHTSA is not constrained by ISTEA or the codified Vehicle Safety Act from adopting an amendment that eliminates the unbelted compliance test, if the rulemaking record justifies doing so. NHTSA's amendment of FMVSS 208 to permit cutoff switches is an implicit acknowledgement of the agency's authority to revise FMVSS 208 to reflect contemporary developments in motor vehicle safety.

NHTSA's recent proposals to amend the test conditions of FMVSS 208 in other respects, such as by raising the thorax injury criterion to 80 G's, from the current level of 60 G's, further reflect the agency's acknowledgement of its plenary authority to revise FMVSS 208 to reflect modern understandings of motor vehicle safety needs.

* * * * *

Nothing in the ISTEA or the codified Vehicle Safety Act explicitly or implicitly constrains NHTSA's authority to repeal the unbelted compliance test for certification with FMVSS 208.

Although the statute indisputably requires ''automatic'' protection by means of ''inflatable restraints,'' NHTSA retains full authority to define what the protection criteria will be, and how the protection will be evaluated. Congress did not evidence any intention of constraining NHTSA's authority and responsibility to do so.

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CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
*Washington, DC, January 31, 1997.*

To: Honorable Dirk Kempthorne; Attention: Gary Smith.

From: American Law Division.

Subject: Whether the Administrator of the National Highway Transportation Safety Board Has the Authority to Amend, Alter, Change or Otherwise Supplement the Test Procedures for Automatic Restraints Set Out in Paragraph S10(b)(1) of Federal Motor Vehicle Safety Standard 208 (49 C.F.R. §571.208, ¶ S10(b)(1)).

You are concerned that the current testing of vehicle airbags has led to a standard for airbag deployment which may in some situations actually imperil vehicle occupants, and would, therefore, like for the Administrator of the National Highway Transportation Safety Administration (NHTSA) to order tests to determine whether and to what extent airbag deployment pressure might be reduced. The Administrator has informed you that it is his belief that he is prohibited from doing so. Accordingly, you have asked that we review a memorandum prepared by the law firm, Mayer, Brown & Platt, which concludes that the Administrator does have the authority to amend the vehicle safety standard which sets forth the test dummy positioning procedures for crash-testing motor vehicles (Federal Motor Vehicle Safety Standard (FMVSS) 208 ¶ S10(b)(1), Occupant crash protection, 49 C.F.R. §571.208 ¶ S10(b)(1)). For the reasons discussed below, we conclude that there is ample evidence to support that conclusion; and further, that there may not be any need to amend the language of the referenced paragraph.

BACKGROUND

In 1966, Congress determined that it was necessary to ''establish motor vehicle safety standards'' in order to protect the public against ''unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles [or the] unreasonable risk of death or injury to persons in the event accidents do occur.'' The same Act required the Secretary of Transportation ''to establish by order appropriate Federal motor vehicle safety standards.'' and further authorized the Secretary ''by order [to] amend or revoke any Federal motor vehicle safety standard established under this section . . . [taking into consideration] relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this Act.''

In response, the Secretary, through the Administrator of NHTSA, promulgated Part 571 of 49 C.F.R., ''Federal Motor Vehicle Safety Standards,'' which include FMVSS 208, Occupant crash protection. The stated purpose for promulgating the Standard was ''to reduce the number of deaths of vehicle occupants, and the severity of injuries . . .''

In the ''National Highway Traffic Safety Administration Authorization Act of 1991,'' Congress directed the Secretary of Transportation ''to promulgate, in accordance with the National Traffic and Motor Vehicle Safety Act of 1966 . . . an amendment to [FMVSS] 208 to provide that the automatic crash protection system for the front outboard designated positions of [certain described vehicles] . . . shall be an inflatable restraint [i.e., an airbag]. . . .''

The same section states that it ''revises, but does not replace [FMVSS] 208,'' merely extending the ''automatic crash protection'' requirement to ''trucks, buses, and multipurpose vehicles.''

FMVSS 208 ¶ S10(b)(1), which sets forth the way in which ''automatic restraints'' are to be tested, states that ''In a vehicle equipped with an automatic restraint at each front outbound seating position . . . each test dummy is not restrained during one frontal test . . . by an means that require occupant action. If the vehicle has a manual seat belt provided by the manufacturer . . . then a second front test is conducted . . . and each test dummy is restrained both by the automatic restraint system and the manual seat belt . . .''

DISCUSSION

As the Mayer, Brown memorandum correctly states, ''[g]eneral principal of administrative law recognize that administrative agencies 'must be given ample latitude to adapt their rules and policies to the demands of changing circumstances,' as long as the changed policy is accompanied by a 'reasoned analysis for the change.'''[11] Only in the case of a mandate in which Congress has specified some or all of the specifies to be included in any Agency's promulgations would an Agency be precluded from altering or amending those specifics; the statute which first required that motor vehicle safety standards be enacted contained only the directive to the Secretary of Transportation that he promulgate ''appropriate Federal motor vehicle safety standards,'' and further gave the Secretary the authority to ''by order amend or revoke any Federal motor vehicle safety standard established under this section.'' Accordingly, it would appear that the Administrator of NHTSA not only has the authority to amend his own agency's safety standards, but may be expected to do so when he is in possession of ''relevant available motor vehicle safety data.''

That the provision which requires airbags does not envision that ''automatic crash protection'' is to be construed as ''protection afforded in the absence of a seat belt'' is illustrated by the future requirement that

''the owner manuals for passenger cars and trucks, buses, and multipurpose vehicles equipped with an inflatable restraint include a statement in an easily understandable format that

''(1) either or both of the front outboard seating positions . . . are equipped with an inflatable restraint referred to as an 'airbag' and a lap and shoulder belt;

''(2) the airbag is a supplemental restraint;

''(3) lap and shoulder belt also must be used correctly . . . to provide restraint or protection. . . .''

The only statutory reference to ''automatic'' that our research has uncovered appears in the Conference Report that accompanied ISTEA: ''the Senate notes that the current regulations of the Department of Transportation . . . require that passenger cars be equipped with 'passive restraints,' which include either airbags or automatic seatbelts that do not require actions by the occupant in order to be engaged'' (House Conf. Rep. No. 102–404 at 400). In other words, it appears that the statute which requires the installation of airbags as automatic, or passive, restraints neither envisions nor requires (because airbags are considered as ''supplemental'' restraints to be used in conjunction with seatbelts) that they must be tested in unbelted conditions.

Finally, we note the improbability, given the languages set out above to emphasize that airbags are to be considered only as a ''supplemental'' restraint, that FMVSS 208 ¶ S10(b)(1) requires that crash tests to evaluate airbag deployment pressure be conducted on completely unbelted test dummies in order to determine the pressure at which protection from frontal impact crashes would be available.

JANICE E. RUBIN,
*Legislative Attorney*

Mr. KEMPTHORNE. Mr. President, without going back and reciting all of the past history, this is an amendment that, through a collaborative process, will now bring us to the point of safer air bags.

A little girl who was killed in Boise, ID, was the reason for my involvement in this whole issue. So I hope that the family will find some consolation, some peace, in knowing that the loss of that precious little child will now lead us to a new era of safer air bags so that other families will not have to experience the tragedy that they have.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1681) was agreed to.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I personally am in support of the amendment of the Senator from Idaho. I think it is a good amendment. And he has moved his amendment, hasn't he?

The PRESIDING OFFICER. The amendment has been agreed to.

Mr. CHAFEE. Well, put me down as in favor of it.

I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and that I may speak for up to 10 minutes.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

Mr. WYDEN. Thank you very much, Mr. President.

Mr. President, the amendment that was agreed to by the Environment Committee with respect to funding for these critical transportation programs for our country really ought to be called the ''Truth In Transportation Funding Act'' because it ensures that gasoline taxes collected for transportation purposes will actually be spent on those critical transportation projects.

For too long in America, the Congress has played a budgetary shell game—pretending to put funds away in various transportation programs but actually slipping those funds into other spending accounts.

Mr. President and colleagues, this con game has been closed down. Now Congress is on the way to making the highway trust fund sacrosanct again. Transportation taxes will, indeed, pay for transportation services. This means that the dollars will be used on the ground where they are needed, not squirreled away in some account that never seems to be spent.

Today, the Congress will be in a position to bring much-needed relief to citizens who face transportation gridlock across our country. The Congress is adding an additional $26 billion of transportation spending to what is now in the Senate ISTEA II bill. This translates for our State into an additional $40 million per year.

In our State, transportation dollars are now stretched so thin that the State department of transportation is not developing new projects. We have focused our efforts on merely maintaining existing roads because we did not have funding available to pay for improvements. Until now, there was little hope on the horizon that more funding would be forthcoming.

The Environment Committee's amendment is like emergency surgery for Oregon's clogged transportation arteries. If Congress now passes this bill, it will be possible to think in terms of improving the health of our transportation system instead of how to avoid further deterioration. We will be in a position to plan improvements to reduce congestion in an already overtaxed system. We can start to think about the future and how to handle our State's growing population, and many other parts of our country will be able to do the same.

Mr. President and colleagues, I have always believed that you cannot have big league quality of life with little league transportation systems. In the modern world, a transportation bill is about so much more than how you get from point A to point B. A strong infrastructure is one of the basic ingredients to any recipe for economic growth. It is one of the key things that our businesses look at as they consider where to locate and one of the principal contributors to our quality of life.

I support the Environment Committee's amendment, and I urge my colleagues to support the additional funding needed to build the transportation system our Nation will need to compete in the 21st century.

Let me conclude, Mr. President, by saying that I intend, in the days ahead, to take to this floor to discuss other parts of this important legislation. Our State has been a leader nationally in developing an innovative approach to managed growth in our country. This legislation allocates $20 million per year to reward those States and communities that have been willing to take fresh, creative approaches to handling growth.

I am also working, and there was discussion in the Environment Committee today, with Senator GRAHAM, Senator BOB SMITH, and others, on a way to streamline the process and ensure that the dollars that are allocated for transportation projects are spent in the most effective way. In the past, there has really been a disconnect between the way transportation dollars are allocated and the environmental permits that are associated with actually getting those projects built and on line. We have been working on a bipartisan basis to bring together environmental leaders, builders, and those who were involved in planning our roads, and we believe that we are on our way to coming up with a streamlined system that is going to make it possible for us to save dollars and ensure that the transportation projects are built expeditiously while we still comply with the critically needed environmental laws for our country. I intend, in the days ahead, to talk about those commendable features of this legislation as well.

I want to conclude by congratulating my friend, Senator BAUCUS, from Montana, and Senator CHAFEE for an extraordinary bit of work. This bill is heavy lifting. There are Senators with very strong views. There are regional differences of opinion. But I think we have been able to forge a piece of legislation that is going to make a difference in the 21st century.

I conclude my remarks by especially praising our chairman, who has entered the Chamber, JOHN CHAFEE, and Senator BAUCUS, the ranking minority member, because it is their work that has made it possible for us to come to the floor today.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank the senior Senator from Oregon for his kind comments. He has done yeoman's work on the Environment and Public Works Committee, not only in connection with this legislation, but with a whole series of environmental legislation. So having praise from him is doubly satisfying.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CHAFEE. Now, Mr. President, we have the so-called Lautenberg amendment that we would like to take up. This is the amendment that deals with the alcohol content in blood. The amendment would lower the alcohol content, which is a test, for drunken driving, from .1 to .08.

Mr. President, we would like to enter into a time agreement on this. The time agreement would be something in the neighborhood of an hour and a half apiece. And now is the time for those Senators to come to the Chamber if, one, they object to this time agreement, and, two, the plan, further, would be that we would vote this evening. In other words, that would take us up to about 6:30, if all the time were used.

So I want to send the word out, we are about to enter into this agreement. I trust offices are listening to what we are saying here and will come on over or call the cloakroom with their views because we want to move on.

We have legislation we have to make progress on. We have been on this floor for some time but now we are ready for this particular amendment, the drinking amendment, which most people are familiar with.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. If I might ask my good friend, the chairman of the committee, Senator CHAFEE, wouldn't it also be a good idea for Senators who are interested in an amendment that might be offered by Senator MCCONNELL, with respect to the disadvantaged business enterprise, to also have their staffs come over to the floor so we can potentially begin to work on it, an agreement on that amendment? That is another amendment that is going to take some time. It is contentious. The more we start working on the provisions of the debate, the more quickly we can reach a time agreement. I guess that would be another subject we should address as well.

Mr. CHAFEE. Well, I certainly agree with the distinguished ranking member. Senator MCCONNELL has been very thoughtful. He has been on the floor. He is ready to go. We want to find out how many people want to speak on Senator MCCONNELL's amendment so we can get some concept of the time that should be set aside. But that is another amendment.

My thinking now is, if we can work out proceeding with the Lautenberg amendment, tomorrow morning we would take up the financing amendment that was agreed to in the committee today as a result of the agreement that was reached yesterday. There may be some debate on that. I do not know. But we are free to take that up tomorrow.

My hope is we would do that tomorrow morning. And then tomorrow afternoon we would go to the McConnell amendment. But the Senator from Kentucky legitimately wants to know how many people want to speak on his amendment. We want a time agreement. He wants a time agreement. I am for a time agreement, enthusiastically for a time agreement.

So, therefore, would individuals who want to speak on the McConnell amendment call up the cloakroom, let us know how long they think they need, and which side they will be on so we can figure that out. The same goes with the Lautenberg amendment.

Time is of the essence. We will reach an agreement pretty quickly on the Lautenberg amendment. Now is the time for people to call with their thoughts.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1679

Mr. CHAFEE. Now, Mr. President, before the Senate we have the Wellstone amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. Mr. President, I will talk a little bit about that. We have no time agreement, but I will be relatively brief, maybe 10 minutes. The Senator from Minnesota will be roughly how long?

Mr. WELLSTONE. Mr. President, I think I can probably try to keep my remarks about 20 minutes or so.

Mr. CHAFEE. Then we would like to go to a vote. At that time I will move to table. We will have a rollcall vote at that time, Mr. President.

Now, Mr. President, the amendment offered by the Senator from Minnesota would be timely if the Finance Committee were now considering a welfare bill. The matter before the Senate, the basic underlying bill, is a highway bill, financing for highways.

The amendment of the Senator from Minnesota deals with welfare and accounting for those welfare recipients who have gone off the rolls, how have they succeeded and what has become of them. That is all well and good. But that has nothing to do with highways.

Therefore, Mr. President, I have urged the Senator to attach it to a different bill or withdraw it. I tried to stress to him that what we want to do today is consider bills that deal with the subject before us; namely, highways, their funding, how to build them, and different ideas connected therewith.

If the Finance Committee were debating a welfare bill, the amendment would be germane. But we would also oppose it even under those conditions because it is costly and unnecessary.

Now, when Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996—that was only 18 months ago—one of the important features of that legislation was a commitment to find out whether the sweeping changes were effective in helping the families get off welfare dependency. What we had before us was a welfare bill. In it we had some provisions to ascertain, to do research on how the bill was working out. Congress appropriated about $44 million a year to conduct research on the benefits, the effects, the costs of the State programs that were funded under this new law. This new law was a radical departure from the way business had been done in the past. Furthermore, we were provided money to study the costs of the State programs funded under the new law and to evaluate innovative programs they might have.

Now, is the impact of welfare reform being studied? One of the points the Senator from Minnesota makes is that this is a subject worthy of study. Our point, Mr. President, is that it is being studied. HHS, Health and Human Services, has awarded grants to conduct rigorous evaluations of State programs including a 5-year comparative study of the Minnesota Work First Program. In the Senator's own State a study is taking place. There are also studies on child care and child welfare being conducted by organizations such as the Urban Institute of Columbia University and Harvard.

Now, under the Welfare Act, the Secretary of the Department of Health and Human Services is required to make an annual report to Congress on whether the States are increasing employment and earnings of needy families, and are they increasing child support? I think the child support was one of the points that the Senator mentioned. The report that is required from the Secretary of HHS, the annual report, has to include progress on decreasing out-of-wedlock pregnancies, how are we doing on child poverty, reducing that. It is to include demographic and financial characteristics of families applying for assistance, the families receiving assistance, and families that become ineligible for assistance. I know the Senator is particularly concerned about the effectiveness of employment programs. He mentioned that in his amendment.

The Welfare Act requires a specific study on moving families out of welfare through employment. That is already required. It requires an annual ranking of the States in terms of the most and the least successful work programs. The new $1 billion high-performance bonus program will reward States which are successful in increasing earnings for welfare families.

Beginning in 1999, just a year from now, the Secretary is required to conduct an annual report on a broader set of indicators, including whether or not children and families have health insurance, the average income of these families, and educational attainment of these families. Thanks to the efforts of Senator MOYNIHAN, Congress now receives an annual report. It is called Indicators of Welfare Dependence. It has a wealth of information. Mr. President, here is a copy of the report. This is no light-weight work. It is filled with graphs and percentages of children, age 0 to 5 in 1982, living in poverty by number of years in poverty; percentage of individuals living in poverty by numbers of years in poverty. On and on it goes. It has average monthly AFDC benefits by family and recipients in current and constant dollars. It is a very, very thorough report.

Now, my concern is that States have been developing and implementing data collection systems for more than a year now. For Congress to suddenly impose, as the Senator's amendment does, new requirements for more information to track all former welfare recipients is a major undertaking and something we should not enter into lightly. The impact on States is likely to be costly and burdensome.

The Senator's amendment is good news for computer and data processing vendors, but it is unlikely to mean anything, I suspect, for families and our efforts to combat welfare dependency. The amendment also calls for a report which may give an inaccurate picture about the lives of individuals who enter and leave the welfare system.

Now, the accent of the Senator's amendment is on employment. Employment is an important reason that families find economic self-sufficiently, no question, but it is not the only reason. Families leave welfare because child support is being collected for the first time. They will leave because their children will have health insurance and no longer need take a risk of having their children without health insurance if their earnings are increased.

Mr. President, these are the reasons that I find the amendment well meaning but unnecessary, particularly in view of the massive amount of reports that are already being required, one of which I briefly indicated.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. First of all, let me thank my colleague from Rhode Island for his graciousness. For those who might be watching this proceeding, my colleague could have just simply tabled this amendment. He didn't do that. He will eventually, but he has given me an

opportunity to respond to his arguments. I want him to know that I appreciate it.

Mr. President, I won't spend a lot of time on the question of this amendment on the ISTEA bill—which is essentially the highway bill for highways and, hopefully, more mass transit—because, as my colleagues know, Democrats and Republicans alike, we look for vehicles whereby we can come out and introduce amendments that really speak to what we think are some real concerns in the country. All of us do that all of the time. I am doing it now. I am not so sure there will be, I say to my colleague, a welfare bill that will be before the U.S. Senate any time soon. I introduce this amendment with some sense of urgency. I don't think there is any evidence whatever that we will have a welfare bill before the U.S. Senate. So if I am going to have an opportunity to make an appeal to my colleagues, now is the time to do so.

Second, I want to just make it clear what this amendment does and what it does not do. I am puzzled by the opposition, with all due respect to my colleague from Rhode Island. This amendment just simply says to the Secretary of Health and Human Services, please give us a report based upon—not your going out and collecting all sorts of other data—but based upon the data that is available to you.

My colleague just said that there will be some good data available. Most people that I know—I have a social science background—that have looked at this are saying you have a number of different people studying a number of different things and it is fragmented and does not focus on the main question I am asking. Exactly how many of the families are reaching economic self-sufficiency? This amendment just says to the Secretary of Health and Human Services, please pull together the data that is available, reports prepared by the Comptroller General, samples of the Bureau of Census, surveys funded by your own department, studies conducted by States, studies conducted by nongovernment organizations, and administrative data from other Federal agencies. Please bring that data together, coordinate that data and provide reports to us every 6 months as to exactly how many families are reaching economic self-sufficiency. The goal of that being to answer the question, Are these families now at 150 percent of poverty? Are they over poverty? What kind of jobs do they have? What kind of wages? Where are the children? Is child care available? How are people doing on transportation? Are they able to get to work? Have we had situations where people couldn't take jobs in rural areas because they couldn't get to the jobs? Have we had situations where people don't take jobs in the suburbs and metro areas because they couldn't get from ghettos to suburbs because of lack of transportation? That is all this amendment calls for. That is all this amendment calls for.

So I say to my colleagues that, in a way, I think those that oppose this amendment are trying to have it both ways. On the one hand, they are arguing that we have already collected all of this data. I think not, but if so, it's hardly an onerous requirement to say to the Secretary: Please assemble this data and give us a report every 6 months as to what is really happening out there in the country.

If the opposition to my amendment—which I have heard from some people on the other side—is, ''Wait a minute, you are going to be asking the Secretary for too much,'' I say eventually we are going to get to the point where there is going to have to be more of an investment. Because if the Secretary isn't going to be able to provide us with the data we need, with the report we need, based upon the data out there, then I say to you we will need more. That is all the more reason to go forward with this.

So I am puzzled by the opposition. ''We already have these studies that are providing us with the information we need,'' they say. So what is the harm in having the Secretary present reports to us every 6 months so we can have some reassurance that these mothers, these single parents, have now been able to obtain employment that they can support their family on, and the children aren't home alone, and first graders don't go home alone after school, and more children aren't impoverished? Why in the world, if we already have the studies out there, would we not want to ask the Secretary of Health and Human Services to provide us with this report?

If, on the other hand, the basis of the opposition is what I think it is—because I think this is the case—is that this is already being done, as a matter of fact what's being done is pretty fragmented. There is good work being done. Senator MOYNIHAN would be the first to say that we can do better, and that is what this amendment says. Let's ask the Secretary of Health and Human Services to take the additional studies that are out there—and my colleague talked about some of them—and provide us with the report. If she cannot really provide us with the information we need, then we will cross that bridge when we come to it. I am not mandating that she has to provide additional information. I am saying what would be helpful to us, asking her to please bring together the data that is out there, based on these reports, and give us a report on the current situation. That is what this amendment is all about.

Now, after having said that, I would make an appeal to my colleagues. I think on our side, I know Senator BAUCUS is going to support the amendment. On our side I think there is pretty strong support for this. I hope there will be support for this on the other side as well. I think the Senator from Rhode Island—we all have these great things to say about other people and half of it may be true—is a great Senator. I wanted to get his support. I am disappointed because I don't understand what the harm is in this amendment.

With all due respect, you can get into all this language that sounds kind of impersonal and kind of cold like, ''We already have studies, we don't need it,'' or ''It is going to require us to obtain additional information, which might cost more money,'' and ''Somebody is going to have to make the investment.''

Well, Mr. President, imagine just for a moment, just ponder this question: What if I'm right?

Maybe other Senators have traveled the country. I think I have done as much travel as any other Senator in this Chamber, at least in poor communities, low-income communities. I think I have tried to stay as close to this as any other Senator. I am telling you that in a whole lot of communities it is crystal clear that people live in communities where the jobs aren't there. And in a whole lot of situations—and you will have a lot of people from your States who will tell you the same thing—these women are obtaining jobs, but they hardly pay a living wage. And one year from now, or whatever, when they no longer receive medical assistance, their families are going to be worse off.

I am hearing from a lot of States, including my own State of Minnesota, which has a very low unemployment level and which is doing well economically. I am not here to bash States, but there are studies that raise a whole lot of questions, and there have been some articles that have raised a whole lot of questions about situations where some women haven't shown up for orientation sessions, and sometimes for good reason, and it's said that they don't necessarily want to work. There are communities that have incredibly long waiting lists. The city of Los Angeles had a waiting list of 30,000 for affordable child care before the welfare bill.

Now, look, if I am right about this, if I am right that what has happened—because all too often we know what we want to know and we don't know what we don't want to know—all too often, what is going on here is, we say there are 4 million fewer recipients, a 4 million reduction in the welfare rolls. The reform is a huge success, but that doesn't mean we have seen a reduction of poverty. I am just saying, should we not know what the situation is in the country? Should we not know what kind of jobs, what wages, the child care situation, and should we not know whether these families are better off or worse off? Should we not know all of that, especially since built into that legislation is a date certain whereby, depending on the State, families will be eliminated from all assistance, the assumption being that all these people are now working and can support themselves and their children. Is that assumption valid?

Now, why in the world, I say to my colleagues, would you oppose this amendment? Why would you oppose this amendment?

One final time. This amendment just asks the Secretary of Health and Human Services to please provide to us a report based on the existing studies with data that is out there, on what the situation is around the country, on how many of these families are reaching economic self-sufficiency. Are they out of poverty now? Are their children better off? That's what we want. Or are more families impoverished? Are the jobs just minimum wage? Is there a lack of child care? Is the transportation available or not? Why would we not want to know that?

You know, I didn't mention this earlier, Mr. President, but there is another amendment I will bring out here on the higher ed bill. I wonder if my colleagues know this. In all too many States, single parents who are in school and community colleges are now being told they have to leave college to take a job. Now, here are the parents that are on the path to economic self-sufficiency. They are in school. They are trying to complete their college education so they can get a good job and support their families. They are being told that, because of the welfare reform bill, they can't complete their education. Talk about something that is shortsighted and harsh, something that is myopic. Well, that is another story and another amendment later on.

But for now, please support this amendment. Please ask the Secretary of Health and Human Services to provide us with the data. Please, colleagues, at least let's have a focus on this, let's have the information before us, let's know what is going on, let's make sure that these women and children are doing better. That would make us more responsible policymakers.

Finally, I say to my colleague, if it doesn't pass—and I hope it will—this is an amendment on ISTEA, but I will come back with these amendments over and over again. Because it is my firm belief as a U.S. Senator that we can't turn our gaze away from this. These are citizens who are not the heavy hitters, these are citizens that are not the givers, these are citizens that do not have the lobbyists. These are, in the main, poor people—mainly women and children. I think it is important that we understand what is happening to them, and it is important that we have the right information, and it is important that we do our very best to be responsible policymakers and make sure that these families aren't worse off and that these children are not in harm's way. How in the world, colleagues, can you vote against the proposition that we ought to have as much information as possible before us so that we make sure these children are not endangered, so that we can make sure these families are better off?

I yield the floor.

Mr. CHAFEE. Mr. President, as I mentioned before, we are dealing with a highway bill here. This isn't the appropriate place for that. When we did the welfare bill, I was the one who included in the welfare bill data collection provisions. Should those data collection provisions be inadequate and need to be expanded along the lines the Senator has suggested, I would be glad to work with him and see if we could not include those by working with the Secretary of HHS. This, plainly, isn't the right place for this amendment.

If the Senator has nothing further, I move to table the amendment of the Senator from Minnesota and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Minnesota. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. ALLARD) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN), the Senator from Hawaii (Mr. INOUYE), are necessarily absent.

The PRESIDING OFFICER (Mr. GORTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—54

| | | |
|---|---|---|
| Abraham | Gorton | McCain |
| Ashcroft | Gramm | McConnell |
| Bennett | Grams | Murkowski |
| Bond | Grassley | Nickles |
| Brownback | Gregg | Roberts |
| Burns | Hagel | Roth |
| Campbell | Hatch | Santorum |
| Chafee | Helms | Sessions |
| Cochran | Hutchinson | Shelby |
| Collins | Hutchison | Smith (NH) |
| Coverdell | Inhofe | Smith (OR) |
| Craig | Jeffords | Snowe |
| D'Amato | Kempthorne | Specter |
| DeWine | Kohl | Stevens |
| Domenici | Kyl | Thomas |
| Enzi | Lott | Thompson |
| Faircloth | Lugar | Thurmond |
| Frist | Mack | Warner |

NAYS—43

| | | |
|---|---|---|
| Akaka | Durbin | Lieberman |
| Baucus | Feingold | Mikulski |
| Biden | Feinstein | Moseley-Braun |
| Bingaman | Ford | Moynihan |
| Boxer | Graham | Murray |
| Breaux | Harkin | Reed |
| Bryan | Hollings | Reid |
| Bumpers | Johnson | Robb |
| Byrd | Kennedy | Rockefeller |
| Cleland | Kerrey | Sarbanes |
| Coats | Kerry | Torricelli |
| Conrad | Landrieu | Wellstone |
| Daschle | Lautenberg | Wyden |
| Dodd | Leahy | |
| Dorgan | Levin | |

NOT VOTING—3

| | | |
|---|---|---|
| Allard | Glenn | Inouye |

The motion to lay on the table the amendment (No. 1679) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table the motion to reconsider is agreed to.

Mr. CHAFEE. Mr. President, what we would like to do now is move to a Lautenberg amendment dealing with alcohol-blood content. The proposal is that there be 3 hours of debate equally divided.

UNANIMOUS CONSENT AGREEMENT

Mr. CHAFEE. Mr. President, I ask unanimous consent that Senator LAUTENBERG be recognized to offer an amendment on blood-alcohol content and that there be 3 hours for debate, equally divided, under the control of Senator LAUTENBERG and Senator CHAFEE. I further ask unanimous consent that there be 1 hour remaining, equally divided, for debate. In other words, do 2 hours tonight and 1 hour tomorrow. The leader has indicated that we are to come in at 9 a.m. and that the vote will be at 10 a.m.; at 10 a.m., the Senate proceed to vote on or in relation to the Lautenberg amendment. I further ask unanimous consent that no additional amendments be in order prior to the vote in relation to the Lautenberg amendment.

Mr. BAUCUS. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Might I ask the chairman of the committee—and we are checking on this—if that 10 o'clock can be delayed until 10:30? There is a problem on our side with a vote at 10 o'clock.

Mr. CHAFEE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CHAFEE. Now, Mr. President, I modify the unanimous consent request, and as a matter of fact, I will just read it over again so everybody will understand it. I ask unanimous consent that Senator LAUTENBERG be recognized to offer an amendment regarding drinking levels, and there be 3 hours for debate, equally divided, and the time be under the control of Senator LAUTENBERG and Senator CHAFEE. I further ask unanimous consent that there be 1 hour, equally divided, for debate tomorrow morning—in other words, do 2 hours tonight and 1 hour tomorrow morning—that we come in at 9:30 a.m., and go straight to the remaining hour on the amendment, and at the hour of 10:30 a.m. the Senate proceed to vote on or in relation to the Lautenberg amendment. I further ask unanimous consent that no additional amendments be in order prior to the vote in relation to the Lautenberg amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, I thank the chairman for making that adjustment. I appreciate it very much.

The PRESIDING OFFICER. Without objection, the unanimous consent request is agreed to.

Mr. CHAFEE. Has that been agreed to, Mr. President?

The PRESIDING OFFICER. It has.

Mr. CHAFEE. Mr. President, the majority leader has informed me that there will be no further votes this evening. And so we will now start the debate on the Lautenberg amendment, with 2 hours.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized.

AMENDMENT NO. 1682 TO AMENDMENT NO. 1676

(Purpose: To provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. Lautenberg], for himself, Mr. DeWine, Mr. Lieberman, Mr. Faircloth, Mrs. Boxer, Mr. Helms, Mr. Glenn, Mr. Durbin, Mrs. Feinstein, Mr. Bingaman, Mr. Moynihan, Mr. Hatch, Mr. Wellstone, Mr. Akaka, Mr. Dodd, Mr. Kerry, Mr. Inouye, Ms. Moseley-Braun, Mr. Bumpers, Mr. Reed, Mr. Smith of Oregon, Mr. Rockefeller and Mr. Chafee proposes an amendment numbered 1682 to amendment No. 1676.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of subtitle D of title I, add the following:

**SEC. 14___. NATIONAL STANDARD TO PROHIBIT OPERATION OF MOTOR VEHICLES BY INTOXICATED INDIVIDUALS.**

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

**''§ 154. National standard to prohibit operation of motor vehicles by intoxicated individuals**

''(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2002.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2001, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2002, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law providing that an individual who has an alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State is guilty of the offense of driving while intoxicated (or an equivalent offense that carries the greatest penalty under the law of the State for operating a motor vehicle after having consumed alcohol).

''(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2003.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2003, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2003.—No funds withheld under this section from apportionment to any State after September 30, 2003, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall—

''(i) lapse; or

''(ii) in the case of funds apportioned under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1)(A), the State does not meet the requirements of subsection (a)(3), the funds shall—

''(A) lapse; or

''(B) in the case of funds withheld from apportionment under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 153 the following:

''154. National standard to prohibit operation of motor vehicles by intoxicated individuals.''.

Mr. CHAFEE. I wonder if the Senator will yield me 1 minute?

Mr. LAUTENBERG. I am happy to.

Mr. CHAFEE. Mr. President, I urge Senators who are opposed to the amendment to come to the floor. I am designated as in control of the time in opposition, but I will confess I am for the amendment so I will not be speaking against it. And for those Senators who wish time, now is the time to come over.

There are 2 hours. We have an hour in opposition to the amendment. Obviously, I am prepared to turn over the time to anybody in opposition. But I will not be speaking against it. So I wish Senators who are opposed to this amendment would come to the floor.

Thank you. I want to thank the Senator from New Jersey.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I offer this amendment with my colleague from Ohio, Senator MIKE DEWINE, and I include, as cosponsors, Senator LIEBERMAN, Senator FAIRCLOTH, Senator BOXER, Senator HELMS, Senator GLENN, Senator DURBIN, Senator FEINSTEIN, Senator BINGAMAN, Senator MOYNIHAN, Senator HATCH, Senator WELLSTONE, Senator AKAKA, Senator DODD, Senator KERRY from Massachusetts, Senator INOUYE, Senator MOSELEY-BRAUN, Senator BUMPERS, Senator REED, Senator SMITH of Oregon and Senator ROCKEFELLER join me as cosponsors in the amendment; and Senator CHAFEE, the chairman of the committee. And all together, we have 23 bipartisan cosponsors. That is the way it ought to be because this is on behalf of the victims of drunk driving crashes—over 17,000 deaths and about one million injuries each year.

This amendment, the Safe and Sober Streets Act, establishes the legal limit for drunken driving at .08 blood alcohol content in all 50 States. Establishing .08 as the legal definition of drunk driving is responsible, effective, and it is the right thing to do. This amendment, if enacted into law, will save lives. And it is our moral imperative, as legislators, to pass legislation that will make our communities, our roads and, of course, our families safe.

This is the logical next step in the fight against drunk driving. It will build on what we started in 1984, when Democrats, Republicans, and President Reagan joined together to set a national minimum drinking age to 21. And since that time, we have saved over 10,000 lives. And contrary to the concern of the restaurant and the liquor business, those businesses have not gone under, like many warned us about at the time.

Mr. President, the question before us is, should a 170-pound man be allowed to have more than four beers in 1 hour, on an empty stomach, and get behind the wheel of a car? And our answer is, absolutely not. This amendment goes after drunk drivers, not social drinkers.

And while we are pushing for enactment of this legislation, I have had the honor of getting to know some families who have experienced the ultimate tragedy—the Frazier family from Maryland. Randy and Brenda's daughter Ashley, 9 years old, was tragically killed by a .08 drunk driver 2 years ago. This person's blood alcohol content level was .08. What we are trying to do is to establish the fact that .08 is a dangerous level for people on our roads and highways. The Fraziers have lent themselves courageously to this fight,

to enact this .08 BAC level across the land.

Last March, Randy Frazier issued a call to Congress, a call that I believe captures what this issue is all about. He said, ''It is time for leadership and action here in the Congress to draw a safer, saner, and more sensible line against impaired driving at .08. If we truly believe in family values, then .08 ought to become the law of the land.

Four beers-plus in an hour—now, that is on an empty stomach, Mr. President. That is not casual. That is not a casual level. An empty stomach, four beers in an hour—a 170-pound person is already impaired in their reaction to situations. They should not be allowed to get behind the wheel of a car and create a situation that is the antithesis of what we call the protection of the family.

As we debate this issue, I want each of my colleagues to consider two things: First, ask yourself, have we done enough to combat drunk driving in this country? The answer to that question, in my view, is absolutely not. Second, is a person whose blood alcohol content is .08 percent a threat to themselves and others on the road? And the answer to that one, of course, is a resounding yes.

Adopting this amendment will simply bring the United States of America into the ranks of most other industrialized nations in this world in setting reasonable drunk driving limits.

Canada, Great Britain, Ireland, Italy, Austria, Switzerland, all have a .08 BAC limit. France, Belgium, Finland and the Netherlands have a limit of .05 BAC—half of what we commonly have in our country. Sweden is practically down to zero—.02 BAC.

We heard today from President Clinton. He is very aggressively supporting this amendment. Other supporters include Transportation Secretary Rodney Slater. They include organizations like the National Safety Council; the National Transportation Safety Board; the National Center for Injury Prevention and Control of the Center for Disease Control; the American Automobile Manufacturers Association; Kemper Insurance; State Farm and Nationwide insurance companies; MADD, Mothers Against Drunk Driving, of course; the American College of Emergency Physicians.

I had a talk with a physician today at the White House when we presented this BAC .08 bill. And a physician, the head of an emergency room in the State of Wisconsin, told me that emergency rooms are sometimes so filled with drunk drivers who had been in accidents, that they cannot adequately calibrate the blood alcohol testing machine. The room is sometimes so filled from the victim's liquor-stained breath that they had to leave the room to set the calibration on the blood alcohol testing machine.

Other supporters include the Consumer Federation of America, National Fire Protection Association—the list goes on—Advocates for Highway and Auto Safety.

And we have had newspaper editorials, such as the New York Times and the Washington Post and the Baltimore Sun. I ask, Mr. President, unanimous consent to have printed in the RECORD letters and editorials in support of this amendment.

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

[From the New York Times, Feb. 26, 1998]

ONE NATION, DRUNK OR SOBER

The danger posed by an intoxicated driver does not change when the driver crosses state lines. Neither should the legal test for sobriety. That is the practical thinking behind pending legislation in Congress to create one uniform Federal standard for drunken driving. Some critics say the measure would infringe on states' rights. But this is a problem that transcends state boundaries, requiring a tough, consistent national approach.

The measure, sponsored by Senators Frank Lautenberg of New Jersey and Mike DeWine of Ohio, and Representatives Nita Lowey and Benjamin Gilman of New York, would set a national blood alcohol limit of .08 percent. States would have three years to enact this limit before losing a percentage of their highway construction funds. This same approach was used to encourage compliance with the lifesaving 1984 law that established the 21-year-old drinking age.

Currently, only 15 states set their drunken-driving threshold at .08. Elsewhere it takes a higher level, .10, to put a driver over the legal limit. Thus most of the country would have to adopt the stricter .08 standard or lose Federal funding. This has lobbyists for liquor interests trying to depict the bill as a heavy-handed assault on harmless social drinking. But a blood alcohol level of .08 is sufficient to cause unacceptable damage to a driver's reflexes, judgment and control. Moreover, the .08 level still allows for considerable consumption. An average 170-pound man, experts say, could imbibe more than four shots of hard liquor in an hour—and on an empty stomach—before reaching a blood alcohol concentration of .08.

Far from a moralistic assault on moderate social drinking, the bill is a reasonable effort to save lives. Over 40 percent of all traffic fatalities are alcohol-related, and close to one-fourth of those crashes involve drivers with an alcohol level under the generous .10 standard. As many as 600 lives would be spared each year, and countless other serious accidents avoided, if .08 were imposed nationwide.

With support from President Clinton and lawmakers from both parties, the measure stands a good chance of winning approval when the Senate tackles the contentious issue of highway funding beginning next week—provided, of course, that generous political giving by liquor interests does not overshadow the needs of public safety.

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[From the Washington Post, Nov. 8, 1997]

DRUNK IN ONE STATE, NOT THE OTHER?

Drunk drivers are deadly threats no matter where they speed or weave in this country. Yet a driver who is certifiably drunk in Virginia can roll to a ''sobriety'' of sorts merely by crossing into Maryland. That is a life-threatening inconsistency that exists around the country because there is no uniform standard of drunkenness on the roads. There could and should be a clear and effective standard—and Congress has legislation before it to bring this about.

Nearly all highway safety organizations and physicians groups consider a blood alcohol content reading of .08 as sufficient evidence of a drunk driver. That is the standard in Virginia and 14 other states, and it is hardly an unreasonable limit: A 170-pound man could consume four drinks in one hour on an empty stomach and still come in below .08; a 135-pound woman could down three drinks and do the same. But Maryland, the District and 34 other states have a looser standard—of .10. Why not agree on .08?

There ought to be a national standard, and such a proposition is now before Congress, with support from across the political spectrum. Legislation cosponsored in the Senate by Sens. Frank Lautenberg and Mike DeWine and in the House of Reps. Nita Lowey, Connie Morella and more than 40 other members would withhold federal transportation funds from states without a .08 standard. The logic is simple enough: Driving is an interstate activity.

One sorry explanation for the failure of states to adopt a .08 limit is that lobbyists for liquor interests have worked to kill the idea in state legislatures. In Congress they have trotted out states' rights objections. But states that are softest on drunk driving could keep their looser standards—it's just that federal taxpayers would not underwrite transportation projects for these states. Why should they, when looser laws mean more tragedies that cost the public that much more in health bills—and in lives lost?

Federal incentives to adopt safety measures do work. There are now 44 states that have a zero-tolerance policy for minors who drink and drive, and results show that the number of traffic deaths involving teenagers and alcohol has fallen nearly 60 percent between 1982 (before the federal law) and last year. All of this long ago should at least have propelled Maryland, the District and state legislators to move on their own. But now Congress can bring still better sense to highways by approving a uniform, nationally understood definition of a dangerous driver.

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[From the Baltimore Sun, Oct. 25, 1997]

LOWER THRESHOLD FOR DRUNKEN DRIVING

You're driving on the beltway. The motorist in the next lane consumed four beers during the past hour. To paraphrase Clint Eastwood, do you feel lucky?

Amazingly, that tipsy driver may be within his legal rights in Maryland and 34 other states where a blood-alcohol concentration of 10 is the minimum to be considered drunk. In recent years, Virginia and 14 other states have stiffened their definition of intoxicated driving to .08. That's still more than four drinks for a 170-pound man on an empty stomach, more than three for a 135-pound woman.

Yet the state-by-state movement to .08 has stalled, often because lobbyists for liquor interests have successfully smothered it in the various legislatures. The liquor industry is foolish, because automobile deaths rooted in alcohol will only heap scorn on the business, but it is reflexively battling .08 laws nonetheless.

President Clinton and several lawmakers believe it is time to confront drunken driving with a national thrust, as the government is doing now to battle another killer, tobacco.

Under Senate Bill 412, authored by Sens. Frnak R. Lautenberg, a New Jersey Democrat, and Michael DeWine, an Ohio Republican, transportation funds would be withheld from states without a .08 standard.

Washington took a similar stand on teen drinking and driving in 1984—with dramatic effect. Traffic deaths involving teen-agers and alcohol dropped nearly 60 percent between 1982, prior to the federal law, and 1996.

That was twice the drop in alcohol-related traffic fatalities for the population at large.

There was also a 25 percent drop in surveys of teens who described themselves as heavy drinkers, suggesting that the force of law nudges people to drink more responsibly. That's a critical and little recognized benefit of a 08 law. In fact, states that switched to .08 recorded an 18 percent decline in fatal crashes involving drivers with blood-alcohol rates of .15.

Medical researchers estimate 600 lives would be saved a year with a .08 law. That has been the experience in other nations with stricter standards than ours, including wine-rich France and Japan, which has fewer drunken driving deaths than Maryland alone 475 vs. 671). Even in the U.S. though, the public isn't as willing to wink at tipsy drivers as it was years ago, after hearing of or being hurt by the deaths of individuals, of families, even a princess.

Four drinks in one state make you no less drunk than four drinks in another. The abundant evidence justifies a national response.

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KEMPER,
*Washington, DC, October 20, 1997.*

Hon. MIKE DEWINE,
*Russell Senate Office Building,*
*Washington, DC.*
Hon. FRANK R. LAUTENBERG,
*Hart Senate Office Building,*
*Washington, DC.*

DEAR SENATORS DEWINE AND LAUTENBERG: You are both to be complimented for stepping forward to offer S. 412, ''The Safe and Sober Streets Act of 1997,'' to the pending reauthorization of the Intermodal Surface Transportation Efficiency Act.

While we as a nation have made progress in the effort to make drinking and driving unacceptable in our society, alcohol related traffic crashes continue to be a sizable problem. Drunk driving fatalities actually increased in 1995 for the first time in a decade.

Your legislation would require the states to enact a blood alcohol concentration threshold of .08% for impaired driving or suffer a loss in federal highway construction funding. This provision should reverse the drunk driving fatality trend and save several hundred lives each year. The .08 threshold is currently in place in Canada, many western European countries and in fifteen states in the U.S. All of the medical evidence indicates that .08 is a sensible threshold to measure driver impairment.

You may feel confident of our companies' wholehearted support of your joint initiative.

Sincerely,

MICHAEL F. DINEEN,
*Vice President, Legislative Affairs.*

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THE COALITION FOR
AMERICAN TRAUMA CARE,
*Reston, VA, September 3, 1997.*

Hon. FRANK LAUTENBERG,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR LAUTENBERG: The Coalition for American Trauma Care is very pleased to endorse ''The Safe and Sober Streets Act of 1997,'' that would set a national standard for defining drunk driving a .08 Blood Alcohol Content (''BAC''). The Coalition commends your leadership in introducing this legislation that will help save the more than 17,000 lives that are lost each year on our nation's highways due to drunk driving. Nothing could be more important during this week when the world mourns the tragic death of Princess Diana, a victim of drunk driving.

The Coalition for American Trauma Care is a not-for-profit organization representing leading trauma and burn surgeons, leading trauma center institutions, and 16 national organizations in trauma and burn care. The Coalition for American Trauma Care seeks to improve trauma and burn care through improved care delivery systems, prevention efforts, research, and by protecting reimbursement for appropriately delivered services.

The Coalition appreciates your efforts to save lives by enacting tougher drunk driving laws and stands ready to support you.

Sincerely,

HOWARD R. CHAMPION, MD,
*President.*

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NATIONAL SAFETY COUNCIL,
*Itasca, IL, December 8, 1997.*

The Hon. FRANK LAUTENBERG,
The Hon. MIKE DEWINE,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATORS LAUTENBERG AND DEWINE: The National Safety Council is writing to offer our strong support for The Safe and Sober Streets Act of 1977, S. 412, and for your plan to include the bill in legislation to reauthorize the Intermodal Surface Transportation Efficiency Act.

Drunk driving remains a national shame. Despite progress over the years, 41% of all motor vehicle fatalities—more than 17,000 lives lost—involve alcohol. Yet the current legal blood alcohol concentration (BAC) in most states is .10, the highest in the industrialized world.

The National Safety Council long has supported setting the BAC limit for adult drivers at .08, a point at which driving skills are proven to be compromised. If every state adopted .08, an estimated 500–600 lives a year could be saved. Although 15 states now have BAC limits of .08, incentive grants and public policy arguments alone have not succeeded in ensuring wider adoption of .08 laws. Strong federal leadership is needed to achieve a uniform national BAC limit of .08.

That is why we believe enactment of S. 412, which links adoption of .08 laws to federal highway funding, is a necessary and important step. Laws which set the legal BAC limit at .08 are a needed part of the combination of programs and policies which must be in place if we are to win the fight against drunk driving.

The National Safety Council commends and thanks you for your leadership on this critical issue.

Sincerely,

GERARD F. SCANNELL,
*President.*

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AMERICAN COLLEGE OF
EMERGENCY PHYSICIANS;
*Dallas, TX, September 24, 1997.*

The Hon. FRANK R. LAUTENBERG,
*Hart Senate Office Building,*
*Washington, DC.*

DEAR SENATOR LAUTENBERG: The American College of Emergency Physicians (ACEP), representing 19,000 emergency physicians and the patients they serve, urges you to cosponsor S. 412, the ''Safe and Sober Streets Act of 1997,'' introduced by Senators Frank Lautenberg (D–NJ) and Mike DeWine (R–OH).

Emergency physicians witness first-hand the serious injuries and fatalities that result from drunk driving. Last year, drunk driving caused more than 17,000 deaths on our nation's highways. Epidemiologic data has well established that all drivers are impaired at a blood alcohol concentration (BAC) of .08. Furthermore, at this level, the risk of being in a crash increases significantly.

For many years, the College has supported the National Highway Traffic Safety Administration's (NHTSA) recommendation that states adopt .08 BAC as the legal standard for intoxication. The ''Safe and Sober Streets Act'' would establish a national standard for defining drunk driving at .08 BAC by encouraging all states to adopt this limit.

The facts cannot be disputed. Too many lives have been lost and many more are put at risk every day by drunk drivers. As emergency physicians, we believe that our success is measured not only by the lives we save in the emergency department, but also by the lives we save through prevention. Thus, we urge you to support and help pass this important highway safety measure.

Sincerely,

LARRY A. BEDARD, MD, FACEP
*President.*

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AMERICAN AUTOMOBILE,
MANUFACTURERS ASSOCIATION,
*Washington, DC, March 2, 1998.*

The Hon. FRANK R. LAUTENBERG,
*U.S. Senate, Hart Senate Office Bldg., Washington, DC.*

DEAR SENATOR LAUTENBERG: This letter is to urge your support for legislation that would provide states with an incentive to adopt and enforce an anti-drunk driving standard of 0.08 Blood Alcohol Concentration (BAC). Such a proposal is contained in S. 412, the Safe and Sober Streets Act, co-sponsored by Senators Lautenberg, DeWine and twenty-one others. This proposal is expected to be offered as an amendment to S. 1173, the ISTEA reauthorization bill.

According to the U.S. Department of Transportation's most recent report, alcohol-related crashes account for 40 percent of all traffic fatalities. While good progress has been made over the past decade, the number of alcohol-related deaths is still over 17,000 each year. In addition, some 1.4 million drivers were arrested in 1995 alone for driving under the influence of alcohol.

Moreover, safety belt use, now required by 49 states, is markedly lower among drivers and occupants involved in alcohol-related crashes.

Clearly, more needs to be done. Currently, in most states the standard for ''legal'' intoxication is 0.10 BAC, while states that have enacted .08 BAC legislation have witnessed significant reductions in alcohol-related traffice fatalities, according to statistics compiled by Mothers Against Drunk Driving.

AAMA and its member companies, Chrysler, Ford and General Motors strongly urge your support of this legislation.

Sincerely,

ANDREW H. CARD, Jr.
*President.*

Mr. LAUTENBERG. But more important than the scores of businesses, health and science organizations, governmental agencies, public opinion leaders, is the support from the families and friends of victims of drunk driving—like, as I mentioned before, the Fraziers. They come from Westminster, MD. They lost their 9-year-old daughter Ashley.

I have also gotten to know very well some people from New Jersey, Louise and Ronald Hammell of Tuckerton, NJ. They lost their son Matthew who was growing up in the full bloom of life—very positive, doing things for the community and others. He ultimately sought to be a minister, the wonderful young man. He was rollerblading on the other side of the highway from the car that became involved in his death, and that driver crossed over the yellow line dividing the two lanes of traffic, and came all the way to the shoulder

and killed this young man, and so early in his life that he had not really yet begun to develop.

Who opposes this amendment? That is the question we have to ask ourselves. The American Beverage Institute, the National Restaurant Association, the Beer Wholesalers, what is it that they have in mind when they oppose this? They say that ''Oh, we're going to lose business,'' that you ought to be targeting the chronic heavy drinker.

Well, we are after the heavy drinker. That is why we have those roadblocks. And it is sometimes very hard to stop those who are so addicted to a substance that they cannot control themselves and wind up harming others. But does that mean that we ought not to bother because some get away with it? We know that we have to have traffic rules, we have to have red lights. Some people do not obey them. But the fact of the matter is, the majority is well-served by having rules that protect the public.

Organizations, Mr. President, which support this amendment have one thing in mind—the public's interest, the health and safety of our communities and of our roads and of our families. Organizations who oppose this amendment have one interest in mind—they only care about protecting their narrow special interest.

We have to make that judgment here. Drunk driving continues to be a national scourge that imposes tremendous suffering on the victims of drunk driving crashes and their loved ones.

In 1996, 17,126 people were killed in alcohol-related crashes. About one million people were injured in alcohol-related crashes. And I point out, Mr. President, that in the worst year of the Vietnam war—an event that scarred the hearts and the minds of people across our country—in 1 year, the worst year in Vietnam, we lost just over 17,000 people. So here, every year, we lose 17,000-plus people in drunk driving crashes. And it compares to the worst year of a war that left our Nation in mourning for many years.

Every one of these deaths and injuries could have been prevented had the driver decided to call for a ride, hand the keys to a friend, or do anything other than taking that wheel. When that person takes that wheel, it is as if they are carrying a gun. The only question—when is that thing going to go off? It is no different. Murder is murder, and the victim is just as dead whether it comes from a drunk driving accident or whether it comes from the pulling of a trigger.

Deaths and injuries that are due to drunk driving are not ''accidents.'' They are predictable and preventable. Every 30 minutes someone in America—a mother, a husband, a child, grandchild, brother, sister—dies in an alcohol-related crash.

In the United States, 41 percent of all fatal crashes are alcohol-related. Alcohol is the single greatest factor in motor vehicle deaths and injuries. The first step in combating this epidemic is to inject the sense of sanity in our Nation's drunk driving laws and by enacting the Safe and Sober Streets Act. The amendment we have in front of us will go a long way toward reducing the deadly combination of drinking and driving.

Mr. President, my amendment, which would have the effect of lowering this Nation's tolerance for drinking and driving by 20 percent, is what ought to be considered now. This amendment requires all States to define the point at which a driver would be considered to be drunk as .08 blood alcohol content. Fifteen States already have .08 BAC and would be unaffected by my amendment. My State of New Jersey does not have a .08 BAC, nor does the State of my chief colleague in this, Senator MIKE DEWINE, from Ohio, who is well aware of that deficiency in the State law.

Mr. President, .08 is a reasonable and responsible level at which to draw the line in fighting drunk driving. Despite what we are all hearing from special interests and their lobbyists, at .08 a person is drunk and should not be driving. Their reaction is impaired. They can't stop quick enough; they accelerate too fast; they turn too erratically.

In fact, Congress, in its wisdom, set the limit for commercial motor vehicle drivers at .04 BAC in the 1980s. So, Congress clearly understands the connection between the consumption of alcohol and the critical ability needed to drive a vehicle safely on our highways.

Mr. President, .08 BAC is just common sense. Think of it this way: You are in your car, driving on a two-lane road at night. Your child is traveling with you. You see a car's headlights approaching. The driver in this case is a 170-pound man who just drank five bottles of beer in an hour on an empty stomach in a bar. If he were driving in Maryland, he would not be considered drunk. But if he were driving in Virginia, he would be. Does it make sense? We should not have a patchwork quilt of laws when we are dealing with drunk driving.

We had the privilege of hearing the chief of police of Arlington County, VA, today at the White House. He talked about what has happened since Virginia reduced its BAC level to .08. They saw a marked improvement in the reduction of deaths on their highways. Here was someone who had the practical responsibility, the practical knowledge of seeing these victims, of tending to the injured people. He said it works. Let's do it.

Regarding this amendment, .08 utilizes what sound science and research proves, and interjects some reality in our definition of drunk driving and applies it to all 50 States so someone can't drink more and drive in New York than in New Jersey, or in this case, someone drinking in Maryland and driving to Virginia when their blood alcohol level is beyond .08.

Mr. President, there are 10 facts that demonstrate the need for this amendment:

Fact No. 1: Drunk driving continues to be a shameful epidemic that destroys our families and communities: 17,000 deaths each year to drunk driving. Isn't 17,000 too many? Each year in this country more people are killed in alcohol-related crashes than are murdered by firearms. Families and friends of drunk driving victims experience tremendous grief which changes their lives forever. Moreover, deaths and injuries from alcohol-related crashes have an enormous economic impact as well. Alcohol-related crashes cost society over $45 billion every year.

One alcohol-related fatality is estimated to cost society about $950,000, and an injury averages about $20,000 in emergency and acute health care costs, long-term care and rehabilitation, police and court costs, insurance, lost productivity, and social services.

The problem exists, and we must do more to reduce drunk driving. The American people agree. Reducing drunk driving is the No. 1 highway safety issue for the American people.

Mr. President, here is a chart reflecting a Lou Harris poll conducted 1 year ago that found that 91 percent of the respondents believe that the Federal role in assuring highway safety is critical. What do Americans consider to be the No. 1 highway safety problem? Fifty-two point nine percent look at drunk driving as the No. 1 highway safety problem; 18.6 percent look at drivers who exceed the posted speed limit by more than 15 miles per hour; 13.7 percent, young or unexperienced drivers; 6.2 percent, elderly drivers; 5.7 percent, highways in poor condition.

The poll showed the two principal causes of problems on our highways are drunk driving and those who are speeding, with drunk driving overwhelmingly the most feared matter for highway safety.

Fact No. 2: It takes a lot of alcohol for a person to reach .08, contrary to what most people think and contrary to information being given out by the alcohol lobby. I want to clear this up. According to the National Highway Traffic Safety Administration and the National Safety Council, a 170-pound man would have to drink four and one-half drinks in 1 hour on an empty stomach to reach .08 BAC; a female weighing 137 pounds would have to have three drinks in 1 hour, no food, and she is still below .08. The male, at 170 pounds, drinks four drinks and is still below .08. We are not talking about the kind of drinking that is a casual single glass of wine with dinner, contrary to what the lobbyists would have you think.

Mr. President, people with .08 BAC are drunk. Or as others say, they are blitzed, wasted, trashed, bombed. The last thing they should do is get behind the wheel. We used to use an expression around the country, and I remember hearing it often, ''Let's have one more

for the road.'' That is the last thing that we want to encourage. That is out. That happy hour is long since gone.

Fact No. 3: Virtually all drivers are seriously impaired at .08 BAC and shouldn't be driving. Here is a chart from the National Highway Traffic Safety Administration. They say at .08, concentrated attention, speed control, braking, steering, gear changing, lane tracking and judgment are impaired. When you get down to even lower levels, half of what the current level is in 35 States in the country, .05, you are talking about problems with tracking, divided attention, coordination, comprehension, and eye movement.

We are not looking to abolish social drinking. We are not looking to create a new temperance in society. What we are saying is that .08 is dangerous if you are driving.

Fact No. 4: The risk of being involved in a crash increases substantially by the time a driver reaches .08 BAC. The risk rises gradually with each BAC level, but then rises rapidly after a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their system. In single vehicle crashes, drivers with BAC's between .05 and .09 are 11 times more likely to be involved in a fatal crash than drivers with a BAC of zero.

Fact No. 5: .08 BAC laws have proven to reduce crashes and fatalities. One study of States with .08 BAC laws found that the .08 BAC laws reduced the overall incidence of alcohol fatalities by 16 percent. In other words, the involvement in fatal crashes is pervasive when alcohol is taken before the driver gets behind the wheel.

This study also found that .08 laws reduced fatalities at higher BAC levels, meaning they had an effect on extremely impaired drivers. Separate crash statistics have confirmed that finding. When the National Highway Traffic Highway Safety Administration studied the effect of .08 in five States—California, Maine, Oregon, Utah, and Vermont—it found significant reductions in alcohol-related crashes in four out of the five States, ranging from 4 percent to 40 percent when compared to the rest of the States with .10 BAC laws. You may hear that there is no ''objective evidence'' showing that .08 works. We have heard statements like that before from the tobacco industry, always declaring it is not proven, it is not sure, and it is not certain, but the person who is dead is dead and the family that is broken-hearted stays broken-hearted for life.

Fact No. 6: Lowering the BAC limit to .08 makes it possible to convict seriously impaired drivers whose levels are now considered marginal because they are at or just over the .10 BAC, and the judge says, in many cases, ''OK, you are at 0.11; listen, watch yourself and don't do it again.'' Drinking and driving is a serious offense which should be handled by the appropriate authorities.

Because .08 BAC laws are a general deterrent and have proven to deter even heavier drinkers from driving, the public has an increased awareness and understanding of what it takes to be too impaired to drive. After Virginia passed the law I mentioned before, not only did traffic fatalities go down but arrests also were reduced. Mr. President, .08 laws are not the problem. They are the solution.

Fact No. 7: Most other Western countries already have drunk driving laws that are .08 or less. Here are some of the countries: Canada and Great Britain are .08; Australia varies between .05 and .08; Austria, .08; Switzerland, .08; France, The Netherlands, Norway, Poland, Finland, .05; Sweden, .02. Are we owned by the liquor-producing establishment? Are our families to be governed by rules established by the liquor lobby? I think not. This amendment would bring us into the civilized world when it comes to drunk driving laws.

Most other countries have adopted these laws because they work. For example, over the past few years France has systematically reduced its legal limit for drunk driving and has seen measurable results. In France, the country that is first in per capita wine consumption, a motorist can have his or her license revoked at .05 BAC and can be jailed if caught driving at .08 BAC. It is estimated that 33 percent of all traffic fatalities in France are alcohol-related.

Fact No. 8: The American people overwhelmingly support .08. When the question is asked, Would you be in favor of lowering the legal blood alcohol limit for drivers to .08, 66 percent of the males said yes, 71 percent of the females said yes; the female, the mother, the one who inevitably feels most pain in a family when there is a loss, 71 percent said, Please, America, stop this; get the blood alcohol limit down to a sensible point. And as we saw even at .05 people's actions are impaired. So what we are doing is the right thing here. We hope we can get the liquor people and some of the restaurant people and beer wholesalers to come on over, join us, and be the kind of corporate citizens that we know you would like to be.

So NHTSA surveys all show that most people would not drive after having two or three drinks in 1 hour and believe that the limit should be no higher than that which would get them there.

Fact No. 9: We need a national drunk driving limit. The best approach is the one we employ because it works. This amendment is written the same way as the 21-year-old drinking age law. If the medical and scientific evidence show that a person is impaired at .08 BAC and should not be driving, why should someone be deemed to be drunk in one State but not the other? If they cross the State boundary and kill somebody, that person is just as dead, and that family is just as wounded. This bill will save lives, and it is a much more compelling argument than any other.

As President Reagan said when he signed the 21 minimum drinking age bill into law, ''We know that drinking, plus driving, spells death and disaster . . . The problem is bigger than the individual States . . . It's a grave national problem, and it touches all our lives. With the problem so clear-cut and the proven solution at hand, we have no misgivings . . .'' President Reagan, who was strictly a person who liked to limit Federal power, said that. ''. . . we have no misgivings about this judicious use of Federal power.''

Sanctions, which is what we are proposing, work and soft incentives do not work. Since .08 BAC laws were part of the incentive grant program in 1993, only a handful of States have adopted .08. Incentive grant problems are the alcohol industry's best friend because they rarely have positive effects. Most telling, no single State lost highway funds as a result of the 21 drinking age law, and we expect no State to lose highway funds from the zero tolerance law. Some initiatives are important enough to employ that tool.

Fact No. 10: Based on past history, adopting .08 will not hurt the economy. There is no evidence that per capita consumption of alcohol was affected in any of the five .08 BAC States examined by NHTSA. A different, four-State analysis conducted by several alcohol industry organizations showed virtually no effect on overall consumption.

In the alcohol industry analysis, Maine, which adopted .08 in 1988, saw a slight dip in alcohol consumption in 1988, but restaurant sales actually increased 11 percent. Restaurants and the alcohol industry should support this bill because they care about their patrons. They don't want to hear about someone who just left their establishment and wound up killed on a road a few miles away. I don't care how much somebody drinks. They can drink until they fall off the bar stool; but just don't get behind the wheel of a car. This is a reasonable amendment.

We are not talking about prohibition. Remember, when you are in a bar and look at a table full of people, .08 applies to only one of those people—the driver.

As my colleagues read the materials disseminated by the opponents of this measure, you have to think to yourself, is .08 the right or the wrong thing to do? You can only have one conclusion if you care about your constituents. Don't get tangled up in whether this is too broad a reach for the Federal Government. Is it too broad a reach when the Federal Government saves lives, or when the Federal Government enacts environmental legislation that takes lead out of public buildings? Is it too much of a reach when the Federal Government posts warnings about air quality? Not at all. So don't get fooled by the alcohol lobby's machinations out there, saying, ''You can't prove it. It's not so. You should work on the chronic alcoholic.'' Yes, we want to work on the chronic alcoholic, but we want the casual drinker, someone who doesn't

realize that when they get to .08, they are in dangerous territory when they get behind the wheel. So I hope my colleagues will all join in and support this amendment.

Consider what the Wall Street Journal said:

> Safe alcohol levels should be set by health experts, not the lobby for Hooter's and Harrah's. The Lautenberg amendment isn't a drive toward prohibition, but an uphill push toward a health consensus.

Mr. President, the Senate has heard my policy arguments. The facts are on our side. I want all Senators to weigh those facts carefully. But I also want them to think about one other issue—not a fact, but a person. I want them to think about the Ashley Fraziers in their State. The child in this photograph was 9 years old. We heard her mother and father talk about her today. This accident took place about 2 years ago. They still mourn every day. When her mother Brenda talked about Ashley, she said they still set a table for four, even though they know there are only going to be three people sitting at that table, because they don't want to forget Ashley. Ashley was killed by a woman, underage, driving with a .08 blood alcohol content. Mr. President, I hope that Senators and the American people can see this child, because there isn't any one of us who is a parent or a grandparent who doesn't so treasure the life of a child like this that we would give our own lives to protect her. We are not being asked to give our lives; we are being asked to give our judgment, we are being asked to give our support.

Two years ago, Ashley's parents heard a noise and saw a sight that they will never forget. She said this morning at the White House, in the presence of the President, that they want to make sure that this never happens to other people. They were unselfishly baring their souls, anguish, and grief to prevent the possibility of someone they don't even know from losing a child like this beautiful young girl. This was a tragedy. Stop and think about the senseless death of this 9-year-old. It pulls our heartstrings, all of us. I ask all Senators to think of this when they vote on this amendment. Think of a family's pain when they lose a child, a loved one, and help us to try to prevent this from happening again.

I urge my colleagues to support the Lautenberg-DeWine amendment to keep drunk drivers off the roads and keep them away from our kids.

I yield the floor.

Mr. CHAFEE. Mr. President, could you give the time situation? The agreement is that each side will have 1 hour. I see Senators here who will speak for the amendment. I think we can yield time to the proponents of the amendment. I am not worried about that. But I want to protect the rights of any Senators who might come over and would be against the amendment.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from New Jersey has 22½ minutes remaining. The Senator from Rhode Island has 59 minutes 30 seconds.

Mr. CHAFEE. All right. If the Chair could announce when the proponents of the amendment have reached their 60 minutes, that would be helpful, and then we can figure out how to go from there. I am confident there will be time that we can yield from the side I control. But if the Chair could let us know when 60 minutes of the proponents' time is up, I would appreciate it.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. I yield such time as I have available to my colleague from Ohio, Senator DEWINE.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. LAUTENBERG. Would the Chair mind repeating the time available?

The PRESIDING OFFICER. The Senator from New Jersey has 22 minutes.

Mr. LAUTENBERG. I understood the manager on the other side to say he would be willing to accommodate by yielding time from his available time to other proponents. I ask the Senator from Ohio how much time he thinks he needs?

Mr. DEWINE. I state to my colleague, I wonder if I can have 20 minutes, and if the Chair can notify me after 20 minutes, we will see who is on the floor and wants to speak at that point.

Mr. CHAFEE. I am confident that we will have time for the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, let me first thank and congratulate my friend and colleague from New Jersey, not just for his very eloquent statement and leadership today, but for his work over the years. His work has made a tremendous difference in saving a number of lives.

Mr. President, at 10:30 tomorrow morning, Members are going to have the opportunity to do something that we don't always have the chance to do. Many times, we vote on issues and we think we are right, but we don't know what the ultimate effect is going to be. This is one of those times where when we cast our vote, we know what the effect is. Members who come to the floor tomorrow morning at 10:30 to cast their vote on this amendment and vote ''yes'' will clearly be saving lives. There is absolutely no doubt about it. That is one thing we know. We know it based on statistics and based on history. We know it based on common sense. That is, I think, a great opportunity that we will have tomorrow. This amendment, make no mistake about it, will save lives.

As we consider legislation to authorize funds for most of our Nation's highways, we cannot avoid the issue of the safety of those highways. Tragically, in the last couple of years we seem to have been losing ground in highway safety. After well over a decade of progress, we are starting slowly to move backward.

According to the National Highway Traffic Safety Administration, alcohol-related traffic fatalities dropped from 24,050 in 1986 down to 17,274 in 1995. That was a 28 percent decrease in drunk driving tragedies over a decade. We as a nation, Mr. President, can take pride in the progress that we made.

However, unfortunately, from 1994 to 1995, alcohol-related traffic fatalities rose 4 percent—the first increase in over a decade. In 1995, alcohol-related traffic fatalities increased for the first time in a whole decade. That year, there were 17,274 fatalities from alcohol-related crashes.

Mr. President, this amendment is an attempt to gain back some of the ground that we have lost in the battle against highway fatalities. It would set a national blood alcohol standard—a standard above which the driver is legally under the influence and should not be driving an automobile. All widely accepted studies indicate that the blood alcohol standard should be set at .08 BAC, the blood alcohol content.

Mr. President, at .08 blood content, no one should be driving a car. I don't know any expert, I don't know any police officer, I don't know any scientist who has seriously looked at this issue in the whole country who does not agree with that—who does not agree that at .08 you are under the influence of alcohol, and your judgment, your reflexes, your control of the car, everything is appreciably impaired. There is no doubt about it.

Mr. President, the facts are that the risk of being in a crash rises gradually with each increase in the blood level content. We know that. NHTSA reports that in single-vehicle crashes the relative fatality risk for drivers with blood alcohol content between .05 and .09 is over 11 times greater than for drivers with a blood alcohol content of zero—11 times. When a driver reaches or exceeds the .08 alcohol level, the risk goes up even more. In fact, it dramatically shoots up even above that high standard.

Mr. President, at .08, one's vision, one's balance, one's own reaction time, one's hearing, judgment, self-control, all are seriously impaired. Moreover, at .08, the critical driving task, concentration, attention, speed control, braking, steering, gear change, lane tracking are all negatively impacted and affected.

We have all heard the arguments. The alcohol industry, in arguing against this standard, claims that—get this now—only 7 percent of the fatal crashes involve drivers with blood alcohol content between .08 and .09—only 7 percent. But what does that mean? What that translates into, if you use 1995 figures, it translates into 1,200 people in that year alone dying—1,200 people who are at precisely that level.

Some of the opponents of this bill would argue, ''Oh, it is only 7 percent.'' Tell that to the parents who lost a child. Tell that to the brothers who lost a sister, or children who lost siblings or who lost parents. Changing the

blood alcohol level content to .08 could have saved many of these lives.

Where the .08 laws have been tried, they have been proven to reduce crashes and fatalities. A study done at Boston University found that .08 laws reduced the overall incidence of alcohol-related fatalities by 16 percent. Moreover, that same study found that .08 laws also reduced fatalities at higher blood alcohol levels by 18 percent.

So it doesn't just have an impact on the .08 and .09 level; it serves as a deterrent, which affects the entire scale.

Lowering the blood alcohol limit to .08 makes it possible to convict seriously impaired drivers whose blood alcohol contents are now considered marginal, because they are just at or just over .10. Further, the .08 blood alcohol level is a supremely reasonable standard.

Let's look at the chart again that my colleague from New Jersey, Senator LAUTENBERG, showed a moment ago. I think it is important to look at this because there always is in debates such as this some misinformation that is going around. I think you have to get back to the scientific data and to look at this.

In order for a 170-pound male to reach a blood alcohol content of .08, that male would have to consume four drinks, four beers, four shots, four glasses of wine, four in 1 hour on an empty stomach. Is there anyone in this Chamber, is there anyone in the Senate, who believes that they could sit down, drink four shots in an hour, and then get behind the wheel and drive? You might be able to do it. But would you be able to do it very well? I think the answer is clearly no.

Maybe a better question we all should ask ourselves is how many of us, knowing a friend of ours, or acquaintance, or neighbor who had four drinks in an hour on an empty stomach, would say to that person, ''Why don't you take my daughter, Anna, uptown to McDonald's, put her in your car, and drive her?'' It is ludicrous. There isn't a person who would do that. We know that. Yet, that is what it would take to reach the .08 standard.

A 135-pound female typically would have to consume three drinks in the same period of time.

In other words, Mr. President, the .08 standard is targeted towards those who engage, frankly, in binge drinking—not, let me repeat, social drinking. This bill will not impact social drinkers.

The opponents of this legislation apparently want the public to believe that our legislation would target for prosecution individuals who have had a beer or two, or had a beer and a pizza. That is the opposite of the truth.

I think we should ask ourselves the simple question: Should the average person who has consumed four shots of distilled spirits in an hour, four beers, four glasses of wine on an empty stomach, be behind the wheel of a car? We all know what the answer to that is.

Mr. President, the .08 legislation sets an intelligent national minimal standard, the same kind of commonsense standard that President Reagan pointed to in 1984 when he signed legislation raising the national minimum drinking age to 21. The results are in. The results of that action by this Congress and that President are in. In every year for which the national minimum drinking age was changed, roughly 1,000 lives were saved.

No one believes in States rights more than Ronald Reagan. No one talked about it more eloquently. And there were those when Ronald Reagan took that position in 1984 who said that is inconsistent, that is wrong. We understand that argument. I think Ronald Reagan had it right, as he did a lot of times. His answer was very eloquent. This is what he said about really the same type issue. I quote from President Reagan:

> This problem is much more than just a State problem. It's a national tragedy. There are some special cases in which overwhelming need can be dealt with by prudent and limited Federal influence. And, in a case like this, I have no misgivings about a judicious use of Federal inducements to save precious lives.

President Ronald Reagan, 1984, on a very similar issue.

Mr. President, our purpose here today is really exactly the same as President Reagan's was back in 1984. We are working together in a very bipartisan way to guarantee a fundamental right, because this really is about rights. It is about freedom—the right of freedom to know that when you put your family in a car on a highway and you put your child in a car, there will be an absolute minimum national standard for how sober some other person has to be to drive on that same highway. So, if there is some minimum standard when I am in Cincinnati and leave Ohio and go into Kentucky, and maybe a few minutes later go into Indiana, cross State lines, that there is some national floor, a minimum standard of responsibility. That is about my freedom as a driver. That is about my family's freedom. That is about, I think, responsibility.

That is the rationale behind the .08 standard embodied in this amendment. Simply put, a person at the .08 blood alcohol level is under the influence. No one disputes that. No one. And that person simply should not be driving a car. Our amendment would make this principle the law of the land, and it would save many, many lives.

Mr. President, I see that my time is about up. I at this point reserve the remainder of the time. I do not know if anyone—Senator CHAFEE is on the floor—who wants to speak against the bill at this point wants me to yield time. I see my colleague from Illinois is on the floor. I will reserve the remainder of our time at this point.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, very much.

Mr. President, I thank my colleagues for yielding time. I will be very brief because I know time is short. In addition, I would like to make some comments regarding the underlying bill, the ISTEA bill.

But, in the first instance, with regard to this amendment, I am very, very pleased to be a cosponsor of the amendment and proud to stand in support of it today. We were over at the White House this afternoon for an announcement regarding this important amendment, the .08 amendment. I was just so struck by the families who were there who had lost young ones, who had lost family members to drunk drivers; struck, also, by the fact that what is being called for in this legislation is ultimately very, very reasonable.

This legislation is not prohibition. It does not require someone not to drink at all. What it says essentially is you not get plastered when you get behind the wheel, and not get so impaired in your physical capacity that you put other pedestrians and other drivers at risk.

Listening to the mother this morning talk about how she was taking her daughter to the schoolbus when a drunk driver just came out of nowhere and took the little girl's life was enough to send chills through the heart of any mother, any parent, and certainly ought to commit our attention to the gravity of this matter and the importance of it.

There is no question but that the .08 blood alcohol level saves lives. Studies have shown that States which have adopted .08 laws have had significant drops in alcohol-related traffic deaths and that a national .08 law could prevent up to 600 deaths a year. That does not even take into account the injuries, the loss of capacity, the trauma to people that could be avoided as well—just in fatalities alone, 500 to 600 fatalities a year.

My home State of Illinois has a .08 limit.

I want to report to everybody who is looking at this issue that the results were immediate and dramatic upon the adoption of this statute by the Illinois legislature. In the first holiday weekend in Illinois, under the .08 statute, which was the 4th of July, 1997, alcohol-related fatalities were 68 percent lower than the same period in 1996—68 percent fewer deaths on a weekend. That is a dramatic result from a simple step that is a reasonable step and that ought to be taken for this entire country.

The question has been raised whether or not this is something the States themselves can do. I would point out that, again, my State of Illinois has a .08 level. Other States have higher levels. It should not be an accident of geography for Americans to be secure in the knowledge that drunk drivers will not confront them on the highways. Individuals should be able to have the

confidence that if they cross over the border from Illinois to Indiana, or Illinois to Wisconsin, or Illinois to Missouri, that they will enjoy the same safety that they do in our State.

I think that this is a commonsense law, a commonsense amendment, it is a life-saving amendment, and certainly an amendment whose time has come. I urge my colleagues to support the Lautenberg-DeWine .08 amendment to ISTEA.

Mr. President, I would like to ask unanimous consent—I ask the manager of the bill—to be allowed to speak on the underlying bill and that it not be charged to this amendment.

Mr. CHAFEE. What I suggest, Mr. President, is that I am perfectly prepared to give 10 minutes from the opponents' side of the amendment to the Senator from Illinois, if that is adequate time.

Ms. MOSELEY-BRAUN. I think it will be. Yes.

Mr. CHAFEE. All right.

Ms. MOSELEY-BRAUN. I appreciate that.

The PRESIDING OFFICER. The time will be so allocated.

Ms. MOSELEY-BRAUN. Mr. President, the good news about ISTEA today is that an agreement has been ratified by the committee that will provide $26 billion in additional funding to improve our Nation's highways. The better news for States like mine and for the Nation's intermodal transportation system is that this additional money will be distributed in more effective and fairer ways than the rest of the money authorized under ISTEA. This addition to the underlying ISTEA formula will make this landmark legislation better serve the interests of our entire country. I congratulate the budget negotiators and the members of the committee for their sensitivity to the needs of States like Illinois and to the role of transportation as an activity that touches all of our country and brings us together as a people.

My home State of Illinois serves as the transportation hub for our Nation's commerce. It is home to the world's busiest airport and two of the world's busiest rivers. It is where the Nation's freight railroads come together to move goods from one side of the country to another. It is the center of the Nation's truck traffic. If you add up the value of all truck shipments in the country, Illinois has by far the largest share of any State. If you count the ton-miles of truck shipments that pass through States on their way to their final destinations, Illinois has by far the largest share of any State.

This map shows very clearly how we are the hub. We are the hub not only for the Midwest but, really, we are the crossroads of the country.

Illinois's roads, therefore, must literally bear the weight of the largest share of the Nation's commercial activity and our roads are suffering as a result. According to some estimates, nearly 43 percent of Illinois roads need repair, and almost one-fourth of our bridges are in substandard condition. Every year, Illinois motorists pay an estimated $1 billion in vehicle wear and tear and other expenses associated with poor road conditions.

In Chicago the traffic flow on some of the major highways has increased sevenfold since those highways were built in the 1950s and in the 1960s. According to a recent study, Chicago is the fifth most congested city in America.

Today's agreement provides relief to Illinois and to our Nation's transportation system, above and beyond the original ISTEA proposal. Today's agreement creates a new program, targeted toward high-density States like Illinois. The plan allocates $1.8 billion over the next 5 years for this program, of which Illinois will receive at least $36 million, and up to $54 million, a year. All told, Illinois will receive approximately $900 million more for highway improvements over the next 6 years under the agreement approved this morning by the Environment and Public Works Committee.

This is very good news for Chicago area residents who are counting on Federal funds to fix the Stevenson Expressway, and not just Chicago area residents but everybody who comes through the State using the Stevenson. This highway was built in 1964 and has become one of the most important arteries in the area, making connections to the Tri-State Tollway and the Dan Ryan Expressway. The road, the Stevenson, is literally falling apart. The State has asked for $175 million over the next 2 years to aid in this project, and today's agreement provides enough additional funds to Illinois, an additional $200 million every year for the next 6 years, and with that money the State will be able to repair the Stevenson on the schedule that is most desirable to facilitate traffic.

There is more good news. Wacker Drive, a major two-level road in the heart of downtown Chicago, is collapsing. If anyone has ever driven Wacker Drive in Chicago—it is green, and we used to call it Emerald City down there, but it's a double-decker road. According to a recent report, water leaks through joints of the double-decker road when it rains, loosening already fractured concrete and threatening to pour chunks of debris onto vehicles on the lower level. If no repairs are made, Wacker Drive will have to be closed in 5 years. This agreement allows not only for full funding of the Stevenson repair, but additional funding for Wacker Drive.

There is more good news, even greater good news for natives of western Illinois who are counting on Federal assistance for a variety of projects along U.S. 67, which runs from just outside of St. Louis, in the southwest corner of Illinois, to the Quad Cities in the northwest corner. So, over in this area.

There are literally hundreds of road repair projects planned in my State, and today's agreement goes a long way toward turning those plans into actual road improvements.

I want to thank Senator CHAFEE, Senator BAUCUS and Senator LAUTENBERG for their hard work in putting this arrangement together.

Now, this, today's announcement, I am so pleased about this part of it, but I think I would be remiss in not mentioning my sadness that we have not been able to do better by mass transit. We have increased, in this agreement, transportation spending by $26 billion, but not one additional dime will be devoted to mass transit improvements. Historically, there has been a split between spending increases for surface transportation and mass transit in an 80/20 ratio. Preserving this ratio is, I think, essential to ensuring the viability of transit systems around the country.

Mass transportation not only moves people from one place to another; it helps the environment. Without public transportation, without public transit, there would be 5 million more cars on the road and 27,000 more lane miles of road, again increasing the pollution of our environment. Transit is also a great economic investment. The net economic return on public expenditures for public transportation is 4 or 5 to 1. When mass transit improvements are made, land values go up, commercial development increases, jobs are created and people can get where the jobs are. They can get to work. Without transit, congestion alone would cost our national economy some $15 billion annually. In the Chicago area, in my State, congestion and bottlenecks already sap economic productivity, it is estimated, by about $2.8 billion every year. Without the additional investments in the area's transit system, that number could increase.

Again, it is regrettable that we have not been able to do more for mass transit. We have great needs. The Regional Transportation Authority of Northeastern Illinois, the Chicago Transit Authority, Metra, and all of the transit authorities in the State, are in dire need of additional support. I hope before this legislation is finalized, we will understand the importance of mass transit to the Intermodal Surface Transportation Efficiency Act, to the efficiency of our surface transportation effort in this country.

But in the meantime, I did want to take this opportunity—I thank Senator CHAFEE for indulging me this time—but also to say thank you to him and the other budget negotiators for the additions and for the improvements, in my opinion, to the underlying formula. I think this goes a long way, again, to achieving the goals of the ISTEA, achieving the goals of intermodal surface transportation efficiency.

We ought to talk about transportation as a people issue, which it really is. It's not just about roads and bridges and cars and trucks; it is about the people of this country being connected one to the other and being able to

carry out the commerce and the activity that keep this country strong. I thank these negotiators for their work.

I yield the floor.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from Illinois for those very kind comments. I am glad we are able to be of help.

I will say she is a tenacious battler for Illinois, so I was particularly glad we were able to be of some help in the particular situation Illinois faced.

Mr. President, the Senator from Arkansas has some comments. How much time do I have? Is the proponents' time—perhaps you could give us an account of the time.

The PRESIDING OFFICER. The time of the proponents has expired. The Senator from Rhode Island has 53 minutes.

Mr. CHAFEE. I yield such time as the Senator from Arkansas needs.

Mr. HUTCHINSON. I appreciate this indulgence. I ask consent to speak in morning business. I am going to speak on a different subject. If the chairman would like that not to count against his time——

Mr. CHAFEE. That is fine. How long will my colleague be, roughly?

Mr. HUTCHINSON. Up to 15 minutes.

Mr. CHAFEE. Fine.

Mrs. HUTCHISON. I ask consent to speak 15 minutes as in morning business.

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

Mr. CHAFEE. Mr. President, may I just say one other thing? I would like to say to all Senators who are listening that now is your chance to come over and speak against the amendment if you so choose. Time is running out here and, frankly, at the conclusion of the comments of the Senator from Arkansas and then a couple of minutes that the Senator from Ohio wants, unless there are people present wanting to speak, it is my intention to yield back the remainder of our time and have the Senate go out.

So, anybody who wants to speak about this amendment—they will have a half-hour tomorrow, that is true. But now is the time to come over. We have some 50 minutes. The Senator will be taking 15, so there will be 35 or 40 minutes left. Now is the time to speak against the measure if anybody wishes to.

If the Senator will proceed?

Mr. HUTCHINSON. Mr. President, I take a moment to commend the Senator from Rhode Island and compliment him for the outstanding leadership he provided the Environment and Public Works Committee on the ISTEA II bill.

It has been suggested he should be nominated, if you have not been, for a Nobel Peace Prize for bringing all the various factions together in what is, I think, a very worthwhile bill that will be to the benefit of all Americans. I commend the Senator.

## PRESIDENT CLINTON'S STATEMENT CONCERNING THE TAX CODE TERMINATION ACT

Mr. HUTCHINSON. Mr. President, yesterday, while millions of American households across the country were struggling to understand which of the 480 separate IRS tax forms applied to them, while they were trudging along, trying to read through the accompanying 280 supplemental explanatory IRS pamphlets, while their tax accountants and tax attorneys worked hard to keep them abreast of the more than 800,000 words which make up this country's Tax Code, and while families nervously anticipated the impending IRS deadline of April 15, which is now less than 6 weeks away, President Clinton had the audacity to call my efforts to sunset this country's incomprehensible maze that we call a Tax Code in the year 2001—irresponsible.

Following his speech, President Clinton's chief economic adviser Gene Sperling equated my bill, the Tax Code Termination Act, with ''reckless river boat gambling.'' Worse yet, President Clinton's Deputy Treasury Secretary stated, ''We have a Tax Code today that works better for Americans as they do what is crucial to them in their lives.'' He said that the Tax Code works for Americans.

No; Americans may feel they work for the Tax Code. They surely do not believe that the Tax Code works for them. In short, the President and his advisers were telling the American people in the midst of their ''tax season migraines,'' that this Tax Code works just fine. Are the American people to believe that President Clinton and his economic advisers do not see anything wrong with Americans spending a combined total of 5.4 billion hours—the equivalent of 2 full work weeks—complying with tax provisions? Are Americans to believe that their President does not see anything wrong with the Tax Code that costs this country more than $157 billion per year? Is it possible that the President and his key advisers see nothing wrong with spending $13.7 billion per year enforcing the Tax Code, yet the IRS fails to provide correct answers to taxpayers seeking assistance almost one-quarter of the time?

I think the American people will be able to decide who is being irresponsible and will be able to easily separate the ''river boat gamblers'' from the sincere legislators working to better their everyday lives.

President Clinton's criticism of the Tax Code Termination Act centers around the notion that one should not set a date to sunset a law until a new law is written and ready to replace it. Doing so, in President Clinton's eyes, would be irresponsible. Well, is it irresponsible to sunset this country's transportation programs, which spend over $23 billion per year, before a new transportation program is written and ready to be put into law? Is it irresponsible to sunset this country's higher education programs before a new law is drafted? Of course not. In fact, right now this Congress is in the midst of debating a new transportation spending program and a new higher education program for one simple reason. When these major spending bills were passed and signed into law, they contained sunset provisions which terminated these programs 5 years after they were implemented. In fact, every major spending program currently on the books contains similar sunset language.

The truth of the matter is that President Clinton doesn't mind sunsetting provisions when the law allows the Government to spend billions of dollars in taxpayers' money. The President does not mind sunsetting Head Start, doesn't mind sunsetting Pell grants or school lunches. Sunsetting only becomes irresponsible to this President when the law being sunset deals with provisions which take money from the pockets of hard-working Americans.

The Tax Code Termination Act is anything but ''irresponsible.'' This act simply sets a date certain, well into the future, when the Tax Code will need to be reauthorized, which will simply place taxes and spending on equal footing. This bill will force Congress to completely rethink how we collect hard-earned taxpayer money and, as with major spending programs, it will allow a healthy debate to ensue on the merits, effectiveness and efficiency of the law as it is currently written.

Why is the President afraid to treat taxes and spending equally? Why should sunset provisions only apply to one but not the other? Maybe it is because the President knows that this tax system cannot withstand close scrutiny—that it can't even stand cursory scrutiny. Maybe the President is afraid that Americans will feel empowered to force this Congress to rethink the amount and methods used to take their hard-earned money. Maybe the President is afraid that he will lose the power to hide tax provisions that benefit favored special-interest groups deep within this large and complex Tax Code? Finally, the President stated yesterday that the Tax Code Termination Act would create uncertainty—skillfully noting that ''uncertainty is the enemy of economic growth.'' Mr. President, is there any certainty in this system? Can one be sure that despite trying diligently to comply with this complex and incomprehensible tax system, one still won't be dragged into court and fined for failure to accurately comply with every jot and every tittle of the Tax Code? Can one be certain that they haven't overpaid or underpaid, that they haven't missed a deduction that is owed them or claimed a deduction for which they don't qualify?

No; the only thing certain about this system is that it guarantees one's rights can be trampled by an overempowered IRS and that one's economic freedom can be jeopardized by overzealous tax collectors.