Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions from Distilled Spirits Facilities, Aerospace Coating Operations and Kraft Pulp Mills'' (FRL7085–1) received on November 16, 2001; to the Committee on Environment and Public Works.

EC–4780. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans: Alabama: Attainment Demonstration of the Birmingham One-Hour Ozone Nonattainment Area'' (FRL7098–7) received on November 16, 2001; to the Committee on Environment and Public Works.

EC–4781. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois NOx Regulations'' (FRL7077–9) received on November 16, 2001; to the Committee on Environment and Public Works.

EC–4782. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Wisconsin'' (FRL7064–4) received on November 16, 2001; to the Committee on Environment and Public Works.

EC–4783. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban'' (FRL7101–1) received on November 16, 2001; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

H.R. 643: A bill to reauthorize the African Elephant Conservation Act. (Rept. No. 107–104).

H.R. 645: A bill to reauthorize the Rhinoceros and Tiger Conservation Act of 1994. (Rept. No. 107–105).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRAMM (for himself, Mr. ENZI, Mr. BENNETT, Mr. BUNNING, and Mr. ALLARD):

S. 1748. A bill to promote the stabilization of the economy by encouraging financial institutions to continue to support economic development including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes; read the first time.

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Mrs. FEINSTEIN, Mr. KYL, Mr. LEAHY, Mr. HATCH, Mr. EDWARDS, Mr. HELMS, Mr. DURBIN, Mr. THURMOND, Mr. CONRAD, Mr. BOND, Mrs. CLINTON, Mr. SESSIONS, Mr. DEWINE, and Mrs. HUTCHISON):

S. 1749. A bill to enhance the border security of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. BREAUX, and Mr. SMITH of Oregon):

S. 1750. A bill to make technical corrections to the HAZMAT provisions of the USA PATRIOT Act; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAMM (for himself, Mr. ENZI, Mr. BENNETT, Mr. BUNNING, and Mr. ALLARD):

S. 1751. A bill to promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. DODD, Mr. LEAHY, and Mrs. MURRAY):

S. 1752. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other sexually transmitted diseases; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. CAMPBELL, and Ms. CANTWELL):

S. 1753. A bill to amend title XIX of the Social Security Act to include medical assistance furnished through an urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care Improvement Act in the 100 percent Federal medical assistance percentage applicable to the Indian Health Service; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. REID, and Mr . BENNETT):

S. 1754. A bill to authorize appropriations for the United States Patent and Trademark Office for fiscal years 2002 through 2007, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. ALLEN (for himself, Mr. HELMS, Mr. CAMPBELL, Mr. WARNER, Mr. ALLARD, Mr. INOUYE, Mrs. FEINSTEIN, Mr. BIDEN, Mr. SMITH of Oregon, Mr. GRASSLEY, Mr. SESSIONS, Mr. FITZGERALD, and Mr. GRAMM):

S. Res. 185. A resolution recognizing the historical significance of the 100th anniversary of Korean immigration to the United States; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. Con. Res. 87. A concurrent resolution expressing the sense of Congress regarding the crash of American Airlines Flight 587; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 1552

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1552, a bill to provide for grants through the Small Business Administration for losses suffered by general aviation small business concerns as a result of the terrorist attacks of September 11, 2001.

S. 1566

At the request of Mr. REID, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1566, a bill to amend the Internal Revenue code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

S. 1707

At the request of Mr. JEFFORDS, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Minnesota (Mr. WELLSTONE), and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1745

At the request of Mrs. LINCOLN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 1745, a bill to delay until at least January 1, 2003, any changes in medicaid regulations that modify the medicaid upper payment limit for non-State Government-owned or operated hospitals.

S.J. RES. 13

At the request of Mr. WARNER, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S.J. Res. 13, a joint resolution conferring honorary citizenship of the United States on Paul Yves Roch Gilbert du Motier, also known as the Marquis de Lafayette.

S. RES. 109

At the request of Mr. REID, the names of the Senator from Tennessee (Mr. FRIST), the Senator from Nebraska (Mr. NELSON), and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. Res. 109, a resolution designating the second Sunday in the month of December as ''National Children's Memorial Day'' and the last Friday in the month of April as ''Children's Memorial Flag Day.''

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Mrs. FEINSTEIN, Mr. KYL, Mr. LEAHY, Mr. HATCH, Mr. EDWARDS, Mr. HELMS, Mr. DURBIN, Mr. THURMOND, Mr. CONRAD, Mr. BOND, Mrs. CLINTON, Mr. SESSIONS, Mr. DEWINE, and Mrs. HUTCHISON):

S. 1749. A bill to enhance the border security of the United States, and for other purposes; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, I am honored to join Senator BROWNBACK, Senator FEINSTEIN, Senator KYL, Senator LEAHY, Senator HATCH, and other colleagues in introducing legislation to strengthen the security of our borders,

improve our ability to screen foreign nationals, and enhance our ability to deter potential terrorists. Senator BROWNBACK and I have worked closely with Senator FEINSTEIN and Senator KYL over the last month to develop a broad and effective response to the national security challenges we face. The need is urgent to improve our intelligence and technology capabilities, strengthen training programs for border officials and foreign service officers, and improve the monitoring of foreign nationals already in the United States.

In strengthening security at our borders, we must also safeguard the unobstructed entry of the more than 31 million persons who enter the U.S. legally each year as visitors, students, and temporary workers. Many others cross our borders from Canada and Mexico to conduct daily business or visit close family members.

We also must live up to our history and heritage as a nation of immigrants. Continued immigration is part of our national well-being, our identity as a Nation, and our strength in today's world. In defending America, we are also defending the fundamental constitutional principles that have made America strong in the past and will make us even stronger in the future.

Our action must strike a careful balance between protecting civil liberties and providing the means for law enforcement to identify, apprehend and detain potential terrorists. It makes no sense to enact reforms that severely limit immigration into the United States. ''Fortress America,'' even if it could be achieved, is an inadequate and ineffective response to the terrorist threat.

Enforcement personnel at our ports of entry are a key part of the battle against terrorism, and we must provide them with greater resources, training, and technology. These men and women have a significant role in the battle against terrorism. This legislation will ensure that they receive adequate pay, can hire necessary personnel, are well-trained to identify individuals who pose a security threat, have access to important intelligence information, and have the technologies they need to enhance border security and facilitate cross-border commerce.

The Immigration and Naturalization Service must be able to retain highly skilled immigration inspectors. Our legislation provides incentives to immigration inspectors by providing them with the same benefits as other law enforcement personnel.

Expanding the use of biometric technology is critical to securing our borders. This legislation authorizes the funding needed to bring our ports of entry into the biometric age and equip them with biometric data readers and scanners.

We must expand the use of biometric border crossing cards. The time frame previously allowed for individuals to obtain these cards was not sufficient. This legislation extends the deadline for individuals crossing the border to acquire the biometric cards.

The USA Patriot Act addressed the need for machine-readable passports, but it did not focus on the need for machine-readable visas issued by the United States. This legislation enables the Department of State to raise fees through the use of machine-readable visas and use the funds collected from these fees to improve technology at our ports of entry.

Our efforts to improve border security must also include enhanced coordination and information-sharing by the Department of State, the Immigration and Naturalization Service, and law enforcement and intelligence agencies. This legislation will require the President to submit and implement a plan to improve access to critical security information. It will create an electronic data system to give those responsible for screening visa applicants and persons entering the U.S. the tools they need to make informed decisions. It also provides for a temporary system until the President's plan is fully implemented.

We must also strengthen our ability to monitor foreign nationals in the United States. In 1996, Congress enacted legislation mandating the development of an automated entry/exit control system to record the entry of every non-citizen arriving in the U.S., and to match it with the record of departure. Although the technology is currently available for such a system, it has not been put in place because of the high costs involved. Our legislation builds on the anti-terrorism bill and provides greater direction to the INS for implementing the entry/exit system.

We must improve the ability of foreign service officers to detect and intercept potential terrorists before they arrive in the U.S. Most foreign nationals who travel here must apply for visas at American consulates overseas. Traditionally, consular officers have concentrated on interviewing applicants to determine whether they are likely to violate their visa status. Although this review is important, consular officers must also be trained specifically to screen for security threats.

Terrorist lookout committees will be established in every U.S. consular mission abroad in order to focus the attention of our consular officers on specific threats and provide essential critical national security information to those responsible for issuing visas and updating the lookout database.

This legislation will help restrict visas to foreign nationals from countries that the Department of State has determined are sponsors of terrorism. It prohibits issuing visas to individuals from countries that sponsor terrorism, unless the Secretary of State has determined that the person is not a security threat.

The current Visa Waiver Program, which allows individuals from participating countries to enter the U.S. for a limited period without visas, strengthens relations between the United States and those countries, and encourages economic growth around the world. Given it's importance, we must safeguard its continued use, while also ensuring that a country's designation as a participant in the program does not undermine U.S. law enforcement and security. This legislation will only allow a country to be designated as a visa waiver participant, or continue to be designated, if the Attorney General and Secretary of State determine that the country reports instances of passport theft to the U.S. government in a timely manner.

We must do more to improve our ability to screen individuals along our entire North American perimeter. This legislation directs the Department of State, the Department of Transportation, the Department of Justice and the INS to work with the Office of Homeland Security to screen individuals at the perimeter before they reach our continent, and to work with Canada and Mexico to coordinate these efforts.

We must require all airlines to electronically transmit passenger lists to destination airports in the United States, so that once planes have landed, law enforcement authorities can intercept passengers who are on federal lookout lists. United States airlines already do this, but some foreign airlines do not. Our legislation requires all airlines and all other vessels to transmit passenger manifest information prior to their arrival in the United States.

When planes land at our airports, inspectors are under significant time constraints to clear the planes and ensure the safety of all departing passengers. Our legislation removes the existing 45 minute deadline, and provides inspectors with adequate time to clear and secure aircraft.

In 1996, Congress established a program to collect information on non-immigrant foreign students and participants in exchange programs. Although a pilot phase of this program ended in 1999, a permanent system has not yet been implemented. Congress enacted provisions in the recent anti-terrorism bill for the quick and effective implementation of this system by 2003, but gaps still exist. This legislation will increase the data collected by the monitoring program to include the date of entry, the port of entry, the date of school enrollment, and the date the student leaves the school. It requires the Department of State and INS to monitor students who have been given visas, and to notify schools of their entry. It also requires a school to notify the INS if a student does not actually report to the school.

INS regulations provide for regular reviews of over 26,000 educational institutions authorized to enroll foreign students. However, inspections have

been sporadic in recent years. This legislation will require INS to monitor institutions on a regular basis. If institutions fail to comply with these and other requirements, they can lose their ability to admit foreign students. In addition, this legislation provides for an interim system until the program established by the 1996 law is implemented.

As we work to achieve stronger tracking systems, we must also remember that the vast majority of foreign visitors, students, and workers who overstay their visas are not criminals or terrorists. It would be wrong and unfair, without additional information, to stigmatize them.

The USA Patriot Act was an important part of the effort to improve immigration security, but further action is needed. This legislation is a needed bipartisan effort to strengthen the security of our borders and enhance our ability to prevent future terrorist attacks, while also reaffirming our tradition as a Nation of immigrants. I urge my colleagues to support it.

Mr. BROWNBACK. Mr. President, the terrorist attacks of September 11 have unsettled the public's confidence in our Nation's security and have raised concerns about whether our institutions are up to the task of intercepting and thwarting would-be terrorists. Given that the persons responsible for the attacks on the World Trade Center and the Pentagon came from abroad, our citizens understandably ask how these people entered the United States and what can be done to prevent their kind from doing so again. Clearly, our immigration laws and policies are instrumental to the war on terrorism. While the battle may be waged on several fronts, for the man or woman on the street, immigration is in many ways the front line of our defense.

The immigration provisions in the anti-terrorist bill passed earlier this month, the USA PATRIOT Act of 2001, represent an excellent first step toward improving our border security, but we must not stop there. Our Nation receives millions of foreign nationals each year, persons who come to the United States to visit family, to do business, to tour our sites, to study and learn. Most of these people enter lawfully and mean us well. They are our relatives, our friends, and our business partners. They are good for our economy and, as witnesses to our democracy and our way of life, become our ambassadors of good will to their home countries.

However, the unfortunate reality is that a fraction of these people mean us harm, and we must take intelligent measures to keep these people out. For that reason, I am pleased to introduce today, along with my colleagues Senator KENNEDY, Senator KYL, Senator FEINSTEIN, Senator HATCH, Senator LEAHY, and others, legislation that looks specifically toward strengthening our borders and better equipping the agencies that protect them. The Enhanced Border Security and Visa Entry Reform Act of 2001 represents an earnest, thoughtful, and bipartisan effort to refine our immigration laws and institutions to better combat the evil that threatens our Nation.

This legislation recognizes that the war on terrorism is, in large part, a war of information. To be successful, we must improve our ability to collect, compile, and utilize information critical to our safety and national security. This bill requires that the agencies tasked with screening visa applicants and applicants for admission, namely the Department of State and the Immigration and Naturalization Service, be provided with the necessary law enforcement and intelligence information that will enable these agencies to identify alien terrorists. By directing better coordination and access, this legislation will bring together the agencies that have the information and those that need it. With input from the Office of Homeland Security, this bill will make prompt and effective information-sharing between these agencies a reality.

In complement to the USA PATRIOT Act, this legislation provides for necessary improvements in the technologies used by the State Department and the Service. It provides funding for the State Department to better interface with foreign intelligence information and to better staff its infrastructure. It also provides the Service with guidance on the implementation of the Integrated Entry and Exit Data System, pointing the Service to such tools as biometric identifiers in immigration documents, machine readable visas and passports, and arrival-departure and security databases.

To the degree that we can realistically do so, we should attempt to intercept terrorists before they reach our borders. Accordingly, we must consider security measures not only at domestic ports of entry but also at foreign ports of departure. To that end, this legislation directs the State Department and the Service, in consultation with Office of Homeland Security, to examine, expand, and enhance screening procedures to take place outside the United States, such as preinspection and preclearance. It also requires international air carriers to transmit passenger manifests for pre-arrival review by the Service. Further, it eliminates the 45-minute statutory limit on airport inspections, which many feel compromises the Service's ability to screen arriving flights properly. Finally, since we should ultimately look to expand our security perimeter to include Canada and Mexico, this bill requires these agencies to work with our neighbors to create a collaborative North American Security Perimeter.

While this legislation mandates certain technological improvements, it does not ignore the human element in the security equation. This bill requires that ''terrorist lookout committees'' be instituted at each consular post and that consular officers be given special training for identifying would-be terrorists. It also provides special training to border patrol agents, inspectors, and foreign service officers to better identify terrorists and security threats to the Unites States. Moreover, to help the Service retain its most experienced people on the borders, this bill provides the Service with increased flexibility in pay, certain benefit incentives, and the ability to hire necessary support staff.

Finally, this legislation considers certain classes of aliens that raise security concerns for our country: nationals from states that sponsor terrorism and foreign students. With respect to the former, this bill expressly prohibits the State Department from issuing a nonimmigrant visa to any alien from a country that sponsors terrorism until it has been determined that the alien does not pose a threat to the safety or national security of the United States. With respect to the latter, this legislation would fill data and reporting gaps in our foreign student programs by requiring the Service to electronically monitor every stage in the student visa process. It would also require the school to report a foreign student's failure to enroll and the Service to monitor schools' compliance with this reporting requirement.

While we must be careful not to compromise our values or our economy, we must take intelligent, immediate steps to enhance the security of our borders. This legislation would implement many changes that are vital to our war on terrorism. I therefore urge my colleagues to support it.

Mrs. FEINSTEIN. Mr. President, I am pleased to join Senators KENNEDY, BROWNBACK, and KYL in introducing the Enhanced Border Security and Visa Entry Reform Act of 2001. We submit this legislation with 16 sponsors.

This legislation represents a consensus, drawing upon the strengths of both the Visa entry Reform Act of 2001, which I introduced with my colleague from Arizona, Senator KYL, and the Enhanced border Security Act of 2001, which Senators KENNEDY and BROWNBACK introduced.

I believe the legislation we are introducing today will garner widespread support from our colleagues on both sides of the aisle.

September 11 clearly pointed out the shortcomings of the immigration and visa system. For example: All 19 terrorist hijackers entered the U.S. legally with valid visas. Three of the hijackers had remained in the U.S. after their visas had expired. One entered on a foreign student visa. Another, Mohammed Atta had filed an application to change status to M–1, which was granted in July. However, Mr. Atta sought admission and was admitted to the United States based on his then current B–1 visitor visa.

Most people don't realize how many people come into our country; how little we know about them; and whether they leave when required.

Consider the following: The Visa Waiver Program: 23 million people from 29 different countries; no visas; little scrutiny; no knowledge where they go in the U.S. or whether they leave once their visas expire. The INS estimates that over 100,000 blank passports have been stolen from government offices in participating countries in recent years.

Abuse of the VISA Waiver Program poses threats to U.S. national security and increases illegal immigration. For example, one of the co-conspirators in the World Trade Center bombing of 1993 deliberately chose to use a fraudulent Swedish passport to attempt entry into the U.S. because of Sweden's participation in the Visa Waiver Program.

Foreign Student Visa Program: more than 500,000 foreign nationals entering each year; within the last 10 years, 16,000 came from such terrorist supporting states as Iran, Iraq, Sudan, Libya, and Syria.

The foreign student visa system is one of the most under-regulated systems we have today. We've seen bribes, bureaucracy, and other problems with this system that leave it wide open to abuse by terrorists and other criminals.

For example, in the early 1990s, five officials at four California colleges, were convicted of taking bribes, providing counterfeit education documents, and fraudulently applying for more than 100 foreign student visas.

It is unclear what steps the INS took to find and deport the foreign nationals involved in this scheme.

Each year, we have 300 million border crossings. For the most part, these individuals are legitimate visitors to our country. We currently have no way of tracking all of these visitors.

Mohamed Atta, the suspected ringleader of the attack, was admitted as a non-immigrant visitor in July 2001. He traveled freely to and from the U.S. during the past 2 years and was, according to the INS, in ''legal status'' the day of the attack. Other hijackers also traveled with ease throughout the country.

It has become all too clear that without an adequate tracking system, our country becomes a sieve, creating ample opportunities for terrorists to enter and establish their operations without detection.

I sit as the Chair of the Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information. Last month, we held a hearing on the need for new technologies to assist our government agencies in keeping terrorists out of the United States.

The testimony at that hearing was very illuminating. We were given a picture of an immigration system in chaos, and a border control system rife with vulnerabilities. Agency officials don't communicate with each other. Computers are incompatible. And even in instances here technological leaps have been made, like the issuance of more than 4.5 million ''smart'' border crossing cards with biometric data, the technology is not even used.

Personally, I am astonished that a person can apply for a visa and granted a visa by the State Department, and that there is no mechanism by which the FBI or CIA can raise a red flag with regard to the individual if he or she is known to have links to terrorist groups or otherwise pose a threat to national security.

In the wake of September 11, it is unconscionable that a terrorist might be permitted to enter the U.S. simply because our government agencies don't share information.

Indeed, what we have discovered in the aftermath of the September 11 terrorist attacks was that the perpetrators of these attacks had a certain confidence that our immigration laws could be circumvented where necessary.

The terrorists did not have to steal into the country as stowaways on sea vessels, or a border-jumpers evading federal authorities. Most, if not all, appeared to have come in with temporary visas, which are routinely granted to tourists, students, and other short-term visitors to the U.S.

Let me talk about the legislation that I cosponsored with Senators KENNEDY, BROWNBACK, and KYL.

First, a key component of this solution is the creation of an interoperable data system that allows the Department of State, the INS, and other relevant Federal agencies to obtain critical information about foreign nationals who seek entry into or who have entered the United States.

Right now, our government agencies use different systems, with different information, in different formats. And they often refuse to share that information with other agencies within our own government. This is not acceptable.

When a terrorist presents himself at a consular office asking for a visa, or at a border crossing with a passport, we need to make sure that his name and identifying information is checked against an accurate, up-to-date, and comprehensive database. Period.

The Enhanced Border Security and Visa Entry Reform Act would require the creation of this interoperable data system, and will require the cooperation of all U.S. government agencies in providing accurate and compatible information to that system.

In addition, the interoperable data system would include sophisticated, linguistically-based, name-matching algorithms so that the computers can recognize that ''Muhamad Usam Abdel Raqeeb'' and ''Haj Mohd Othman Abdul Rajeeb,'' are transliterations of the same name. In other words, this provision would require agencies to ensure that names can be matched even when they are stored in different sets of fields in different databases.

Incidentally, this legislation also contains strict privacy provisions, limiting access to this database to authorized Federal officials. And the bill contains severe penalties for wrongful access or misuse of information contained in the database.

Second, this legislation includes concrete steps to restore integrity to the immigration and visa process. including the following: The legislation would require all foreign nationals to be fingerprinted and, when appropriate, submit other biometric data, to the State Department when applying for visa. This provision should help eliminate fraud, as well as identify potential threats to the country before they gain access.

We include reforms of the visa waiver program, so that any country wishing to participate in that program must begin to provide its citizens with tamper-proof, machine-readable passports. The passports must contain biometric data by October 26, 2003, to help verify identity at U.S. ports of entry.

Prior to admitting a foreign visitor from a visa waiver country, the INS inspector must first determine that the individual does not appear in any ''lookout'' databases.

In addition, the INS would be required to enter stolen passport numbers in the interoperable data system within 72 hours after receiving notification of the loss or theft of a passport.

We would establish a robust biometric visa program. By October 26, 2003, newly issued visas must contain biometric data and other identifying information, like more than 4 million already do on the Southwest border, and, just as importantly, our own officials at the border and other ports of entry must have the equipment necessary to read the new biometric cards.

We worked closely with the university community in crafting new, strict requirements for the student visa program to crack down on fraud, make sure that students really are attending classes, and give the government the ability to track any foreign national who arrives on a student visa but fails to enroll in school.

The legislation prohibits the issuance of a student visa to any citizen of a country identified by the State Department as a terrorist-supporting nation. There is a waiver provision to this prohibition, however, allowing the State Department to allow students even from these countries in special cases.

We require that airlines and cruiseliners provide passenger and crew manifests to immigration officials before arrival, so that any potential terrorists or other wrongdoers can be singled out before they arrive in this country and disappear among the general populace.

The bill contains a number of other related provisions as well, but the gist of the legislation is this: Where we can provide law enforcement more information about potentially dangerous foreign nationals, we do so. Where we can reform our border-crossing system to weed out or deter terrorists or others

who would do us harm, we do so. And where we can update technology to meet the demands of the modern war against terror, we do that as well.

As we prepare to modify our immigration system, we must be sure to enact changes that are realistic and feasible. We must also provide the necessary tools to implement them.

Our Nation will be no more secure tomorrow if we create new top-of-the line databases and do not see to it that government agencies use them to share and receive critical information.

We will be no safer tomorrow if we do not create a workable entry-exit tracking system to ensure that terrorists do not enter the U.S. and blend into our communities without detection.

And we will be no safer if we simply authorize new programs and information sharing, but do not provide the resources necessary to put the new technology at the border, train agents appropriately, and require our various government agencies to cooperate in this effort.

We have a lot to do but I am confident that we will move swiftly to address these important issues. The legislation Senators KENNEDY, BROWNBACK, KYL, and I introduce today is an important, and strong, first step. But this is only the beginning of a long, difficult process.

In closing, I would like to respond to concerns that this bill is ''anti-immigrant.'' We are a nation of immigrants. Indeed, the overwhelming percentage of the people who come to live in this country do so to enjoy the blessings of liberty, equality, and opportunity. The overwhelming percentage of the people who visa this country mean us no harm.

But there are several thousand innocent people, including foreign nationals, who were killed on September 11 in part because a network of fanatics determined to wreak death, destruction, and terror exploited weaknesses in our immigration system to come here, to stay here, to study here, and to kill here.

We learned at Oklahoma City that not all terrorists are foreign nationals. But the world is a dangerous place, and there are peopled and regimes that would destroy us if they had the chance.

We are all casualties of September 11. Our society has necessarily changed as our perception of the threats we face has changed. The scales have fallen from our eyes.

It is unfortunate that we need to address the vulnerabilities in our immigration system that September 11 painfully revealed. The changes we need to make in that system will inconvenience people. We can ''thank'' the terrorists for that.

Once implemented, however, those changes will make it easier for law-abiding foreign to visit or study here, and for law-abiding immigrants who want to live here. More important, once they are here, their safety, and ours, will be greatly enhanced.

We must do everything we can to deter the terrorists, here and abroad, who would do us harm from Oklahoma City to downtown Manhattan, we have learned just how high the stakes are. It would dishonor the innocent victims of September 11 and the brave men and women of our armed forces who are defending our liberty at this very instant, if we flag or fail in this effort.

I urge my colleagues to support us on this legislation.

Mr. KYL. Mr. President, today, Senators KENNEDY, BROWNBACK, FEINSTEIN and I join together to introduce the Enhanced Border Security and Visa Entry Reform Act of 2001. This bill represents the merging of counter-terrorism legislation recently introduced by Senator FEINSTEIN and I and separately by Senators KENNEDY and BROWNBACK. This bipartisan, streamlined product, cosponsored by both the chairman and ranking Republican of the Senate Judiciary Committee, will significantly enhance our ability to keep terrorists out of the United States and find terrorists who are here. I also want to reiterate my appreciation to Senators KENNEDY, FEINSTEIN, and BROWNBACK, and especially to their staffmembers, for their hard work and cooperation in developing this bill. I am hopeful that we can work together toward the bill's passage, and signature into law, before the 107th Congress adjourns for the year.

Last month the President signed into law anti-terrorism legislation that will provide many of the tools necessary to keep terrorists out of the United States, and to detain those terrorists who have entered our country. These tools, while all important, will be significantly enhanced by the bill we introduce today.

Under the Border Security and Visa Entry Reform Act of 2001, the Homeland Defense director will be responsible for the coordination of Federal law enforcement and intelligence communities, the Departments of Transportation, State, Treasury, and all other relevant agencies to develop and implement a comprehensive, interoperable electronic data system for these governmental agencies to find and keep out terrorists. That system will be up and running by October 26, 2003, 2 years after the signing into law of the USA Patriot Act.

Under our bill, terrorists will be deprived of the ability to present fake or altered international documents in order to gain entrance, or stay here. Foreign nationals will be provided with new travel documents, using new technology that will include a person's fingerprint(s) or other form of ''biometric'' identification. These cards will be used by visitors upon exit and entry into the United States, and will alert authorities immediately if a visa has expired or a red flag is raised by a federal agency. Under our bill, any foreign passport or other travel document issued after October 26, 2003 will have to contain a biometric component. The deadline for providing for a way to compare biometric information presented at the border is also October 26, 2003.

Another provision of the bill will further strengthen the ability of the U.S. Government to prevent terrorists from using our ''Visa Waiver Program'' to enter the country. Under our bill, the 29 participating Visa Waiver nations will, in addition to the USA Patriot Act Visa Waiver reforms, be required to report stolen passport numbers to the State Department; otherwise, a nation is prohibited from participating in the program. In addition, our bill clarifies that the Attorney General must enter stolen passport numbers into the interoperable data system within 72 hours of notification of loss or theft. Until that system is established, the Attorney General must enter that information into any existing data system.

Another section of our bill will make a significant difference in our efforts to stop terrorists from ever entering our country. Passenger manifests on all flights scheduled to come to the United States must be forwarded in real-time, and then cleared, by the Immigration and Naturalization Service prior to the flight's arrival. All cruise and cargo lines and cross-border bus lines will also have to submit such lists to the INS. Our bill also removes a current U.S. requirement that all passengers on flights to the United States be cleared by the INS within 45 minutes of arrival. Clearly, in some circumstances, the INS will need more time to clear all prospective entrants to the United States. These simple steps will give appropriate officials advance notice of foreigners coming into the country, particularly visitors or immigrants who pose security threats to the United States.

The Border Security and Visa Entry Reform Act will also provide much needed reforms and requirements in our U.S. foreign student visa program, which has allowed numerous foreigners to enter the country without ever attending classes and, for those who do attend class, with lax or no oversight of such students by the Federal Government. Our bill will change that, and will require that the State Department within 4 months, with the concurrence of the Department, maintain a computer database with all relevant infromation about foreign students.

In the past decade, more than 16,000 people have entered the United States on student visas from states included on the Government's list of terrorist sponsors. Notwithstanding that Syria is one of the countries on the list, the State Department recently issued visas to 14 Syrian nationals so that they could attend flight schools in Fort Worth, TX. United States educational institutions will be required to immediately notify the INS when a foreign student violates the term of the visa by failing to show up for class or leaving

school early. Our legislation will prevent most persons from obtaining student visas if they come from terrorist-supporting states such as Iran, Iraq, Sudan, Libya, and Syria, unless the Secretary of State and Attorney General determine that such applicants do not pose a threat to the safety or national security of the United States.

For the first time since the War of 1812, the United States has faced a massive attack from foreigners on our own soil. Every one of the terrorists who committed the September 11 atrocities were foreign nationals who had entered the United States legally through our visa system. None of them should have been allowed entry due to their ties to terrorist organizations, and yet even those whose visas had expired were not expelled.

Mohamed Atta, for example, the suspected ringleader of the attacks, was allowed into the United States on a tourist visa, even though he made clear his intentions to go to flight school while in the United States. Clearly, at the very least, he should have been queried about why he was using his tourist visa to attend flight school.

Another hijacker, Hani Hanjour, was here on a student visa that had expired as of September 11. Hani Hanjour never attended class. In addition, at least two other visitor visa-holders overstayed their visa. In testimony before the Terrorism subcommittee of which I am the ranking member, U.S. officials have told us that they possess little information about foreigners who come into this country, how many there are, and even whether they leave when required by their visas.

America is a nation that welcomes international visitors, and should remain so. But terrorists have taken advantage of our system and its openness. Now that we face new threats to our homeland, it is time we restore some balance to our consular and immigration policies.

As former chairman and now ranking Republican of the Judiciary Committee's Terrorism Subcommittee, I have long suggested, and strongly supported, many of the anti-terrorism and immigration initiatives now being advocated by Republicans and Democrats alike. In my sadness about the overwhelming and tragic events that took thousands of precious lives, I am resolved to push forward on all fronts to fight against terrorism. That means delivering justice to those who are responsible for the lives lost on September 11, and reorganizing the institutions of government so that the law-abiding can continue to live their lives in freedom. It is extremely important that we pass the Border Security and Visa Entry Reform Act before we adjourn for the year. To all of the Senators who worked on this bill, including Senators KENNEDY, FEINSTEIN, BROWNBACK, and HATCH, SNOWE, CANTWELL, BOND, SESSIONS, THURMOND and others I again want to express my appreciation. This bill will make a difference.

By Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. BREAUX, and Mr. SMITH of Oregon):

S. 1750. A bill to make technical corrections to the hazmat provisions of the USA PATRIOT Act; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLING. Mr. President, today I join with my colleagues Senators MCCAIN, BREAUX, and SMITH in introducing the Hazmat Endorsements Requirement Act. We introduce this legislation today to improve the implementation and effectiveness of Section 1012 of H.R. 3162, The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, (USA PATRIOT), Act of 2001, [Public Law 107–56], enacted on October 26, 2001.

The legislation we are introducing today primarily addresses technical corrections to Section 1012 of the USA PATRIOT Act. Due to procedural agreements, the Senate consideration of H.R. 3162 did not provide for any amendments. I did however, engage in a colloquy with Chairman LEAHY to state my concerns with section 1012 and my desire to address my concerns over substance, scope and procedure in subsequent legislation. The changes in legislation assume continuation of the basic framework of section 1012 requiring that one, States request security checks from the Attorney General for driver license applicants who would transport certain hazardous materials; second, the Attorney General conduct checks of relevant information systems and then provide the results to the Department of Transportation; and third, the Department of Transportation notify requesting States whether applicants pose a security threat.

Our bill does the following: clarifies the definition of hazardous materials and gives the Secretary the ability to expand the list as national security issues require; defines disqualifying offenses that would result in the denial of a hazardous materials endorsement; provides for an appeals process in the event an individual is denied a hazardous materials endorsement based on the results of a background check; extends the requirement for background checks to Canadian and Mexican drivers who drive commercial vehicles carrying hazardous materials in the United States; establishes penalties for fraudulently issued or obtained licenses; and requires the Department of transportation to report back to the Congress on security improvements that can be made in the transport of hazardous materials.

Approximately 10 million drivers have commercial drivers licenses and almost 2.5 million of those drivers have hazardous materials endorsements. The law has not required criminal background checks for applicants seeking CDLs. However, section 1012 of the USA PATRIOT Act now requires any driver of a commercial motor vehicle who transports hazardous materials to have a criminal background check prior to being issued a commercial drivers license (CDL). That requirement became effective upon the enactment of that law in October.

Since the passage of the USA PATRIOT Act, we have worked to address the concerns raised by all interested parties involved in this issue, including the administration, the States, public safety officials, commercial motor vehicle drivers, and motor carriers. While everyone has supported the concept of performing background checks, it has not yet been implemented because the infrastructure for conducting background checks does not exist. We believe the provisions contained in this legislation will aid the administration, the State licensing agencies, and all interested parties by providing a clear understanding of the requirements associated with granting a license permitting a driver to transport hazardous cargo.

Senator BREAUX chaired a hearing on October 10, 2001, on bus and truck security and hazardous materials licensing for commercial drivers. Of particular concern were reports that terrorists may have been seeking licenses to drive trucks with hazardous materials. On October 4, 2001, a Federal grand jury in Pittsburgh indicted 16 people on charges of fraudulently obtaining commercial driver's licenses, including licenses to haul hazardous materials. Other incidents include a report that in September the Federal Bureau of Investigation, FBI, arrested a man, Nabil Al-Marabh, linked to an associate of Osama bin Laden, who had a hazardous materials drivers license. Al-Marabh had a commercial driver's license issued by the State of Michigan.. That license, issued on September 11, 2000, allowed Al-Marabh to operate vehicles weighing 100,000 pounds or more. Additionally, Al-Marabh obtained what is called an ''endorsement'' the same day that allowed him to transport hazardous materials. He took a test and paid the fee to obtain that endorsement.

During that hearing, many options for increasing the security of hazardous materials shipments were discussed, including requiring background checks for drivers of commercial vehicles carrying hazardous materials. As chairman, I am committed to working with Senators MCCAIN, BREAUX, and SMITH to introduce a more comprehensive legislative proposal next year which will reauthorize the Hazardous Materials Transportation Act, HMTA. Reauthorization of the HMTA addresses training, emergency response, safety and security concerns for all movements of hazardous materials.

Annually, more than four billion tons of hazardous materials, an estimated 800,000 hazardous materials shipments daily, are transported by land, sea, and air in the United States. While hazardous materials transportation invoices all transportation modes, truck transport typically accounts for the

majority of all hazardous materials shipments, although the tonnage transported is more equally divided between truck and rail.

There are 3.12 million tractor-trailer drivers in the United States. The entire trucking industry employs more than 9 million people. Trucks annually transport 6 billion tons of freight, representing 63 percent of the total domestic tonnage shipped. There are 540,000 trucking companies in the U.S., and 80 percent of those have 20 or fewer trucks. The types of vehicles carrying hazardous materials on the Nation's highways range from cargo tank trucks to conventional tractor-trailers and flatbeds that carry large portable tank containers.

In 2000, there were 17,347 hazardous materials incidents related to transportation in the United States, 14,861 via highway transportation. These incidents are mostly minor releases of chemicals; only 244 incidents caused injuries, and there were 13 deaths.

Since the events of September 11, 2001, a number of legislative proposals have been introduced to address terrorism and the prevention of terrorist acts within the United States. I am pleased to report that the Commerce Committee has addressed security concerns in a bipartisan manner in all modes of transportation. On November 19, 2001, the President signed into law S. 1447, the Aviation Security Act, P.L. 107–71. On August 2, 2001, the Commerce Committee favorably reported S. 1214, the Port and Maritime Security Act, and on October 17, 2001, the Commerce Committee unanimously approved S. 1550, the Rail Security Act. Both of these measures are awaiting consideration by the Senate.

This legislation which addresses the important issue of the safety of hazardous materials transportation on our Nation's highways. This legislation should be considered as soon as possible. We must ensure the hazardous materials transported over our Nation's roads are carried by qualified drivers. Our legislation accomplishes this in a manner that provides clear and consistent requirements for licensing with minimum bureaucratic red tape and delay in the issuance of licenses to eligible drivers.

I would request that the text of this bill be printed in the RECORD.

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

S. 1750

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hazmat Endorsement Requirements Act''.

SEC. 2. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) IN GENERAL.—Chapter 313 of title 49, United States Code, is amended by adding at the end the following:

''§ 31318. Issuance, renewal, upgrade, transfer, and periodic check of hazmat licenses

''(a) IN GENERAL.—A State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver's license to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the Secretary of Transportation has determined that the individual does not pose a security risk warranting denial of the endorsement or license. Each State shall implement a program under which a background records check is requested—

''(1) whenever a commercial driver's license with a hazardous materials endorsement is to be issued, renewed, upgraded, or transferred; and

''(2) periodically (as prescribed by the Secretary by regulations) for all other individuals holding a commercial driver's license with a hazardous materials endorsement.

''(b) DETERMINATION OF SECURITY RISK.—

''(1) IN GENERAL.—An individual may not be denied a hazardous materials endorsement for a commercial driver's license under subsection (a) unless the Secretary determines that individual—

''(A) in the 10-year period ending on the date of the background investigation, was convicted (or found not guilty by reason of insanity) of an offense described in section 44936(b)(1)(B) of this title (disregarding the matter in clause (xiv)(IX) after '1 year,');

''(B) is described in section 175b(b)(2) of title 18, United States Code; or

''(C) may be denied admission to the United States or removed from the United States under subclause (IV), (VI), or (VII) of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)).

''(2) MITIGATING CIRCUMSTANCES.—In making a determination under paragraph (1), the Secretary shall give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a security risk warranting denial of the license or endorsement.

''(3) APPEALS PROCESS.—The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a hazardous materials endorsement for a commercial driver's license that includes notice and an opportunity for a hearing.

''(c) BACKGROUND RECORDS CHECK.—

''(1) IN GENERAL.—Upon the request of a State regarding issuance of a hazardous materials endorsement for a commercial driver's license to an individual, the Attorney General shall—

''(A) conduct a background records check regarding the individual;

''(B) take appropriate criminal enforcement action required by information developed or obtained in the course of the background check; and

''(C) upon completing the background records check, notify the Secretary of Transportation of the completion and results of the background records check.

''(2) SCOPE.—A background records check regarding an individual under this subsection shall consist of the following:

''(A) A check of the relevant criminal history data bases.

''(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

''(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

''(D) Review of any other national security-related information or data base identified by the Attorney General for purposes of such a background records check.

''(3) SECRETARY TO NOTIFY STATE.—After making the determination required by subsection (b)(1), the Secretary of Transportation shall promptly notify the State of the determination.

''(d) REPORTING REQUIREMENT.—Each State shall submit to the Secretary of Transportation, at such time and in such manner as the Secretary may prescribe, such information as the Secretary may require, concerning each individual to whom the State issues a hazardous materials endorsement for a commercial driver's license.

''(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

''(1) FOIA NOT TO APPLY.—Information obtained by the Attorney General or the Secretary of Transportation under this section may not be made available to the public under section 552 of title 5, United States Code.

''(2) CONFIDENTIALITY.—Any information other than criminal acts or offenses constituting grounds for disqualification under subsection (b)(1) shall be maintained confidentially by the Secretary and may be used only for making determinations under this section.

''(f) RENEWAL WAIVER FOR BACKGROUND CHECK DELAYS.—The Secretary shall provide a waiver for State compliance with the requirements of subsection (a) for renewals to the extent necessary to avoid the interruption of service by a license holder while a background check is being completed.

''(g) DEFINITIONS.—In this section:

''(1) HAZARDOUS MATERIALS.—The term 'hazardous material' means—

''(A) a substance or material designated by the Secretary under section 5103(a) of this title for which the Secretary requires placarding of a commercial motor vehicle transporting it in commerce; and

''(B) a substance or material, including a substance or material on the Centers for Disease Control's list of select agents, designated as a hazardous material by the Secretary under procedures to be established by the Secretary.

''(2) ALIEN.—The term 'alien' has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).''.

(b) ENFORCEMENT.—Section 31311(a) of title 49, United States Code, is amended by adding at the end the following:

''(21) The State shall comply with the requirements of section 31318.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 31305(a)(5)(C) of title 49, United States Code, is amended by striking ''section 5103a'' and inserting ''section 31318''.

(2) The chapter analysis for chapter 313 is amended by adding at the end the following:

''31318. Limitation on issuance of hazmat licenses''.

(3) Chapter 51 of title 49, United States Code, is amended—

(A) by striking section 5103a; and

(B) by striking the item in the chapter analysis relating to section 5103a.

(4) Section 1012(c) of the USA PATRIOT Act of 2001 is amended by striking ''section 5103a'' and inserting ''section 31318''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 26, 2001.

(2) LIMIT ON RETROACTIVITY.—Notwithstanding paragraph (1), no enforcement action shall be taken against a State under section 31311 (a) (21) of title 49, United States Code, for any act committed, or failure to act that occurred, in violation of that section before the effective date of the interim final rule prescribed by the Secretary of Transportation under section 31318 of title 49, United States Code.

(3) INTERIM FINAL RULE AUTHORITY.—The Secretary of Transportation shall issue an interim final rule as a temporary regulation under section 31318 of title 49, United States Code, as soon as practicable after the date of enactment of this Act without regard to the provisions of chapter 5 of title 5, United States Code. The Secretary shall initiate a rulemaking in accordance with such provisions as soon as practicable after the date of enactment of this Act. The final rule issued pursuant to that rulemaking shall supersede the interim final rule promulgated under this paragraph.

SEC. 3. PROHIBITION ON OPERATING WITHOUT PROPER HAZMAT ENDORSEMENT OR LICENSE.

(a) IN GENERAL.—Chapter 313 of title 49, United States Code, is further amended by adding at the end the following:

''§ 31319. Prohibition on unauthorized transportation of hazardous materials

''(a) IN GENERAL.—Notwithstanding any provision of law, treaty, or international agreement to the contrary, after the effective date of the interim final rule promulgated by the Secretary of Transportation under section 2(d)(3) of the Hazmat Endorsement Requirements Act, no individual may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States without a hazardous materials endorsement or a license authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce—

''(1) issued by a State in accordance with the requirements of section 31318 of this title; or

''(2) issued by the government of Canada or Mexico, or a political subdivision thereof, after a background check that is the same as, of substantially similar to, the background check required by section 31318.

''(b) PENALTY.—The Secretary shall by regulation prescribe the penalty for violation of subsection (a).''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 313 is amended by adding at the end the following:

''31319. Prohibition on unauthorized transportation of hazardous materials''.

SEC. 4. PENALTY FOR FRAUDULENT ISSUANCE OR RENEWAL OF COMMERCIAL DRIVER'S LICENSE.

(a) IN GENERAL.—Chapter 313 of title 49, United States Code, is further amended by adding at the end the following:

''§ 31320. Penalty for fraudulent issuance, renewal, upgrade, or transfer of commercial driver's license.

''Any person who knowingly issues, obtains, or knowingly facilitates the issuance, renewal, upgrade, transfer, or obtaining of, a commercial driver's license or an endorsement for a commercial driver's license knowing the license or endorsement to have been wrongfully issued or obtained, or issued, renewed, upgraded, transferred, or obtained through the submission of false information or the intentional withholding of required information is guilty of a Class E felony punishable by a fine, imprisonment, or both as provided in title 18, United States Code.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 313 is amended by adding at the end the following:

''31320. Penalty for fraudulent issuance of renewal of commercial driver's license''.

SEC. 5. MOTOR CARRIER SECURITY REPORT.

(a) IN GENERAL.—

(1) IN GENERAL.—The Secretary of Transportation shall assess the security risks associated with motor carrier transportation and develop prioritized recommendations for—

(A) improving the security of hazardous materials shipments by motor carriers, including shipper responsibilities;

(B) using biometrics or other identification systems to improve the security of motor carrier transportation;

(C) technological advancements in the area of information access and transfer for the purpose of identifying the location of hazmat shipments and facilitating the availability of safety and security information; and

(D) reducing other significant security related risks to public safety and interstate commerce, taking into account the impact that any proposed security measure might have on the provision of motor carrier transportation.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The assessment shall include a review of any actions already taken to address identified security issues by both public and private entities.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment required by subsection (a), the Secretary shall—

(1) consult with operators, drivers, safety advocates, and public safety officials (including officials responsible for responding to emergencies); and

(2) utilize, to the maximum extent feasible, the resources and assistance of the Transportation Research Board of the National Academy of Sciences.

(c) REPORT.—

(1) CONTENTS.—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report, without compromising national security, containing—

(A) the assessment and prioritized recommendations required by subsection (a);

(B) any proposals the Secretary deems appropriate for providing Federal financial, technological, or research and development to assist carriers and shippers in reducing the likelihood, severity, and consequences of deliberate acts of crime or terrorism toward motor carrier employees, shipments, or property; and

(C) data on the number of shipments and type of hazardous materials for which placarding is required for transport by motor carriers in the United States, including the transport of hazardous materials shipments by Canadian or Mexican motor carriers with authority to enter into the United States.

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

SEC. 6. STUDY.

The Secretary of Transportation shall conduct research and operational testing to determine the feasibility, costs, and benefits of requiring motor carriers transporting certain high-risk hazardous materials, as determined by the Secretary, to install ignition or engine locking devices, silent alarms, satellite technology, or other mechanisms to increase the security associated with the transportation of such shipments by motor carriers. The Secretary may conduct a pilot program to assess such devices.

Mr. MCCAIN. Mr. President, I am pleased to join with Senators HOLLINGS, BREAUX, and SMITH in introducing the Hazmat Endorsements Requirement Act. The legislation we are introducing today is in large part a technical correction proposal to address Section 1012 of the USA PATRIOT Act, enacted October 26, 2001. Today's bill is designed to fill in a few of the gaps of the new law with respect to commercial drivers licenses and hazardous materials endorsements and to provide guidance to the Department of Transportation and the States on how to implement the new requirements.

The safe transport of hazardous materials is of critical importance to both our nation's economy and public safety. The events of September 11 have led to an even greater awareness of the necessity of ensuring hazardous cargo is transported in a manner that provides the highest level of safety and security possible. This bill would help improve the safety and security of hazardous materials transported on our roads and highways by ensuring the driver of such loads is not a risk to national security.

Annually, more than four billion tons of hazardous materials, an estimated 800,000 hazardous materials shipments daily, are transported by land, sea, and air in the United States. While hazardous materials transportation involves all transportation modes, truck transport typically accounts for the majority of all hazardous materials shipments, although the tonnage transported is more equally divided between truck and rail. The types of vehicles carrying hazardous materials on the nation's highways range from cargo tank trucks to conventional tractor-trailers and flatbeds that carry large portable tank containers. The shipped materials are used in thousands of commercial manufactured products and they include: chlorine for water treatment; ammonia for fertilizers; plastics; home siding materials; battery casings; leather finishes; fireproofing agents for textiles; and, motor vehicle gasoline.

The hazardous materials industry has a notable safety record, in large part due to the safety efforts of the individuals and companies involved in transporting hazardous materials. On average, only 10 to 15 fatalities are attributed annually to releases of hazardous materials in transportation.

The Commercial Motor Vehicle Safety Act of 1986 was enacted in an effort to ensure that drivers of large trucks and buses are qualified to operate such vehicles and to remove unsafe and unqualified drivers from the highways. The 1986 Act, which created the Commercial Driver's License Program, retained the state's right to issue a driver's license, but established minimum national standards which states must meet when licensing commercial motor vehicle, CMV, drivers.

The CDL program places requirements on the CMV driver, the employing motor carrier and the States. Drivers who operate special types of vehicles or who transport passengers or hazardous materials need to pass additional tests to obtain specific endorsements to permit such transport on their CDL.

Since 1986, over 10.5 million drivers have obtained a CDL, and almost 2.5 million of those drivers have received hazardous materials endorsements. The law has not required criminal background checks for applicants seeking CDLs. However, section 1012 of the USA PATRIOT Act now requires any driver of a commercial motor vehicle who transports hazardous materials to have a criminal background check prior to being issued a commercial drivers license, CDL. That requirement became effective upon the enactment of that law in October.

Both Senator HOLLINGS and I strongly support the intent of the background check requirement. Unfortunately, the Senate Commerce, Science, and Transportation Committee, with jurisdiction over the CDL program and hazardous materials transportation, did not have an opportunity to offer our recommendations to the provision in the USA PATRIOT Act due to procedural agreements at the time that legislation was approved by the Senate. Therefore, the measure we are introducing today provides technical modifications to section 1012 and would ensure the Department of Transportation, the States, and the drivers of commercial motor vehicles have a very clear direction with respect to the requirements associated with a hazardous materials endorsement.

Through Senator HOLLINGS leadership, we have sought input on this issue from all interested parties, including the administration, the states, public safety officials, commercial motor vehicle drivers, and motor carriers. We believe the provisions contained in this legislation will aid the administration and all interested parties by providing a clear understanding of the requirements associated with granting a license permitting a driver to transport hazardous cargo.

I urge my colleagues' timely consideration of this important legislation. We should take expeditious action to ensure the hazardous materials transported over our nation's roads is provided by qualified drivers. This must be accomplished in a manner that provides clear and consistent requirements for licensing with minimum bureaucratic red tape and delay in the issuance of licenses to eligible drivers.

By Mr. GRAMM (for himself, Mr. ENZI, Mr. BENNETT, Mr. BUNNING, and Mr. ALLARD):

S. 1751. A bill to promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. GRAMM. Mr. President, today I am joined by Senators ENZI, BENNETT, BUNNING, and ALLARD, in introducing the Terrorism Risk Insurance Act of 2001. This legislation will effectively, and in a straightforward way, address a crisis before us.

The crisis of which I speak is, like a tidal wave, currently away from the shore. Its movement is little noticed until it reaches the shore, when its consequences will be disastrous. That is, the consequences will be disastrous unless we prepare for them now. This legislation will do that.

Tidal waves are started by major seismic, earth shaking events. The earth shaking event that set this tidal wave in motion took place on September 11. Our Nation has responded admirably to the very visible problems caused by that day. We need to act just as admirably and effectively to address this hidden wave.

This hidden wave nearing our shores is the unavailability to terrorism risk insurance, an unavailability that will strike a little more than one month from now. Already we are receiving signs from all across the country that terrorism risk insurance is becoming increasing hard to get, in many cases it is not available at all even today. That is because insurance companies have to be able to estimate and measure risk in order to be able to provide for it, in order to be able to spread the risk, and to do that so that the insurance is affordable. Right now, in the short term, they cannot do that. If they cannot do that, they cannot offer the coverage without jeopardizing the solvency of their companies and the value of all their other insurance policies.

I want to make it clear that the problem before us is not one of the weakness of our insurance industry. It is a strong and vibrant industry. The industry needs no help, no bail out, no government assistance. And our bill would not give them any assistance, not one penny. Our bill addresses the needs of the insurance customers, the customers who, without this short term program, will not be able to find affordable insurance coverage against terrorism risks.

What does that mean for the economy? It means that without insurance, banks will not make loans where there is an uncovered risk, a risk that what they are lending the money for might be destroyed or harmed by a terrorist. It means that simple, ordinary, everyday business transactions that rely upon the security of underlying insurance coverage will not take place. That means that, without this legislation, come January 1 and the weeks leading up to it a brand new weight will be placed upon our economic recovery just as it starts to get going.

Will the insurance industry be able to figure out how to price this coverage? Yes. But history tells us that they will not figure it out right away. It will take a few months, maybe a couple of years.

The legislation we are introducing today is a program that will work to solve this problem in the mean time. It has been put together in close consultation with industry, with the consumers of insurance products and with the insurance companies. It has been put together in close consultation with the White House and the Treasury Department, and it enjoys their support.

This bill will not create any new, forever government program. It is short term in structure and intent. It is limited in its extent. It is designed to force the insurance industry to develop its own capacity to handle this new risk in a shortened period of time. From our discussions with the industry, with the state regulators, with insurance consumers, we believe that the industry will be up to the task.

Central to our proposal is that this legislation would not provide one penny of federal assistance to the insurance industry. No insurance company will get a penny out of this program. All of the benefits of this program would go to victims of terrorist activities.

The structure of our program is, for a two-year period that may be extended by the Secretary of the Treasury for only one additional year, to divide the terrorism risk with industry. We say to industry, here, you take the first risk. It is all yours. But we will define what that initial risk is so that you can price it. We will put limits on it. We will, for the period of this program, take over the currently unknown risk, the cataclysmic risk, while you develop the means for dealing with that new risk as well, as the industry always has.

Under our program, in the first two years, the industry has sole responsibility for the first $10 billion of risk from terrorist events. The industry then has ten percent of the risk above that to encourage them to manage and become familiar with managing the catastrophic risk, while the Federal Government will carry ninety percent of that catastrophic risk. If a third year is added, then the industry will have the sole responsibility for the first $20 billion of risk.

I believe that this is the most effective way not only to deal with this tidal wave approaching our shores but in fact to ward it off. The program is simple and understandable. The program does not have the victims of terrorism paying any extra premiums to the government for the coverage provided by the government. We don't make the suffering pay yet again. But we also do not expose the taxpayer to liability for frivolous lawsuits that might follow a terrorist event.

With the Federal Government providing this insurance benefit, we do not also want to open the Treasury doors to frivolous or predatory litigation. But these limitations are narrow, and they are limited to the life of the program. They end when the Federal program ends. The limitations are similar to the limitations in place today against lawsuits brought against the federal government. We cannot expose the taxpayer to punitive damages at

the same time that he is providing generous assistance to the victims of terrorism.

There are a few things that we need to do before adjournment of the Congress this year. I believe that this legislation, that addresses this very serious problem, should be on that sort list of things that we need to do.

I ask that the text of the bill and a summary of its highlights be printed in the RECORD.

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

S. 1751

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

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Terrorism Risk Insurance Act of 2001''.

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(2) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this Act is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term ''act of terrorism'' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

(ii) to have resulted in damage within the United States, or outside of the United States in the case of an air carrier described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act or event shall be certified by the Secretary as an act of terrorism if—

(i) the act or event is committed in the course of a war declared by the Congress; or

(ii) losses resulting from the act or event, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(2) BUSINESS INTERRUPTION COVERAGE.—The term ''business interruption coverage''—

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—

(i) there is physical damage to the business premises of such magnitude that the business cannot open for business;

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

(B) does not include lost profits, other than in the case of a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632) and applicable regulations hereunder) in any case described in clause (i), (ii), or (iii) of subparagraph (A).

(3) INSURED LOSS.—The term ''insured loss''—

(A) means any loss resulting from an act of terrorism that is covered by any type of commercial or personal property and casualty insurance policy or endorsement, including business interruption coverage, issued by a participating insurance company if such loss—

(i) occurs within the United States; or

(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), regardless of where the loss occurs; and

(B) does not include any loss covered by any type of life or health insurance policy.

(4) PARTICIPATING INSURANCE COMPANY.—The term ''participating insurance company'' means any insurance company, including any subsidiary or affiliate thereof

(A) that—

(i) is licensed or admitted to engage in the business of providing primary insurance in any State; or

(ii) is not so licensed or admitted, if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the National Association of Insurance Commissioners, or any successor thereto;

(B) that offers in all of its property and casualty insurance policies, coverage for insured losses;

(C) that offers property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism; and

(D) that meets any other criteria that the Secretary may reasonably prescribe.

(5) PERSON.—The term ''person'' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(6) PROGRAM.—The term ''Program'' means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(8) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and each of the United States Virgin Islands.

(9) UNITED STATES.—The term ''United States'' means all States of the United States.

SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insured Loss Shared Compensation Program.

(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (c).

(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under subsection (c), unless—

(1) a policyholder that suffers an insured loss, or a person acting on behalf of that policyholder, files a claim with a participating insurance company;

(2) at the time of offer, purchase, and renewal of each policy covering an insured loss, the participating insurance company provides, as soon as practicable following the date of enactment of this Act, clear and conspicuous disclosure in the policy to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program;

(3) the participating insurance company processes the claim for the insured loss in accordance with its standard business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the participating insurance company submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written verification and certification—

(i) of the underlying claim; and

(ii) of all payments made to policyholders for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) SHARED INSURANCE LOSS COVERAGE.—

(1) FEDERAL SHARE.—Subject to the limitations in paragraph (2), the Federal share of compensation under the Program, to be paid by the Secretary, shall be—

(A) for insured losses resulting from an act of terrorism occurring during the period beginning on the date of enactment of this Act and ending on December 31, 2002, 90 percent of the aggregate amount of all such losses in excess of $10,000,000,000;

(B) for insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2003 and ending on December 31, 2003, 90 percent of the aggregate amount of all such losses in excess of $10,000,000,000; and

(C) if the Program is extended in accordance with section 6, for insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2004 and ending on December 31, 2004, 90 percent of the aggregate amount of all such losses in excess of $20,000,000,000.

(2) CAP ON ANNUAL LIABILITY.—Notwithstanding paragraph (1), or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000 during any period referred to in subparagraphs (A) and (B) of paragraph (1) (or the period referred to in subparagraph (C) of paragraph (1) if the Program is extended in accordance with section 6)—

(A) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds $100,000,000,000; and

(B) participating insurance companies shall not be liable for the payment of any portion of the amount that exceeds $100,000,000,000.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 in any period described in paragraph (1), and the Congress shall determine the procedures for and the source of any such excess payments.

(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, and shall not be subject to judicial review.

(d) FUNDING.—

(1) PAYMENT AUTHORITY.—This Act constitutes payment authority in advance of appropriation Acts and represents the obligation of the Federal Government to provide for the Federal share of compensation for insured losses under the Program.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to pay the administrative expenses of the Program.

SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to implement the Program.

(b) INTERIM RULES AND PROCEDURES.—The Secretary shall issue interim final rules or procedures specifying the manner in which—

(1) participating insurance companies may file, verify, and certify claims under the Program;

(2) the Secretary shall publish or otherwise publicly announce the applicable percentage of insured losses to be paid by participating insurance companies and the Federal share of compensation for insured losses under the Program;

(3) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual aggregate insured losses;

(4) the Secretary may, at any time, seek repayment from or reimburse any participating insurance company, based on estimates of insured losses under the Program, to effectuate the insured loss sharing schedule and limitations contained in section 4;

(5) participating insurance companies that incur insured losses shall pay their pro rata share of insured losses in accordance with the schedule and limitations contained in section 4; and

(6) the Secretary will determine any final netting of payments for actual insured losses under the Program, including payments owed to the Federal Government from any participating insurance company and any Federal share of compensation for insured losses owed to any participating insurance company, to effectuate the insured loss sharing schedule and limitations contained in section 4.

(c) SUBROGATION RIGHTS.—The United States shall have the right of subrogation with respect to any payment made by the United States under the Program.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) CIVIL PENALTIES.—The Secretary may assess civil money penalties for violations of this Act or any rule, regulation, or order issued by the Secretary under this Act relating to the submission of false or misleading information for purposes of the Program, or any failure to repay any amount required to be reimbursed under regulations or procedures described in section 5(b). The authority granted under this subsection shall continue during any period in which the Secretary's authority under section 6(d) is in effect.

SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EXTENSION.

(a) TERMINATION OF PROGRAM.—

(1) IN GENERAL.—The Program shall terminate, on December 31, 2003, unless the Secretary—

(A) determines, after considering the report and finding required by this section, that the Program should be extended for one additional year, until December 31, 2004; and

(B) promptly notifies the Congress of such determination and the reasons therefore.

(2) DETERMINATION FINAL.—The determination of the Secretary under paragraph (1) shall be final, and shall not be subject to judicial review.

(3) TERMINATION AFTER EXTENSION.—If the Program is extended under paragraph (1), this Act is repealed, and the Program shall terminate, on December 31, 2004.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the Program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates on December 31, 2003.

(c) FINDING REQUIRED.—A determination under subsection (a) to extend the Program shall be based on a finding by the Secretary that—

(1) widespread market uncertainties continue to disrupt the ability of insurance companies to price insurance coverage for losses resulting from acts of terrorism, thereby resulting in the continuing unavailability of affordable insurance for consumers; and

(2) extending the Program for an additional year would likely encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(d) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program under subsection (a), the Secretary may take such actions as may be necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this Act and as to which a determination has been made in accordance with the provisions of section 4 and regulations promulgated thereunder.

(e) STUDY AND REPORT ON SCOPE OF THE PROGRAM.—

(1) STUDY.—The Secretary, after consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

SEC. 7 PRESERVATION OF STATE LAW.

Nothing in this Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any participating insurance company or other person—

(1) except as specifically provided in this Act; and

(2) except that—

(A) the definition of the term ''act of terrorism'' in section 3 shall be the exclusive definition for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any insurance policy relating to terrorism risk in the United States;

(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2002, rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect as provided in Section 6 (including any period during which the Secretary's authority under Section 6(d) is in effect), books and records of any participating insurance company shall be provided, or caused to be provided, to the Secretary or his designee upon request by the Secretary or his designee notwithstanding any provision of the laws of any State prohibiting or limiting such access.

SEC. 8. SENSE OF THE CONGRESS.

It is the sense of the Congress that the insurance industry should build capacity and

aggregate risk to provide affordable property and casualty coverage for terrorism risk.

SEC. 9. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—There shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or resulting from an act of terrorism. All State causes of action of any kind for property damage, personal injury, or death otherwise available arising out of or resulting from an act of terrorism, are hereby preempted, except as provided in subsection (f).

(b) GOVERNING LAW.—The substantive law for decision in an action for property damage, personal injury, or death arising out of or resulting from an act of terrorism under this section shall be derived from the law, including applicable choice of law principles, of the State, or States determined to be required by the district court assigned under subsection (c), unless such law is inconsistent with or otherwise preempted by Federal law.

(c) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall assign a single Federal district court to conduct pretrial and trial proceedings in all pending and future civil actions for property damage, personal injury, or death arising out of or resulting from that act of terrorism.

(2) SELECTION CRITERIA.—The Judicial Panel on Multidistrict Litigation shall select and assign the district court under paragraph (1) based on the convenience of the parties and the just and efficient conduct of the proceedings.

(3) JURISDICTION.—The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all actions under paragraph (1). For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(4) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS.—Any civil action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that is filed in a Federal district court other than the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1) shall be transferred to the Federal district court so assigned.

(5) REMOVAL OF CASES FILED IN STATE COURTS.—Any civil action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that is filed in a State court shall be removable to the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1).

(d) APPROVAL OF SETTLEMENTS.—Any settlement between the parties of a civil action described in this section for property damage, personal injury, or death arising out of or resulting from an act of terrorism shall be subject to prior approval by the Secretary after consultation with the Attorney General.

(e) LIMITATION ON DAMAGES.—Punitive or exemplary damages shall not be available in any civil action subject to this section.

(f) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way limit the ability of any plaintiff to seek any form of recovery from any person, government or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(g) OFFSET—In determining the amount of money damages available under this section, the court shall offset any compensation or benefits received or entitled to be received by the plaintiff or plaintiffs from any collateral source, including the United States or any Federal agency thereof, in response to or as a result of the act of terrorism.

(h) EFFECTIVE PERIOD.—This section shall apply only to actions for property damage, personal injury, or death arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including, if applicable, any extension period under section 6.

SEC. 10. REPEAL OF THE ACT.

This Act shall be repealed at the close of business on the termination date of the Program under section 6(a), but the provisions of this section shall not be construed as preventing the Secretary from taking, or causing to be taken, such actions under sections 4(c)(4), (5), sections 5(a)(1), (c), (e), section 6(d), and section 9(d) of this Act and applicable regulations promulgated thereunder. Further, the provisions of this section shall not be construed as preventing the availability of funding under section 4(d) during any period in which the Secretary's authority under section 6(d) is in effect.

KEY PROVISIONS OF THE TERRORISM RISK INSURANCE ACT OF 2001

All property and casualty policyholders are covered, including those insured under workers compensation policies and those with business interruption coverage.

Federal tax dollars will be paid as compensation to insured victims of terrorist attacks, not to insurance companies.

The insurance industry would fully cover losses arising from certified acts of terrorism, up to $10 billion in each year. The government will provide compensation for 90 percent of losses exceeding $10 billion, with the insurance industry continuing to pay for 10 percent of the losses.

The program is temporary, expiring after two years. The Treasury Secretary has the option to extend the program for one additional year.

The Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General, will determine whether an event qualifies as a terrorist attack.

In order for property and casualty insurers to participate in the program, insurers are required to offer terrorism coverage to all of their policyholders under terms that are consistent with their other property and casualty policies.

Insurance companies are required to disclose to customers which portion of their premiums they are paying for terrorism risk coverage, apart from other property and casualty coverages.

Careful, narrow restrictions on lawsuit liability are included to protect taxpayer funds from being exposed to opportunistic, predatory assaults on the U.S. Treasury.

The State system of insurance regulation is preserved with very few exceptions. First, the definition of an ''act of terrorism'' under the bill will become the definition in every state. Also, the small number of states that require pre-approval of rate will be restrained from doing so far terrorism risk coverage during the first year. This does not, however, preempt a state insurance regulatory's ability to review and revise the rates once they are in effect. Finally, the Secretary of the Treasury would have access to the books and records of participating insurers in all States.

Mr. ENZI. Mr. President, today I join with Senators GRAMM, BUNNING, and BENNETT in introducing legislation that provides a temporary public-private partnership for terrorism insurance in the wake of the September 11 attacks. This bill provides a joint partnership between insurance companies and the Federal Government for the next 3 years in cases of terrorist attacks.

September 11 has proven to be the most expensive disaster to ever take place on American soil. With cost estimates ranging from $40 to $60 billion, the attacks have drained the capital reserves of some of the largest insurance companies in the world. In addition, as we know all too well, the risk for future attacks is very high. In the absence of this legislation, the insurance industry would be unable to pay the potentially extraordinary costs, and the Federal Government would likely be responsible for the entire costs. This is preemptive legislation.

I believe this legislation strikes the right balance between what the responsibilities should be between the insurance industry and the Federal Government. In each of the first 2 years, the insurance industry is responsible for the first $10 billion of any attack. By placing a $10 billion initial retention for the insurance industry, we ensure that the Federal Government does not get involved unless it is absolutely necessary.

After that, we agree the Federal Government should pay 90 percent of the remaining costs up to a $100 billion threshold. After the first 2 years, the Secretary of the Treasury will decide whether the industry is prepared to once again begin offering this type of coverage. If he believes they are not prepared, he may extend the program for 1 additional year.

This legislation also includes special provisions for small businesses which might be affected by terrorist attacks. A small business that is located in a building that is destroyed requires different treatment than a global corporation. Whereas a large, multinational corporation has offices all over the world with different lines of revenue, a small business could be eliminated by a single incident that would likely destroy all their equipment, possibly kill personnel, and virtually make it impossible for the business to continue. This bill allows for small businesses to recover lost profits and receive funding for business interruptions due to an attack.

I am sure that many of my colleagues have heard from their State insurance regulators the same as I have. My State insurance commissioner informs me that few, if any, of the new policies being submitted for next year's coverage offer terrorism insurance. With insurance being primarily regulated by the States, this has caused a backlog of filings from being approved and paperwork is quickly accumulating at the State level. We must act quickly to alleviate this backlog that will lead to uncertainty in the marketplace.

The legislation also includes very targeted liability provisions. These

provisions are extremely narrow and directed only at this specific program. Without these limitations, we would open the Federal Government's checkbook to every trial lawyer in America, and the American taxpayers would have unlimited liability. The trial lawyers were committed to not pursuing frivolous claims that resulted from September 11, and I certainly hope that they would continue their commitment if America is attacked again.

In closing, I would only like to add that I believe the insurance industry should be commended for the way in which they've handled the September 11 crisis. Despite losing many employees in the bombing, they were one of the first groups at the front of the line offering their assistance and support for the victims. To my knowledge, not a single company has attempted to withhold payment from this disaster. They have been most cooperative in working through the myriad proposals that have been circulated and their support has expedited this process.

I look forward to working with my colleagues to move this legislation before we adjourn.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. DODD, Mr. LEAHY, and Mrs. MURRAY):

S. 1752. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other sexually transmitted diseases; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the Microbicides Development Act of 2001. I am very pleased to be introducing this bipartisan bill along with my colleagues, Senators SNOWE, CANTWELL, DODD, LEAHY, and MURRAY. I extend my gratitude to Senator CANTWELL, in particular, for her support and assistance in the development of this legislation. Additionally, I applaud the efforts of my colleague in the House of Representatives, Republican Congresswoman CONNIE MORELLA of Maryland, for her leadership on this important issue. We all believe this initiative is vital to the pursuit of combating the global HIV/AIDS crisis.

As you know, tomorrow, December 1, is World AIDS Day. Twenty years ago, the Centers for Disease Control became aware of a virus that was claiming the lives of thousands of gay men in the United States. Throughout most of the 1980s, we thought of AIDS purely as a gay men's disease. Twenty years later, we find that we couldn't have been more wrong, as we have seen this disease spread globally to women, children, and heterosexual men, infecting and killing millions.

Today, women and children are being impacted by this epidemic at alarming rates. Every day, 6,300 women worldwide become infected with HIV. In fact, women now represent the fastest growing group of new HIV infections in the United States. AIDS is the fourth leading cause of death among women aged 25 to 44 in this country. Unfortunately, I have seen the devastation that this disease is having on women, as New Jersey has the Nation's fourth highest HIV/AIDS infection rate among women, and the second highest infection rate among all adults.

Despite this growing trend, however, there exists absolutely no HIV or STD prevention method that is within a woman's personal control. Condom use must be negotiated with a partner. We are all aware that for too many women, particularly low-income women in the developing world who reply upon a male partner for economic support, there is no power of negotiation. We know these women are at risk, yet, we expect them to protect themselves without any tools.

Today we have the opportunity to invest in groundbreaking research that can produce these tools, and ultimately, empower women. Microbicides are self-administered products that women could use to prevent transmission of STDs, including HIV/AIDS. I say ''could,'' because due to insufficient research investments, no microbicides have been brought to market. This legislation would encourage federal investments for microbicide research through the establishment of programs at the National Institutes for Health, NIH, and the Centers for Disease Control and Prevention, CDC.

In addition to investing new resources in microbicide research, the Microbicides Development Act will expedite the implementation of the NIH's 5-year strategic plan for microbicide research, as well as expand coordination among Federal agencies already involved in this research, including NIH, CDC, and the United States Agency on International Development, USAID. The bill also establishes Microbicide Research and Development Teams at the NIH. These teams will bring together public and private scientists and resources to research and development microbicides for the prevention of HIV and STD infection.

The Microbicides Development Act of 2001 has the potential not only to save millions of lives, but also to save billions in health care costs. Every year, 15 million new HIV and other STD infections occur among Americans aged 15 and older. The direct cost to the U.S. economy of STDs and HIV infection is approximately $8.4 billion. When the indirect costs, such as lost productivity, are included, that figure rises to an estimated $20 billion.

While new therapies are being developed to prolong the lives of individuals infected with HIV/AIDS—and we must continue developing new therapies—only prevention can truly ensure the safety and health of those vulnerable to infection. If we do not pay a small price now to invest in new prevention methods, we will pay a much higher price later.

Federal support for microbicide research is crucial. Numerous small biotechnology companies and university researchers are actively engaged in microbicide research, but they are almost totally dependent on public-sector grants to continue their work and to test their products. Existing public sector grants for microbicides, however, are too small and too short-term to move product leads forward. According to the Alliance for Microbicide Development and other health advocates, in order to bring a microbicide to market within the next 5 years, current Federal investments in microbicide research should be increased to $75 million this year. The NIH currently invests only $25 million a year, or 1 percent of its total HIV/AIDS budget, in such important research.

This legislation will make microbicide research the priority it should be, a priority the Federal Government must have if it expects to save the lives of women and their children worldwide, who, 20 years after the first AIDS death, will otherwise become victims of a preventable disease.

In closing, I would like to request that an opinion piece written by United Nations' Secretary General Kofi Annan that appeared in the Washington Post yesterday be included in the RECORD. In his comments recognizing World AIDS Day, Secretary Annan reiterates the importance of investing in new prevention methods as we continue to fight against AIDS.

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

NO LETTING UP ON AIDS

(By Kofi Annan)

Every day more than 8,000 people die of AIDS. Every hour almost 600 people become infected. Every minute a child dies of the virus. Just as life—and death—goes on after Sept. 11, so must we continue our fight against the HIV/AIDS epidemic. Before the terrorist attacks two months ago, tremendous momentum had been achieved in the fight. To lose it now would be to compound one tragedy with another.

New figures, released in advance of World AIDS Day, Dec. 1, show that more than 40 million people are now living with the virus. The vast majority of them are in sub-Saharan Africa, where the devastation is so acute that it has become one of the main obstacles to development. But parts of the Caribbean and Asia are not far behind, and the pandemic is spreading at an alarming rate in Eastern Europe.

For too long, global progress in facing up to AIDS was painfully slow, and nowhere near commensurate with the challenge. But in the past year, for much of the international community the magnitude of the crisis has finally begun to sink in. Never, in the two long decades that the world has faced this growing catastrophe, has there been such a sense of common resolve and collective possibility.

Public opinion has been mobilized by the media, nongovernmental organizations and activists, by doctors and economists and by people living with the disease. Pharmaceutical companies have made their AIDS drugs more affordable in poor countries, and a growing number of corporations have created programs to provide both prevention

and treatment for employees and the wider community. Foundations are making increasingly imaginative and generous contributions, both financial and intellectual—in prevention, in reducing mother-to-child transmission, in the search for a vaccine.

In a growing number of countries, effective prevention campaigns have been launched. There has been an increasing recognition, among both donors and the most affected countries, of the link between prevention and treatment. There has also been a new understanding of the particular toll AIDS is taking on women—and of the key role they have in fighting the disease.

The entire United Nations family is fully engaged in this fight, working to a common strategic plan and supporting country, regional and global efforts through our joint program, UNAIDS. Perhaps most important, a new awareness and commitment have taken hold among governments—most notably in Africa.

Last June the membership of the United Nations met in a special session of the General Assembly to devise a comprehensive and coordinated global response to the AIDS crisis.

They adopted a powerful declaration of commitments, calling for a fundamental shift in our response to HIV/AIDS as a global economic, social and development challenge of the highest priority. They reaffirmed the pledge, made by world leaders in their Millennium Declaration, to halt and begin to reverse the spread of AIDS by 2015. And they set out a number of further ambitious but realistic time-bound targets and goals. Among them were commitments to reach, by 2005, an overall target of annual expenditure on AIDS of $7 billion to $10 billion per year in low- and middle-income countries; to ensure, by 2005, that a wide range of prevention programs are available in all countries; and to support the establishment of a fund to help finance an urgent and expanded response to the epidemic.

Only seven months after I proposed this new international facility to support the global fight against AIDS and other infectious diseases, pledges to the fund stand at more than $1.5 billion. The fund cannot be the only channel of resources for a full-scale global response to AIDS. But what is most heartening is the range of pledges that have been made: from the world's wealthiest nations—starting with the founding contribution from the United States last May—but also from some of its poorest, as well as from foundations, corporations and private individuals.

It is clear that we have the road map, the tools and the knowledge to fight AIDS. What we must sustain now is the political will. Life after Sept. 11 has made us all think more deeply about the kind of world we want for our children. It is the same world we wanted on Sept. 10—a world in which a child does not die of AIDS every minute.

Ms. CANTWELL. Mr. President, I rise today with my colleagues Senators CORZINE and SNOWE to introduce the Microbicides Development Act of 2001, and to recognize tomorrow, December 1, as World AIDS Day. As we reflect on the last 20 years of battling this disease, we need to remember the thousands of people here in the United States and the millions worldwide afflicted by HIV and AIDS.

It is hard to believe that it has been 20 years since we first learned of the disease that would come to be known as Acquired Immune Deficiency Syndrome or AIDS. In those 20 years medical and pharmaceutical advancements have made HIV/AIDS more manageable for some, but a cure is yet to be found. And in those 20 years since we first learned of AIDS we have begun to see a changing face of AIDS across the country, as well as in my home State of Washington.

Consider these facts.

Twenty years ago, HIV infections attributed to sex between gay men accounted for nearly all HIV/AIDS cases in the country. Today, more than half— 54 percent—of HIV infections are in different population groups: straight or bisexual women, or straight men. In fact, between the beginning of the AIDS epidemic and today, the proportion of women newly infected with HIV more than tripled— from 7 percent to 23 percent.

Twenty years ago, HIV infections were primarily appearing in Caucasians. Today, HIV/AIDS is disproportionately affecting communities of color. Approximately two-thirds of all women and over 40 percent of all men reported with AIDS were black. Although Hispanics represent 13 percent of the population, they accounted for 19 percent of new HIV infections in 1999.

And one in four Washingtonians infected with HIV is under aged 22. Half are under 25. These are people that have grown up with the disease—they should be educated on prevention and they should know how to take care of themselves. But somehow complacency—whether from the new drugs and medical treatment—or from disease ennui—has replaced the message we want to be sending.

We have long known that the only way to stop the advance of this terrible disease is through a coordinated and comprehensive approach to education, prevention and treatment. As a community we need to refocus our efforts and not allow complacency—especially among populations not traditionally associated with HIV/AIDS —to dictate the future. There must be a continued commitment to he eradication of this terrible disease.

Before the end of today, several hundred people will become infected with AIDS. In these days of fear of Anthrax and discussions of bioterrorism we should not loose sight of the worst natural pandemic in human history. Twenty years after the U.S. Centers for Disease Control and Prevention first identified AIDS, I am afraid that this vast tragedy has become a little too familiar, and we may have become a little too complacent.

The HIV/AIDS epidemic rages on, from Asia and Eastern Europe to the Caribbean and most tragically Africa. As AIDS has become an international crisis, its face has become that of humanity itself. I fear that AIDS may become the single greatest obstacle to global development humanity has ever faced.

And while it is easy to become discouraged in the face of such a huge, heartbreaking calamity—the truth is we know how to stop the spread of AIDS. Through a coordinated and comprehensive program of education, prevention and treatment, we know that the epidemic can be greatly reduced in scope.

To that end, I'm proud to join Senator CORZINE in sponsoring the Microbicides Development Act of 2001. This bill increases authorization of funding for microbicide research at the National Institutes of Health and the CDC.

Microbicides represent a novel and virtually unexplored area in STD/HIV research. Microbicides can kill or inactivate the bacteria and viruses that cause STDs and AIDS. Despite their huge potential, microbicide research is underrepresented in the federal HIV research portfolio. Currently, Microbicide development represents only one percent of federal research in HIV/AIDS.

Microbicides are unique in that they are under development as topical products—a cream or gel. This gives them a high degree of versatility and user control. This is especially important for women who are unable to or cannot ask their partner to use a condom to prevent spreading HIV. Development of a dependable, affordable and easy to use microbicide would represent a major breakthrough in AIDS prevention—allowing populations like commercial sex workers to have more control over their own bodies. It is extremely important to prevent HIV transmission and serve women, a population increasingly at risk for HIV infection.

Microbicide development is a fertile but unexplored anti-HIV research area. Pharmaceutical companies have generally concentrated on high return disease treatments and government-sponsored vaccine programs. While there are potential microbicides in the research and development pipeline, this bill encourages the pursuit of these promising compounds by increasing authorization for the current federal investment in microbial research in the next fiscal year.

Through this bill, we will emphasize the work at the National Institutes of Health and the Centers for Disease Control and Prevention to develop products to prevent the transmission of AIDS for women. I can think of no new direction in AIDS prevention that has a larger potential—we know that the best preventatives must be easy to use and controlled by the user. I expect that microbicides will fill a new role in preventing the spread of HIV and AIDS. I thank Senator CORZINE for his leadership on this issue and I urge my colleagues to support this bill.

By Mr. BINGAMAN (for himself, Mr. CAMPBELL, and Ms. CANTWELL):

S. 1753. A bill to amend title XIX of the Social Security Act to include medical assistance furnished through

an urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care improvement Act in the 100 percent Federal medical assistance percentage applicable to the Indian Health Service; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators CAMPBELL and CANTWELL entitled the ''Urban Indian Health Medicaid Amendments Act of 2001'' would raise the Medicaid matching rate to 100 percent for Medicaid-covered services provided to Medicaid-eligible American Indians and Alaska Natives at urban Indian health programs.

The legislation eliminates the discrepancy in current law that provides for a higher matching rate to states for care delivered in an non-urban outpatient facility operated by the Indian Health Service, or IHS, or by a tribe or a tribal organization under contract with IHS compared to the lower matching rate to an urban Indian program funded by the IHS to deliver services to Medicaid-eligible Native Americans residing in urban areas.

The bill would not alter current policy toward facilities operated by the IHS or by tribes or tribal organizations. As under current law, the Federal Government would continue to pay 100 percent of the cost of treating Medicaid-eligible American Indian or Alaska Natives at an IHS hospital or tribal clinic. Similarly, the bill would not alter the amounts paid to IHS hospitals or tribal clinics for treating Medicaid patients.

Instead, the bill simply extends the 100 percent federal matching rate to the costs of treatment of Medicaid-eligible Native Americans in urban Indian health programs and corrects the inconsistency in treatment under current Medicaid law.

The urban Indian health program was first authorized in 1976 in Title V of the ''Indian Health Care Improvement Act.'' According to a report entitled ''Urban Indian Health'' by the Kaiser Family Foundation that was released this month, ''The purpose of the Title V program is to make outpatient health services accessible to urban Indians, either directly or by referral. These services are provided through non-profit organizations, controlled by urban Indians, that receive funds under contract with the IHS.''

In fact, the Federal Government, through the IHS, currently funds 36 urban Indian health programs in 20 states: Arizona, 3; California, 8; Colorado, 1; Illinois, 1; Kansas, 1; Massachusetts, 1; Michigan, 1; Minnesota, 1; Montana, 5; Nebraska, 1; Nevada, 1; New Mexico, 1; New York, 1; Oklahoma, 2; Oregon, 1; South Dakota, 1; Texas, 1; Utah, 1; Washington, 2; and Wisconsin, 2.

These programs are nonprofit organizations that provide outpatient primary care services, and in some cases, just referral services, to urban Indians, many of whom are eligible for Medicaid. In FY 2001, Congress appropriated $29.9 million, or just 1 percent of the Indian Health Service budget, in discretionary funding to these programs. These programs are expected to supplement this direct funding with revenues from third party payers, such as private insurance and Medicaid.

Urban Indian health programs may participate as providers in their state's Medicaid program and receive payment for services covered by Medicaid that are furnished to Medicaid-eligible urban Indians. Whatever amount the state pays the urban Indian program for a Medicaid patient visit, the Federal Government will match the State's expenditure at the State's regular Federal Medicaid matching rate, or FMAP.

In contrast, if an American Indian or Alaska Native who is eligible for Medicaid receives primary care services covered by Medicaid at an outpatient facility operated by the IHS or by a tribe or a tribal organization under contract with the IHS, the Federal Government will pay 100 percent of the cost of the service.

The policy rationale for this enhanced matching rate is that because Indian health is a Federal responsibility, states should not have to share in the costs of providing Medicaid services to Native American beneficiaries receiving care through facilities operated directly by the Federal Government's IHS or by tribes or tribal organizations on behalf of the IHS. This same rationale applies to Medicaid-covered services provided by urban Indian programs funded by the IHS to deliver services to Medicaid-eligible Native Americans residing in urban areas. Unfortunately, the Medicaid statute does not reflect this policy. This legislation would address this inequity.

Moreover, as a report by the Kaiser Family Foundation entitled ''Urban Indian Health'' released this month adds, ''Extension of this 100 percent matching rate to services provided by Title V providers to Medicaid-eligible urban Indians may give State Medicaid programs an incentive to treat these 'safety net' clinics more favorably in both a fee-for-service and managed care context.''

The proposal would simply amend the third sentence in section 1905(b) of the Social Security Act to read as follows (new language in italic):

Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility *or program* whether operated by the Indian Health Service or by an Indian tribe or tribal organization *or by an urban Indian health program* (as defined in section 4 of the Indian Health Care Improvement Act).

The amendment would be effective for Medicaid services furnished on or after October 1, 2001. Under this language, the enhanced 100 percent matching rate would apply only to services furnished directly ''through'' an urban Indian health program, not by referral. Note that the amendment would not determine the particular amount the state Medicaid program pays an urban Indian health program for a particular service, such as a patient visit. The language only affects the Federal Government's share of that payment amount.

Despite the fact that recent Census figures indicate that 57 percent of the 2.5 million people that identify themselves solely as American Indian and Alaska Native live in metropolitan areas, including 17,444 in Albuquerque, New Mexico, the IHS budget only provides 1 percent of its funding to urban Indian health programs. We should and must begin to take steps to eliminate such dramatic discrepancies.

As a result, within the Medicaid program, just as the Federal Government reimburses States 100 percent for the costs of services delivered to Native American beneficiaries receiving care through facilities operated directly by the Federal Government's IHS or by tribes or tribal organizations on behalf of the IHS, the same should apply to urban Indian health programs. This simple, yet important bill will eliminate the disparity and I urge its swift passage.

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

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

S. 1753

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Urban Indian Health Medicaid Amendments Act of 2001''.

SEC. 2. INCLUSION OF MEDICAL ASSISTANCE FURNISHED THROUGH AN URBAN INDIAN HEALTH PROGRAM IN 100 PERCENT FMAP.

(a) IN GENERAL.—The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended—

(1) by inserting ''or program'' after ''facility'';

(2) by striking ''or by'' and inserting '', by''; and

(3) by inserting '', or by an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care Improvement Act'' before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2002.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. REID, and Mr. BENNETT):

S. 1754. A bill to authorize appropriations for the United States Patent and Trademark Office for fiscal years 2002 through 2007, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to join with Senators HATCH, REID, and BENNETT in the introduction of the Patent and Trademark Office

Authorization Act of 2002. Senator HATCH and I, as leaders of the Judiciary Committee, have had great success in working together to protect America's innovators and to protect our patent and trademark system.

This bill is another example of our bipartisan effort to strengthen America's future. By joining with Senators REID and BENNETT, this bill will send a strong message to America's innovators and inventors that the Congress intends to protect and enhance our patent system. The PTO serves a critical role in the promotion and development of commercial activity in the United States by granting patents and trademark registrations to our nation's innovators and businesses.

The costs of running the PTO are entirely paid for by fees collected by the PTO form users, individuals and companies that seek to benefit from patent and trademark protections. However, since 1992 Congress has diverted over $800 million of those fees for other government programs unrelated to the PTO.

This bill sends a strong message that Congress should appropriate to the PTO a funding level equal to these fees. The reason for this is simple: the creation of intellectual property by Americans, individuals and businesses, is a massive positive driving force for our economy and is a huge plus for our trade balance with the rest of the world. In recent years, the number of patient applications has risen dramatically, and that trend is expected to continue. Our patent examiners are very overworked, and emerging areas such as biotechnology and business method patents may overwhelm the system.

If fully implemented as intended, this bill can greatly assist the PTO in issuing quality patents more quickly which means more investment, more jobs and greater productivity for American businesses. Similarly, early federal registration of the name, logo, or symbol of a company or product is necessary to protect rights and avoid expensive litigation. Section 2 of the bill thus authorizes Congress to appropriate to the PTO, in fiscal years 2002 through 2007, an amount equal to the fees estimated by the Secretary of Commerce to be collected in each of the next five fiscal years. The Secretary shall make this report to the Congress by February 15 of each such fiscal year.

Section 3 of the bill directs the PTO to develop, in the next three years, an electronic system for the filing and processing of all patent and trademark applications that is user friendly and that will allow the Office to process and maintain electronically the contents and history of all applications. Of the amount appropriated under section 2, section 3 authorizes Congress to appropriate not more than $50 million in fiscal years 2002 and 2003 for the electronic filing system.

Third, the bill requires the PTO to develop a strategic plan to set forth for the methods by which the PTO will enhance patent and trademark quality, reduce pendency, and develop an effective electronic system for the benefit of filers, examiners, and the general public regarding patents and trademarks.

I am pleased that my colleagues in the other body, Congressmen COBLE and BERMAN, have introduced similar legislation. I am very concerned that the Bush Administration budget for FY 2002 planned to divert $207 million in PTO fees to programs outside the PTO. This diversion takes fees paid by inventors and businesses to secure patents or trademarks and uses them to promote unrelated programs. It does this at a time when the number of patent and trademark applications has increased by 50 percent since 1996, and while the ''waiting period,'' or pendency period, has increased 20 percent 1996. Even worse, the PTO estimates that the patent pendency period could increase to 38 months by 2006.

The bill also contains two sections which will clarify two provisions of current law and thus provide certainty and guidance to the PTO and for inventors and businesses.

Section 5 expands the scope of matters that may be raised during the reexamination process to a level which had been the case for many years. Let me explain the background. Congress established the patent reexamination system in 1980 for three purposes: to attempt to settle patent validity questions quickly and less expensively than litigation; to allow courts to rely on PTO expertise; and, third, to reinforce investor confidence in the certainty of patent rights by affording an opportunity to review patents of doubtful validity.

This system of encouraging third parties to pursue reexamination as an efficient method of settling patent disputes is still a good idea. However, by clarifying current law this bill increases the discretion of the PTO and enhances the effectiveness of the reexamination process. It does this by permitting the use of relevant evidence that was considered by the PTO, but not necessarily cited. Thus, adding this sentence to current law, which only allows for reexaminations when ''substantial new questions of patentability exist'', will help prevent the misuse of defective patents, especially those concerning business method patents.

It permits a reexamination based on prior art cited by an applicant that the examiner failed to adequately consider. Thus, this change allows the PTO to correct some examiner errors that it would not otherwise be able to correct.

Section 6 of the bill modestly improves the usefulness of inter partes reexamination procedures by enhancing the ability of third-party requesters to participate in that process by allowing such a third party to appeal an adverse reexamine decision in Federal court or to participate in the appeal brought by the patentee. This may make inter partes reexamination a somewhat more attractive option for challenging a patent in that a third party should feel more comfortable that the courts can be accessed to rectify a mistaken reexamination decision. This section should increase the use of the reexamine system and thus decrease the number of patent matters adjudicated in federal court.

I again want to express my appreciation to the co-sponsors of this bill, Senators HATCH, REID, and BENNETT and look forward to working with other Senators on these matters.

Mr. HATCH. Mr. President, I am pleased to join with Senators LEAHY, REID, and BENNETT in the introduction of the Patent and Trademark Office Authorization Act of 2002. As Senator LEAHY mentioned, he and I, as leaders of the Judiciary Committee, have enjoyed a productive relationship working together to protect America's innovators, and to strengthen our intellectual property laws as well as the agencies that administer and enforce them.

One of the issues we have long worked on is strengthening the ability of the United States Patent Office, ''USPTO'', to do its important work in reviewing and granting intellectual property rights to inventors seeking the patents that drive our high-tech economy or those businesses that seek to protect the trademarks that consumers rely on to find the goods and services they want. For those inventors and businesses to succeed in using those patent or trademark rights, the USPTO needs to do a quality and timely job in reviewing and granting those rights.

However, over the past few years, the USPTO has been under mounting pressure on three fronts, increased filings, increased complexity in the filings, and increased difficulty retaining valuable and experienced examiners in the face of more lucrative offers in the private sector. These pressures, if unaddressed, can lead to delays for applicants of months or years, or to reduced quality and reliability of the determinations that issue from the USPTO. Indeed, the USPTO estimates that the patent pendency period could rise to 38 months by 2006. I hate to think that innovative products could sit on the shelf for more than three years awaiting government review. This is especially troubling when we realize that in many high-tech sectors the shelf life of a product is often less than half that time. Such increased waiting periods and lower quality decision-making means slower innovation, less competitiveness, higher costs, and greater risk for those seeking patents or trademarks. And, consequently, the rest of us and our economy could see slower recovery and weaker growth. Addressing these challenges will require leadership, of course, which I believe can be provided by the President's nominee to head the USPTO, former Congressman Jim Rogan. But, to be realistic, we

must admit that surely it will also require resources.

As many in this body know, the costs of running the USPTO are entirely paid for by fees collected from applicants, individuals and companies that seek to benefit from patent and trademark protection. However, since 1992 Congress has diverted an amount estimated at over $800 million from those fees for other government programs unrelated to the USPTO.

At a time when our economy needs support, it seems doubly wrong to levy what amounts to a tax on innovation, a tax imposed by taking a portion of the fees America's innovators and businesses pay to secure protection for their economy-generating products and services and spending it on unrelated government programs. I believe that fees paid to secure patent and trademark rights should be used to process those applications faster with better reliability precisely because getting the products of American ingenuity to market faster helps grow our economy faster.

That is why I am glad to join my colleagues in introducing this bill which takes the position that Congress should appropriate to the USPTO a funding level equal to the fees applicants pay. I agree with my colleagues that if fully implemented as intended, this bill can greatly assist the USPTO in issuing quality patents more quickly, which in turn can lead to more investment, job creation, and productivity for American businesses.

In addition to establishing the principle that user fees collected by the USPTO should be used to serve those who pay them, the bill makes additional improvements to the way the USPTO does business, further enhancing its ability to serve American companies and inventors. Among these improvements are the requirement that the USPTO develop a user-friendly electronic system for the filing and processing of all patent and trademark applications, and that the PTO to develop a strategic plan to enhance patent and trademark quality, reduce pendency, and otherwise improve their systems and services for the benefit of applicants, examiners, and the general public. The bill also contains two sections which will clarify two provisions of current law regarding reexamination of patents to provide greater guidance to the USPTO and its customers about the scope and availability of the reexamination process. Both of these changes should help streamline and reduce the costs of post-grant patent decisions.

I again want to express my appreciation to Senator LEAHY, the chairman of the Judiciary Committee, for this leadership, and to the other co-sponsors of this bill, Senators REID and BENNETT. I look forward to working with them and my other colleagues on this important legislation.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 185—RECOGNIZING THE HISTORICAL SIGNIFICANCE OF THE 100TH ANNIVERSARY OF KOREAN IMMIGRATION TO THE UNITED STATES

Mr. ALLEN (for himself, Mr. HELMS, Mr. CAMPBELL, Mr. WARNER, Mr. ALLARD, Mr. INOUYE, Mrs. FEINSTEIN, Mr. BIDEN, Mr. SMITH of Oregon, Mr. GRASSLEY, Mr. SESSIONS, Mr. FITZGERALD, and Mr. GRAMM) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 185

Whereas missionaries from the United States played a central role in nurturing the political and religious evolution of modern Korea, and directly influenced the early Korean immigration to the United States;

Whereas in December 1902, 56 men, 21 women, and 25 children left Korea and traveled across the Pacific Ocean on the S.S. Gaelic and landed in Honolulu, Hawaii on January 13, 1903;

Whereas the early Korean-American community was united around the common goal of attaining freedom and independence for their colonized mother country;

Whereas members of the early Korean-American community served with distinction in the Armed Forces of the United States during World War I, World War II, and the Korean Conflict;

Whereas on June 25, 1950, Communist North Korea invaded South Korea with approximately 135,000 troops, thereby initiating the involvement of approximately 5,720,000 personnel of the United States Armed Forces who served during the Korean Conflict to defeat the spread of communism in Korea and throughout the world;

Whereas casualties in the United States Armed Forces during the Korean Conflict included 54,260 dead (of whom 33,665 were battle deaths), 92,134 wounded, and 8,176 listed as missing in action or prisoners of war;

Whereas in the early 1950s, thousands of Koreans, fleeing from war, poverty, and desolation, came to the United States seeking opportunities;

Whereas Korean-Americans, like waves of immigrants to the United States before them, have taken root and thrived in the United States through strong family ties, robust community support, and countless hours of hard work;

Whereas Korean immigration to the United States has invigorated business, church, and academic communities in the United States;

Whereas according to the 2000 United States Census, Korean-Americans own and operate 135,571 businesses across the United States that have gross sales and receipts of $46,000,000,000 and employ 333,649 individuals with an annual payroll of $5,800,000,000;

Whereas the contributions of Korean-Americans to the United States include, the invention of the first beating heart operation for coronary artery heart disease, the development of the nectarine, a 4-time Olympic gold medalist, and achievements in engineering, architecture, medicine, acting, singing, sculpture, and writing;

Whereas Korean-Americans play a crucial role in maintaining the strength and vitality of the United States-Korean partnership;

Whereas the United States-Korean partnership helps undergird peace and stability in the Asia-Pacific region and provides economic benefits to the people of the United States and Korea and to the rest of the world; and

Whereas beginning in 2003, more than 100 communities throughout the United States will celebrate the 100th anniversary of Korean immigration to the United States: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the achievements and contributions of Korean-Americans to the United States over the past 100 years; and

(2) requests that the President issue a proclamation calling on the people of the United States and interested organizations to observe the anniversary with appropriate programs, ceremonies, and activities.

Mr. ALLEN. Mr. President, I am pleased to submit today, along with the Chairman of the Foreign Relations Committee, Senator BIDEN, the Vice Chairman of the Armed Services Committee, Mr. WARNER, and the Vice Chairman of the Indian Affairs Committee, Mr. CAMPBELL, and many of our colleagues, a Senate resolution recognizing the historical significance of the 100th anniversary of Korean-Americans' immigration to the United States in 2003.

In December of 1902, 56 men, 21 women and 25 children traveled from Korea across the Pacific Ocean on the *S.S. Gaelic* and landed in Honolulu, HI, on January 13, 1903, marking the first entry of Korean immigrants to the U.S. territories. The year 2003 will be the 100th Anniversary of that immigration. With that anniversary looming, interest in this historic centennial celebration is growing in Korean communities in the United States and worldwide, including events within the vibrant Korean-American communities in the Commonwealth of Virginia.

A century is more than a convenient marker for Korean-Americans: It celebrates Koreans' prominent place in the broad narrative of America. Judging by their achievements over these past 100 years, theirs is an American story that confirms the opportunity for individual initiative, creativity, hard work and success in these free United States.

Both individually and as a community, Korean-Americans have much to celebrate in 2003. In such diverse areas as commerce and finance, technology, medicine, education, and the arts, Korean-American contributions are being widely acknowledged and recognized. Even the Korean culture, uniquely shaped, inspired, and nurtured by life in America, is becoming part of the vernacular. From Hawaii to California to New York, and in Annandale in Fairfax County, VA, Korean-American communities are vibrant and vital leaders throughout the United States.

It is worth noting that apart from the many achievements by Korean-Americans, unique among all immigrant communities in the United States, the early Korean-American community was united around the common goal of attaining freedom and independence for their colonized mother country. Like many immigrant groups, Korean-Americans embraced the basic principles of democracy in our Constitution. It is a goal that continues to this day, when one considers