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Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have told us that You are for us and not against us. Help us to receive Your correctives as well as Your guidance as signs of Your faithful love. In the same way, free us to befriend the struggling, sometimes anxious and insecure person inside of each of us. Encourage us to say with Lincoln, "When I lay down the reins of this administration, I want to have one friend left and may that friend be inside myself."

Make us so secure in Your unqualified grace that we reach out to others with good will and encouragement. Free us from thinking of people in the other party, Republican or Democrat, as opponents.

Father, You know that these are pressured times in the Senate. Grant the Senators a renewed commitment to agree whenever possible, to debate fairly when agreement is not easily reached, and when votes are taken neither gloat over victory nor be discouraged by defeat.

Our times are in Your hands. Shape our destiny as planned. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Georgia, is recognized.

SCHEDULE

Mr. COVERDELL. Mr. President, this morning the Senate will immediately proceed to a second attempt to invoke cloture on the pending tobacco bill. As-

suming cloture is not invoked, it will be the leader's intention to try to reach an agreement similar to the agreement reached yesterday with respect to the drug issue. If an agreement can be reached, Members should expect two votes on the marriage penalty issue at 1 or 2 p.m. That would be this afternoon. Following those votes, it is hoped that Members will come to the floor to offer and debate remaining amendments to the tobacco bill. Therefore, votes will occur throughout Wednesday's session of the Senate, with the first vote being on the second attempt to invoke cloture on the tobacco bill.

I thank my colleagues for their attention.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the modified committee substitute for S. 1415, the tobacco legislation.

John Kerry, Bob Kerrey, Kent Conrad, Harry Reid, Paul Wellstone, Dick Durbin, Patty Murray, Richard Bryan, Tom Harkin, Carl Levin, Joe Biden, J. Lieberman, John Glenn, Jeff Bingaman, Ron Wyden, and Max Baucus.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call under rule XXII is waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute for S. 1415 shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—43

Akaka	Conrad	Hollings
Baucus	Daschle	Inouye
Biden	Dodd	Johnson
Bingaman	Dorgan	Kennedy
Boxer	Durbin	Kerrey
Breaux	Feingold	Kerry
Bryan	Feinstein	Kohl
Bumpers	Glenn	Landrieu
Byrd	Graham	Lautenberg
Cleland	Harkin	Leahy

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S6001

Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan

Murray
Reed
Reid
Rockefeller
Sarbanes

Torricelli
Wellstone
Wyden

NAYS—55

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Burns
Campbell
Chafee
Coats
Cochran
Collins
Coverdell
Craig
D'Amato
DeWine
Domenici
Enzi
Faircloth

Ford
Frist
Gorton
Gramm
Grams
Grassley
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Jeffords
Kempthorne
Kyl
Lott
Lugar
Mack
McCain

McConnell
Murkowski
Nickles
Robb
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Warner

NOT VOTING—2

Gregg
Specter

The PRESIDING OFFICER (Mr. HUTCHINSON). On this vote the yeas are 43; the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, on behalf of the leader, I ask unanimous consent that the bill remain in status quo until 12 noon, for the purpose of debate only.

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

Mr. MCCAIN. Mr. President, let me just say that may even go until 12:30. The problem is the amendment we had agreed to take up next—that would have been Senator GRAMM, Senator DOMENICI, and Senator ROTH—they have not completed the language so the other side is able to examine this language, which is a courtesy, obviously, that is expected around here. But we do expect to move forward with the Gramm amendment and debate on it either within a half-hour or an hour.

Mr. President, let me just say again, it is my understanding that Senator HATCH had a substitute he wanted considered, that Senator GRAMM and Senator DOMENICI had a substitute, and there is also the very important issue of the farmer aspect of this bill to which the Senator from Kentucky, Senator FORD, is obviously very involved in and committed. There is also the issue of attorneys' fees that would be the subject of an amendment.

I also am aware that there are several hundred, maybe, other amendments that have been—quote—filed. Those are amendments which I know in the view of the sponsors are important amendments, but I have to say I do not believe that they are vital to the progress of this bill. Many of them we could accept. Many of them I think could be dispensed with in a short period of time.

After the disposition of the Gramm amendment, which I understand there will be a time agreement on, I hope then that would be an appropriate time to determine not only where we go for

the rest of the day, but for the rest of this bill. We are in the middle of the third week of consideration of this legislation. I thought the passage of the drug amendment yesterday was important. A tax cut, as we may enact today—although there certainly are some concerns I have about the size of it—if it passes, then I think it is important for us to determine on both sides of the aisle as to where we want to go after that.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. MCCAIN. I will be glad to yield at any time to the Senator from Kentucky.

Mr. FORD. I thank my friend. When you go to the marriage penalty amendment, or at least the minority has an opportunity to visit with it, and then you indicate that you want to go maybe to the substitute—you have at least one, possibly two—would it take a unanimous consent agreement to set aside the pending amendments, then, in order to go to the substitutes?

Mr. MCCAIN. It is my understanding, if I could respond to the Senator from Kentucky, that we have been conducting this whole procedure on a sort of agreement basis. I would like to say in response to the Senator from Kentucky, I understand what he is getting at here. The Senator from Kentucky wants the issue of the farmers in his State, and throughout America—

Mr. FORD. And I prefer it not to be under cloture, when my time is limited.

Mr. MCCAIN. I understand. I think it is important the Senator's concerns be satisfied. I think the Senator from Massachusetts and I, along with the leaders, should sit down with him and try to address this very important concern that he has.

Mr. FORD. I will be more than happy to do that. As the majority leader set out the sequence of getting this bill out of here, that we would have to pull a bill from the calendar in order to have a tax bill to put this one on to get it back to the House, there are a lot of slips between the lip and the cup before this bill will leave the Chamber as it relates to the farmer question.

I thank the Chair.

Mr. MCCAIN. As I mentioned yesterday, after we passed the drug bill and had an agreement to move forward with tax cuts, I felt a lot more like Bob Hope felt—

Mr. FORD. He is alive.

Mr. MCCAIN. In that the bill is alive, than I did some sense of exhilaration.

So I also am very aware of how difficult this agriculture—tobacco farmer issue is to the Senator from Kentucky. He and I have worked together for many, many years on many, many issues. I know the Senator from Kentucky and I have such a relationship that he will not be mistreated, given the consideration which he deserves on this issue.

Mr. FORD. I thank my friend. I will not mistreat him until I tell him I am going to.

Mr. MCCAIN. Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could just add to the list the Senator from Arizona just ran through, in addition to the amendments that he mentioned is also an amendment by the Senator from Rhode Island, Senator REED, on advertising, and there is an amendment of mine, joined with a number of different colleagues on both sides of the aisle, on the issue of children. So those are two other issues. Time agreements on both of them, however, will be easily arrived at, and they should not delay us as I think most of the issues the Senator listed will be subject to time agreement. Obviously the issue of the Senator from Kentucky is more contentious, and one we need to work on over the course of the next days. And we will.

With that said, we are waiting for the language from Senator ROTH to add to the language from Senator GRAMM. Then, hopefully, we will be able to proceed. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN pertaining to the introduction of S. 2152 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DURBIN. Mr. President, I yield back the remainder of my time.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, as we speak, there is work going on on redrafting the Gramm-Roth amendment to add what I think is a vitally important provision to provide tax relief through full deductibility of health insurance for the self-employed. To me that is another very, very significant step that we should take for the purpose of fairness, the purpose of assuring that all people in this country have health care, to ensure that those who may suffer illnesses or disability as a result of the use of tobacco have adequate care when they become ill.

The revised amendment has not yet been offered, but I rise in strong support of the Gramm-Roth amendment, because it will return a portion of the revenues raised from the tobacco tax to taxpayers who are bearing the burden of this tax increase. I am pleased to be a cosponsor.

The objective is to discourage use of tobacco by raising the price, and certainly tax increases will do that, but the purpose of the bill should not be to raise the taxes and produce massive

new Government spending. I think it is appropriate that we use this bill to provide tax relief to the people who are going to be paying increased taxes on tobacco.

The amendment's phaseout of the marriage penalty for couples with incomes of less than \$50,000 is a solid first step to eliminating the marriage penalty completely. We should be encouraging people to marry and raise their children in a marriage.

Under current law, many two-income wage earners, particularly if they are both earning good wages, are penalized by paying higher taxes as a result of being married than they would be paying if they were single. In addition, I think it is fitting that part of the tobacco tax revenues will be used to ease the burdens of the tax increase which will be borne by Americans in the lowest tax brackets.

I am also extremely pleased that part of these revenues will be used to eliminate another inequity in the Tax Code—the deductibility of health insurance for the self-employed. This amendment will finally—finally—make full deductibility a reality beginning next year.

Again, it is fitting to use tobacco revenues for this purpose since two-thirds of families headed by a self-employed individual with no health insurance earn less than \$50,000 a year. That is from a March 1997 Current Population Survey. I don't have in hand the statistics on the number of those people who may be tobacco users, but I suspect that it is a significant number who would be taxed by the increased cost of cigarettes who would find it difficult to make commitments, like buying health insurance, if they don't have this relief.

Today, while the self-employed, as a result of our actions in the last couple of years, which I led and strongly supported, can deduct 45 percent of their health insurance costs, they are still not on a level playing field with large businesses which can deduct 100 percent.

While the self-employed are slated to have full deductibility in 2007, and I am very grateful to the Members of this body who supported our efforts to get that goal, what self-employed person or family members can wait 9 more years to get sick? It just isn't going to happen. Nobody is willing to wait 9 years to get their health insurance, and we should not wait 9 years to give them fair tax treatment for buying health insurance for themselves and their families.

An immediate increase in the deduction to 100 percent would make health insurance more affordable and accessible to 5.4 million Americans in families headed by self-employed individuals who currently have no health insurance. Full deductibility will also help bring insurance to 1.5 million children who live in households headed by self-employed individuals where there is no health insurance.

Coverage of these self-employed individuals and their children through the self-employed health insurance deduction will enable the private sector to address the health care needs of these individuals rather than having an expensive, intrusive, and burdensome Federal bureaucracy to do it.

It has long been my goal that the self-employed have immediate 100 percent deductibility of health insurance costs. I have sought every opportunity to achieve that goal.

In 1995, my amendment to the Balanced Budget Act, which President Clinton vetoed, would have increased the health insurance deduction for the self-employed to 50 percent.

In 1996, I worked with Senator Kassebaum and Senator KENNEDY to include in the Health Insurance Portability and Accountability Act an increase in the self-employed health insurance deduction incrementally over 10 years to 80 percent.

In 1997, provisions of my Home-Based Business Fairness Act were included in the Taxpayer Relief Act of 1997, finally increasing the deduction to 100 percent in 2007 and accelerating the phase-in over existing law.

This year, I and others who have been strong supporters, on a bipartisan basis, of this measure worked with Chairman DOMENICI to include language in the budget resolution calling for funds to be available to accelerate the 100-percent deductibility of health insurance by the self-employed.

If this tobacco bill is signed into law without full deductibility, I intend to be back—and I will be back as many times as it takes—to finish the job. Right now, full deductibility is available in 2007. I intend to be here to see it move up to an immediate deductibility to end the glaring unfairness of the discrimination against people who have to buy their own health insurance who are not provided health insurance by their employer.

The goal of providing full deductibility of health insurance costs for the self-employed has long enjoyed broad bipartisan support. My colleague who was just on the floor has long championed it. We do have support on both sides of the aisle. We have support from small business, we have support from agriculture, because it is right, it is necessary.

We are talking about health care. We are talking about eliminating a penalty, a tax penalty that discourages people from being able to acquire their own health insurance for themselves and their families.

Let us continue the spirit of bipartisanship by adopting this amendment and not miss an opportunity to help the self-employed get the insurance coverage they need and deserve. I look forward to working with my colleagues on this amendment when it comes to the floor. I intend to be a cosponsor. And I trust that we will have a strong bipartisan majority for the amendment when it is offered.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Robin Buhrke, who is a fellow in my office, be allowed to be on the floor while I speak.

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

Mr. WELLSTONE. I thank the Chair.

I ask unanimous consent that I be allowed to speak as in morning business.

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

NOMINATION OF JAMES C. HORMEL

Mr. WELLSTONE. Mr. President, I rise today to speak again—and I shall be relatively brief—about the nomination of James C. Hormel to be United States Ambassador to Luxembourg.

I point out to colleagues that it has now been more than 8 months that his nomination has languished, awaiting an opportunity for us to consider this on the Senate floor. I have spoken on the floor before about Mr. Hormel.

Let me just make one point. We in fact have voted before on Mr. Hormel when we made the decision as to whether or not he would be a representative to the U.S. delegation to the 51st U.N. General Assembly. As I look at his qualifications, he has had a tremendous amount of success as a businessman, a tremendous amount of success as a lawyer, a tremendous amount of success in philanthropy, a tremendous amount of success from the point of view of very, very moving, very personal testimony by his former wife, his children, his family members, people who really know him well—and, I say to the Chair, people who know him not from the point of view of formal credentials, not from the point of view of any political fight, but from the point of view of kind of measuring the character of a person.

My feeling is, colleagues can have different views about this nomination, but I believe it is extremely important that this nomination be brought to the floor. I've said it before. I have spoken any number of different times on the floor about Mr. Hormel. What I have said is that if there is a debate about his qualifications, that is quite one thing. If so, then let us have that debate.

But I do not want the Senate to deny a nomination to anyone because of their sexual orientation. I think that would be discrimination. It's not just that I think that would be discrimination; it would be discrimination. And I think it is terribly important that the Senate take a long, hard look at itself and, at the very minimum, we have the debate. I think to be silent about this