STATUTE

New York—NY CLS County §701 provides that when a district attorney cannot attend in a court in which he or she is required by law to attend or is disqualified from acting in a particular case, the criminal court may appoint another attorney to act as special district attorney ''during the absence, inability or disqualification of the district attorney.''

Pennsylvania—71 P.S. §732–205 provides that the Attorney General shall have the power to prosecute in any county criminal court upon the request of a district attorney who lacks the resources to conduct an adequate investigation or prosecution or if there is actual or apparent conflict of interest. Also, the Attorney General may petition the court to permit him or her to supersede the district attorney in order to prosecute a criminal action if he or she can prove by a preponderance of the evidence that the district attorney has failed or refused to prosecute and such failure or refusal constitutes an abuse of discretion.

Minnesota—Minn. Stat. §388.12 provides that a judge may appoint an attorney to act as or in the place of the county attorney either before the court or the grand jury.

North Dakota—If a judge finds that the state's attorney is absent or unable to attend the state's attorney's duties, or that the state's attorney has refused to perform or neglected to perform any of his duties to institute a civil suit to which the state or county is a party and it is necessary that the state's attorney act, the judge shall (1) request that the district attorney take charge or the prosecution or (2) appoint an attorney to take charge of the prosecution.

Tennessee—Tenn. Const. art. VI, §6 provides that in all cases where the Attorney for any district fails or refuses to attend and prosecute according to law, the Court shall have power to appoint an Attorney pro tempore.

CASE LAW

Florida—*Taylor* v. *Florida*, 49 Fla. 69 (1905)—The Supreme Court of Florida held that absent an express legislative statement prohibiting a court from doing so, in the event the state attorney refuses to represent the state, that a court has the inherent power to appoint another attorney.

Arkansas—*Owen* v. *State*, 263 Ark 493 (1978)—The Supreme Court of Arkansas held that ''[i]t is well settled that the circuit judge had the power to appoint a special prosecuting attorney.'' Various other state courts have embraced the inherent power concept of a court to appoint a special prosecutor in a criminal case. See *White* v. *Polk County*, 17 Iowa 413 (1864); *Territory* v. *Harding*, 6 Mont. (1887); *State* v. *Henderson*, 123 Ohio St. 474 (1931); *Hisaw* v. *State*, 13 Okla. Crim. 484 (1917).

Mr. SPECTER. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I would like to note for the record two previous statements I made on this subject, one on September 7, 2000, appearing in the CONGRESSIONAL RECORD beginning at page S–8188, and also a statement on September 15, 2000, appearing in the CONGRESSIONAL RECORD on page S–8625. I would note that my statement of September 7, 2000, provides some more detailed facts concerning the Ford-Firestone issue and discusses several other cases involving punitive damages.

I note one other consideration, and that is, I am aware that in subscribing to the requirement that there is a criminal prosecution as a basis for an award of punitive damages, that does require proof beyond a reasonable doubt. On punitive damages, there have been varying standards applied, for example, clear and convincing evidence. And while proof beyond a reasonable doubt is obviously more than a preponderance of the evidence, it is my view that where you deal with these horrendous kinds of cases—the Pinto, where there is a calculation regarding the gas tank in the rear of the car, or the Ford-Firestone case—in these kinds of cases where we are really looking to make an example, that the proof will be there for proof beyond a reasonable doubt.

Having had some considerable experience prosecuting criminal cases, it has been my view that in most situations the vagaries of burdens of proof—beyond a reasonable doubt, clear and convincing evidence, preponderance of the evidence—really are not the ultimate determinants. But to the extent that proof beyond a reasonable doubt is an additional burden, I think the gain in moving in this direction to impose criminal liability is certainly worth it from the point of view of public policy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Madam President, I ask unanimous consent the order for the quorum call be rescinded and that I be recognized as in morning business.

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

HUMAN CLONING

Ms. LANDRIEU. Madam President, I understand we are going to be voting on a very important bill at about 3:45, in just 20, 25 minutes. I support the bill on terrorism insurance creating a mechanism for us to create a system in this country for a new kind of insurance, unfortunately, one for which there has become an apparent need since September 11, and without which there would be a great hardship for our banking and financial industries and also for our real estate developers. Frankly, all businesses—many in Louisiana—are affected across our Nation.

So I am going to be supportive of this terrorism insurance bill, and have been supportive of it in the process of trying to bring it to the floor for a final vote.

But I want to take a few minutes, before we actually vote on that bill, to speak on an issue that is not directly before the Senate but is something in which many of us are involved, and for which we are trying to come up with some solutions. This is the very important issue involving the subject of cloning. It involves issues related to potential research in cloning.

We believe this is a subject the Senate and Congress is going to have to address, and we are attempting to address it. There are various differences of opinion about how to do that. So I come to the floor to speak for a minute while we have some time.

First of all, as you know, Madam President, and as many of my colleagues know, I am working with Senator BROWNBACK and Senator FRIST and others to try to fashion a position on this bill that would basically create a moratorium of some type—either long term, short term, or intermediate term—because we believe this is an issue with serious ethical considerations and one that we, as a Congress, and as leaders, should have to give very careful consideration to before we would go forward.

That has been the essence of our approach, just trying to slow things down so that perhaps we could get enough information to say that we should not, at any time, under any circumstance, go forward with human cloning. But the basis of our approach has been a moratorium to give us more time to get some of this important information out to the public.

This is an issue of great concern to the public. Generally, I think people want to be supportive of ethical kinds of research, particularly for the development of cures for diseases. Juvenile diabetes comes to mind; also cures for cancer and spinal cord injuries.

We want to be very supportive of ethical approaches to research to provide cures for people who are suffering: children, adults, older people. I think this Senate has gone on record, in a truly bipartisan fashion, supporting the increase in funding for the National Institutes of Health, and it has been a remarkable increase in funding. I, for one, have been very strongly supportive of that funding and want it to continue.

But I want to spend a moment talking about some of the problems—ethical and otherwise—associated with the process of human cloning and to suggest that the Feinstein-Kennedy approach, which basically would be asking the Senate, if you will—and why I am not supporting that approach—and Congress to consider, for the first time, sanctioning or legalizing human cloning.

I do not think there is enough information for us to make that decision. Let me give you a couple of reasons.

First of all, some of the proponents of human cloning—people who say we should go forward with human cloning—try to make a distinction between human cloning and therapeutic cloning or reproductive cloning or nuclear transfer.

One of the points I want to make is that human cloning is human cloning

is human cloning. It is just a matter of where you stop the process. The process is exactly the same. Terms have been used to describe it in a variety of different ways. There may be many terms, but there is just one process. There may be many names, but there is one process.

As shown on this chart, it is the one process that we are talking about. There are not two or three or four processes; there is one process. That process involves an unfertilized egg and a cell from an adult stem cell. The nucleus is removed and put into this unfertilized egg, and it becomes basically an embryo.

The Feinstein-Kennedy-Specter approach says that we should basically authorize this for the first time, say it is legal, authorize it, and engage in the creation of a human embryo—not a plant, not an animal, but a human embryo; and then just say at a certain point—whether it is 12 days or 14 days or 16 days—that embryo would then be destroyed, basically before it is implanted. That is the Feinstein-Kennedy-Specter approach.

Senator BROWNBACK and I—because of many similar concerns and some different concerns—and Senator FRIST believe the line should be drawn at this point until we can make a better determination about the risks and benefits associated with human cloning; that is, to stop the process before it begins.

One of the reasons we believe this—although the law might try to draw a line here after the embryo has been created—is because it is going to be very difficult, if not impossible, to enforce this line because somewhere, some time, that line is going to be pierced and we will end up having a cloned embryo implanted. Then the question is, What do you do then?

The possibilities of passing any kind of so-called compromise that would legalize and authorize human cloning for the first time in our Nation's history could get us on to a very slippery slope. That is why some of us are urging to slow it down, have more study, and have a short-term moratorium, which even President Clinton, in his term as President, said—of course, when Dolly, the sheep, was created—that is exactly what we should do until we get more information about the benefits and risks associated with cloning.

So it is not only President Bush who is urging us to slow down, but both Democrat and Republican administrations. And you can understand why. It puts us on a very slippery slope if we—and I hope we do not; and I am going to fight to make sure we do not—start with the premise that we can legalize human cloning, authorize it, potentially even fund it with Government funding; that we at least legalize it so that millions of private dollars flow into the research on human cloning, harvesting, creating these millions of embryos in labs all around the country and supporting their development in labs all around the world—harvesting them and destroying them, harvesting them and destroying them, harvesting them and destroying them.

Then, at some point, because these are not Government-run labs, these are private sector labs, these are people who will be working—to give everybody the benefit of the doubt, let's say most people are working on some potential cures for diseases, although they may be far in the distance, but it is not inconceivable, and it is common sense to believe that at some point somebody—a scientist, a patient, a woman, a couple—is going to push the envelope, implant what is a legal clone, and then look at us or go call a press conference and say: Now what? It is a clone that has been created because we have legalized it. It is a clone. We will have legalized it, if we pass a bill that does legalize it. And then the question is, What are you going to do about it?

Once a clone is implanted, what do we do if it is delivered or born healthy? That is one issue. What if it is born grossly mutilated, which is probably, based on the Dolly, the sheep, experiment and research, going to happen because 275 embryo trials were used to create Dolly, the sheep. All of them ended in death or destruction to the creature, the clone being created, and then finally a clone was successfully delivered.

For us to think that this is the time—there has been only one hearing in a Senate committee on this subject, at least in recent years; perhaps there were some many years ago, but I don't think so—to move forward with a bill that would authorize human cloning is at best premature and, frankly, in my opinion, at this particular point, wholly unproven technology with tremendous ethical questions and great difficulty in trying to police what would basically be an authorized legal process of creating for the first time in America human clones.

That is as simple as I can state it. There is not a difference between therapeutic cloning or nuclear transfer. There are many names for it, but it is one process. It is the same process. The issue is, should we start that process and, if so, where should we stop it. Another question is, Could you really stop it once it is started?

The other reason I am suggesting a pause, a moratorium of some nature, maybe 2 years, 3 years, 4 years, enough time for us to develop a blue ribbon panel of scientists, not with preordained notions but truly a group of scientists who can help us as a nation figure out what would be, if any, benefits of human cloning, we have to realize that right now in the body of the law we are not even engaging in the full range of stem cell research that holds tremendous potential for the discovery of cures for many of these diseases.

We have very limited research on stem cells going on in this country, either adult or embryonic stem cells. Why? Because we have not even come to a consensus on that. Human cloning takes us many steps past that issue. We can work on nonclones. We can work on noncloned embryos and still get a tremendous amount of benefit without the terrible ethical consideration this raises.

The third issue is, if you think about it, even in a macro sense, even those of us who are not trained as doctors or scientists could understand that one issue that might compel a person, a family, a grieving parent over a fatally ill child or a spouse over another fatally ill spouse would be if the research or the benefits could not be derived from regular embryos or from stem cells on nonclones, and the only way to cure this person's particular disease would be to get something harvested from a clone. That is the rejection issue.

If everything else has been exhausted, none of the other methods or procedures is working in other areas, then perhaps we would have to get tissue or research or some piece of a cell from a cloned embryo. We are so far from making that determination. I have not read one scientific study, one legitimate group of scientists anywhere, not any prize winners, not any research has been done or even theorized that that would be the only way, the rejection issue, to overcome the objections to cloning.

Those of us who are urging a moratorium are not against research. We are strongly—many of us—supportive of stem cell research. But to rush headlong into a process that will for the first time legalize human cloning because there might be a slight benefit, which is totally unproven, to get over a rejection issue by using a human clone is a real stretch, and it is very premature.

What I am hoping is that we can continue this debate for Members to come to the floor and speak about some of these issues at the appropriate time. We don't want to hold up other important bills. But this is a very important bill for our Nation. It will set a pace, a direction for our research.

I am hoping in the next several days and weeks we can come up with a compromise on this issue that will not authorize the creation of clones but that will allow us some more time to study the benefits of human cloning, if there are any, if it can be proven, and if those benefits outweigh the grave risk, the tremendous risk associated with legalizing human cloning, and then trying to stop the implantation of the clones. I think it puts our society at a great risk, at a great disadvantage, to try to regulate something we have never tried to regulate before.

The Feinstein-Kennedy approach is not a ban on human cloning; it is an exception to the ban on human cloning. It would authorize and legalize human cloning for the first time in our Nation's history. We have to be very careful before we open what could be a Pandora's box or at least get us on a slippery slope towards a system where we

have actually legalized and authorized the development of human clones.

If this study comes out and the research suggests the only way to find cures for this disease for this particular individual might be to explore the benefits or to explore the opportunities in a clone, maybe some ethical considerations would be outweighed if a life could be saved or if this is the only way to save a life. But we are not anywhere near that.

I urge my colleagues to take a very close look at what Senator BROWNBACK and Senator FRIST and I will suggest as a compromise to get us through these next years, using our good values and our common sense and our ethics, always promoting good research and good science, but not getting ourselves in a direction where we cannot pull back and causing our population to have to deal with the birth of a first human clone.

To then have to ask ourselves, why didn't we do something more to stop this and what do we do now that we have the first clone alive and in the world—we have to think about it.

I hope we can come to terms with this issue. That is why I wanted to spend some time speaking about it.

It is a very exciting time in science. We are exploring and inventing and discovering things people even 25 or 30 or 40 years ago thought could never possibly be. There are some wonderful things about science and discovery, but there are limits that sometimes need to be placed. We have now for the first time in human history come to terms with the fact that we can create not a plant clone, not an animal clone, but the potential to create a human clone.

The question before the Congress is, Should we start that process? I am saying as simply as I can, before we start, we had better be sure of what we are going to do, when basically the line we draw is breached, as surely as it will be one day, and make sure we can draw a line and set a framework in place that minimizes the chances of a human clone being born in our lifetime or forever.

I think it is definitely worth debating and worth considering. I yield back the remainder of my time. I see my colleague from the great State of Connecticut is with us.

Before I yield the floor, I ask unanimous consent to have two articles by Charles Krauthammer printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 10, 2002]

RESEARCH CLONING? NO.

(By Charles Krauthammer)

Proponents of research cloning would love to turn the cloning debate into a Scopes monkey trial, a struggle between religion and science. It is not.

Many do oppose research cloning because of deeply held beliefs that destroying a human embryo at any stage violates the sanctity of human life. I respect that view, but I do not share it. I have no theology. I do not believe that personhood begins at conception. I support stem cell research. But I oppose research cloning.

It does no good to change the nomenclature. The Harry and Louise ad asks, ''Is it cloning?'' and answers, ''No, it uses an unfertilized egg and a skin cell.''

But fusing (the nucleus of) a ''somatic'' cell (such as skin) with an enucleated egg cell is precisely how you clone. That is how Dolly the sheep was created (with the cell taken not from the skin but from the udder). And that is how pig, goat, cow, mouse, cat and rabbit clones are created.

The scientists pushing this research go Harry and Louise one better. They want to substitute the beautifully sterile, high-tech sounding term SCNT—''somatic cell nuclear transfer''—for cloning. Indeed, the nucleus of a somatic cell is transferred into an egg cell to produce a clone. But to say that is not cloning is like saying: ''No, that is not sex. It is just penile vaginal intromission.'' Describing the technique does not change the nature of the enterprise.

Cloning it is. And it is research cloning rather than reproductive cloning because the intention is not to produce a cloned child but to grow the embryo long enough to dismember it for its useful scientific parts.

And that is where the secularists have their objection. What makes research cloning different from stem cell research—what pushes us over a moral frontier—is that for the first time it sanctions the creation of a human embryo for the sole purpose of using it for its parts. Indeed, it will sanction the creation of an entire industry of embryo manufacture whose explicit purpose is not creation of children but dismemberment for research.

It is the ultimate commodification of the human embryo. And it is a bridge too far. Reducing the human embryo to nothing more than a manufactured thing sets a fearsome desensitizing precedent that jeopardizes all the other ethical barriers we have constructed around embryonic research.

This is not just my view. This was the view just months ago of those who, like me, supported federally funded stem cell research.

The clinching argument then was this: Look, we are simply trying to bring some good from embryos that would otherwise be discarded in IVF clinics. This is no slippery slope. We are going to put all kinds of safeguards around stem cell research. We are not about to start creating human embryos for such research. No way.

Thus when Senators Tom Harkin and Arlen Specter were pushing legislation promoting stem cell research in 2000, they stipulated that ''the stem cells used by scientists can only be derived from spare embryos that would otherwise be discarded by in vitro fertilization clinics.'' Lest there be any ambiguity, they added: ''Under our legislation, strict federal guidelines would ensure [that] no human embryos will be created for research purposes.''

Yet two years later, Harkin and Specter are two of the most enthusiastic Senate proponents of creating cloned human embryos for research purposes.

In testimony less than 10 months ago, Senator Orrin Hatch found ''extremely troubling'' the just-reported work of the Jones Institute, ''which is creating embryos in order to conduct stem cell research.''

The stem cell legislation Hatch was then supporting—with its ''federal funding with strict research guidelines,'' he assured us—was needed precisely to prevent such ''extremely troubling'' procedures.

That was then. Hatch has just come out for research cloning whose entire purpose is ''creating embryos in order to conduct stem cell research.''

Yesterday it was yes to stem cells with solemn assurances that there would be no embryo manufacture. Today we are told: Forget what we said about embryo manufacture; we now solemnly pledge that we will experiment on only the tiniest cloned embryo, and never grow it—and use it—beyond that early ''blastocyst'' stage.

What confidence can one possibly have in these new assurances? This is not a slide down the slippery slope. This is downhill skiing. And the way to stop it is to draw the line right now at the embryo manufacture that is cloning—not just because that line is right, but because the very notion of drawing lines is at stake.

[From the Washington Post, July 27, 2001]

A NIGHTMARE OF A BILL

(By Charles Krauthammer)

Hadn't we all agreed—we supporters of stem cell research—that it was morally okay to destroy a tiny human embryo for its possibility curative stem cells because these embryos from fertility clinics were going to be discarded anyway? Hadn't we also agreed that human embryos should not be created solely for the purpose of being dismembered and then destroyed for the benefit of others?

Indeed, when Senator Bill Frist made that brilliant presentation on the floor of the Senate supporting stem cell research, he included among his conditions a total ban on creating human embryos just to be stem cell farms. Why, then, are so many stem cell supporters in Congress lining up behind a supposedly ''anti-cloning bill'' that would, in fact, legalize the creation of cloned human embryos solely for purposes of research and destruction?

Sound surreal? It is.

There are two bills in Congress regarding cloning. The Weldon bill bans the creation of cloned human embryos for any purpose, whether for growing them into cloned human children or for using them for research or for their parts and then destroying them.

The competing Greenwood ''Cloning Prohibition Act of 2001'' prohibits only the creation of a cloned child. It protects and indeed codifies the creation of cloned human embryos for industrial and research purposes.

Under Greenwood, points out the distinguished bioethicist Leon Kass, ''embryo production is explicitly licensed and treated like drug manufacture.'' It becomes an industry, complete with industrial secrecy protections. Greenwood, he says correctly, should really be called the ''Human Embryo Cloning Registration and Industry Facilitation and Protection Act of 2001.''

Greenwood is a nightmare and an abomination. First of all, once the industry of cloning human embryos has begun and thousands are being created, grown, bought and sold, who is going to prevent them from being implanted in a woman and developed into a cloned child?

Even more perversely, when that inevitably occurs, what is the federal government going to do: Force that woman to abort the clone?

Greenwood sanctions licenses and protects the launching of the most ghoulish and dangerous enterprise in modern scientific history: the creation of nascent cloned human life for the sole purpose of its exploitation and destruction.

What does one say to stem cell opponents? They warned about the slippery slope. They said: Once you start using discarded embryos, the next step is creating embryos for their parts. Frist and I and others have argued: No, we can draw the line.

Why should anyone believe us? Even before the President has decided on federal support

for stem cell research, we find stem cell supporters and their biotech industry allies trying to pass a bill that would cross the line—not in some slippery-slope future, but right now.

Apologists for Greenwood will say: Science will march on anyway. Human cloning will be performed. Might as well give in and just regulate it, because a full ban will fail in any event.

Wrong. Very wrong. Why? Simple: You're a brilliant young scientist graduating from medical school. You have a glowing future in biotechnology, where peer recognition, publications, honors, financial rewards, maybe even a Nobel Prize await you. Where are you going to spend your life? Working on an outlawed procedure? If cloning is outlawed, procedure? If cloning is outlawed, will you devote yourself to research that cannot see the light of day, that will leave you ostracized and working in shadow, that will render you liable to arrest, prosecution and disgrace?

True, some will make that choice. Every generation has its Kevorkian. But they will be very small in number. And like Kevorkian, they will not be very bright.

The movies have it wrong. The mad scientists is no genius. Dr. Frankensteins invariably produce lousy science. What is Kevorkian's great contribution to science? A suicide machine that your average Hitler Youth could have turned out as a summer camp project.

Of course you cannot stop cloning completely. But make it illegal and you will have robbed it of its most important resource: great young minds. If we act now by passing Weldon, we can retard this monstrosity by decades. Enough time to regain our moral equilibrium—and the recognition that the human embryo, cloned or not, is not to be created for the sole purpose of being poked and prodded, strip-mined for parts and then destroyed.

If Weldon is stopped, the game is up. If Congress cannot pass the Weldon ban on cloning, then stem cell research itself must not be supported either—because then all the vaunted promises about not permitting the creation of human embryos solely for their exploitation and destruction will have been shown in advance to be a fraud.

TERRORISM RISK INSURANCE ACT OF 2002—Continued

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Madam President, I rise to speak in favor of S. 2600, the Terrorism Risk Insurance Act of 2002. Before I get to the substance of the measure, I thank and praise my colleague and friend from Connecticut, Senator DODD, for his extraordinary work in drafting a practical, effective solution to the terror insurance crisis.

As we all know, this has been an arduous and, at times, frustrating process. Senator DODD has proven to be not only tenacious but almost divinely patient in pursuit of this legislation. I congratulate him and thank him for the success that I am confident this bill will enjoy when it is voted on a little more than an hour from now.

I wish to speak for a moment about why this is so important, perhaps as a summary as we approach the vote.

Property and casualty insurance is not an optional matter for businesses in our country. Nearly every business I know of buys insurance to protect its equipment, its property, its stock, to guard against liability, and to safeguard its employees, for instance, under State workers compensation laws. Property and casualty insurance is required by investors and shareholders. Of course, it is required by banks that lend for construction of new buildings or other projects.

In the event property and casualty insurance for major causes of loss is not available or is prohibitively expensive, businesses face very painful choices and, in fact, will probably end up being paralyzed. Construction projects will come to a halt, and banks will not lend. If one multiplies this across an economy, the impact will be quite severe and particularly difficult and painful at this time as our economy remains uncertain and flat.

We are here today because the ability of businesses to continue buying insurance will be placed at severe risk if we fail to address the way life and risk have changed since the attacks on America of September 11. Underwriting an insurance policy obviously requires companies to assess that risk and to estimate damages in a way that is much more tangible than most of us have done, although we know our lives and our history were changed on September 11.

For those in business and in the business of insurance or reinsurance, this comes down to an attempt to evaluate that risk in terms of probabilities and ultimately dollars and cents.

In the case of claims for damages caused by terrorist attacks, there is obviously no easy way to do this. There are so many uncertainties, but one thing is certain, and that is that losses from terrorist attacks, as we have already painfully seen and felt, can cost tens of billions of dollars, and under worse case scenarios, possibly hundreds of billions of dollars.

Insurance is a very competitive industry, but what most Americans, although most have contact with some form of insurance, may not realize is that insurance companies need and buy their own insurance. In other words, they are dependent on so-called reinsurers that help them spread the risks that they assume when they sell insurance to us and cover their losses.

When reinsurers will not renew their contracts unless they contain terrorism exclusions or limitations, there are going to be an awful lot of insurance companies that will not be able to provide terrorism coverage, in most cases not at any cost but in other cases only at a prohibitive cost. That is not just a possibility today; that is a very real probability.

Across the country, insurers are in danger of losing their contracts with reinsurers because of the reinsurers' unwillingness to accept the risks of possible terrorist attacks. If this happens, and the insurers are not able to include terrorism exclusions or limitations, insurers may not be able to offer any policy at any price.

This is not a matter of speculation anymore. Notices have effectively gone out, discussions have occurred, letters have been exchanged between reinsurers and insurers and those who are insured, as we read in the paper today.

That uncertainty on the part of the insurance industry has now come to the point where it is haunting consumers and will hurt consumers, purchasers of insurance, developers, businesses, and real estate owners. American businesses will not be able to get the policies they need at a reasonable price. They will not be able to get the financial protection they require.

There is nothing we can do in Congress within the limits of our Constitution, as I read it, to require by law that insurance companies write policies that they do not want to write because of what they evaluate to be a market and financial factor, but we can and must avoid creating the conditions that force reinsurers to drop insurers and insurers to drop American businesses or charge such exorbitant rates that they may as well be dropping them off their rolls.

We have to intervene in this process to create a backup, to create enough security for reinsurers to reenter the market and for insurers to continue to insure American businesses and keep them going and growing hopefully at this stage in our economic history.

In recognition of this serious crisis, State regulators are already considering terrorism exclusions, as they must, consistent with their responsibilities to oversee the solvency of the insurance industry, but State laws will only patch the problems and leave businesses without the insurance they need to continue operating. They will not eliminate the crisis. It is clear, therefore, that we in Congress must act, and this sensible legislation is clearly the way to do it. This legislation will provide businessowners with the opportunity to buy insurance against terrorism claims and to do so in the private market as well. It would establish a temporary Federal backstop for insurance to cover against damages resulting from terrorist attacks, a program that would last for a year and gives the Secretary of the Treasury authority to extend the program for another year.

This temporary backstop is intended to provide the insurance industry with time to assess the dramatically changed risk of claims resulting from terrorist attacks.

As the industry determines how to price the risk and determine appropriate premium levels for terrorism insurance, hopefully the need for the Federal emergency backstop we are creating will lessen.

I do point out that what this legislation will accomplish is not unprecedented. In fact, the Federal Government has a history of partnering, if I can put it that way, with the insurance industry to provide coverage for risks that are just too big or unpredictable