

1964

## CONGRESSIONAL RECORD — SENATE

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SEC. 352. (a) The Service may prepare for its own use any product described in section 351 and any product necessary to carrying out any of the purposes of section 301.

(b) The Service may prepare any product described in section 351 for the use of other Federal departments or agencies, and public or private agencies and individuals engaged in work in the field of medicine when such product is not available from establishments licensed under such section.

Mr. President, section 351 is broad in its scope, covering "any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives, or any other trivalent organic arsenic compound, applicable to the prevention, treatment or cure of diseases or injuries of man."

This is the section which gives the Secretary of Health, Education, and Welfare licensing and inspection authority over the manufacture of all these biologicals. The Secretary exercises this authority through the Public Health Service. The Service, therefore, has a long history of intimate connection with the preparation of these biologicals.

Section 301 directs the Surgeon General to conduct a wide range of research and investigation and to provide funds and information to others to enable them to engage in research on matters affecting the public health.

I am, therefore, calling on the Surgeon General to prepare a program of production and stockpiling for critical biologicals.

The Surgeon General should call a conference of all manufacturers of biological products. He should explore with industry the potential peak requirements for each antitoxin, vaccine, toxoid, antivenin, and so forth, and the commercial supply which can be counted on.

Naturally, he should urge the manufacturers to shoulder the responsibility for the slow-moving items. The industry's spokesmen have stressed, in testimony before the Antitrust and Monopoly Subcommittee, the necessity for great profit margins on the popular drugs to make up for losses on drugs of only occasional use. Here is an opportunity for the pharmaceutical industry to justify some of those statements.

In the event, however, that the industry does not elect to furnish the required biologicals, the Surgeon General must act upon his own statutory responsibilities. With the powers and funds at the disposal of the Public Health Service, it is essential that life-saving but unprofitable drugs be provided by the Government, if the industry fails to do so.

Mr. President, the expenditure of public funds to protect against a potential threat to the public health is analogous to paying insurance premiums. So, also, is the expenditure of \$40 to \$50 billion a year for defense. We make the expenditure which we can afford, to protect against a cataclysm which we cannot afford to face unarmed.

I submit that out of all the hundreds of millions of dollars annually appropriated to the Public Health Service—including the National Institutes of Health—we can well afford to spend a fraction of that amount to have all the

biologicals we need ready in case of a major natural—or even enemy—attack.

I ask unanimous consent to have my letter to the Surgeon General printed in the RECORD.

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

MARCH 4, 1964.

Hon. LUTHER TERRY,  
Surgeon General of the United States, Public Health Service, Department of Health, Education, and Welfare, Washington, D.C.

DEAR DR. TERRY: The outbreaks of botulism last year and the inability of the pharmaceutical industry to provide the antitoxin required for treatment have been most disturbing to me.

Certainly the Public Health Service and yourself are to be commended for the prompt action taken to insure that deaths from botulism need not occur in the future. But what really bothers me is that such a catastrophe is needed to stimulate corrective measures.

May I suggest that a conference of manufacturers of biologicals be called to devise ways and means of assuring that supplies of antitoxins will be adequate to meet any likely emergency for other rare diseases. Toward this end, the U.S. Public Health Service could conduct a survey of the potential requirements for biologicals that may be needed on a once-in-a-year basis. Commitment should be obtained from biologicals manufacturers to produce and maintain adequate supplies of usable vaccines. Some means of providing "fair compensation" to cover the actual cost of producing and storing little used biologicals could also be devised.

In the event firm commitments by the industry are below your estimate of essential minimums, the Public Health Service could produce, or have manufactured for it, the needed supplies. As you know, of course, you are specifically authorized by section 352 of the Public Health Service Act to prepare biological products for use of the Service; and for use of other medical agencies and individuals when such products are not available from commercial producers.

Also, under your research and investigation authorization, section 301, you can cause to have carried on research in improved methods of preserving such biologicals (as for example freeze-drying and storing in vacuum or inert gases at very low temperatures) so as to reduce the costs of storing and to increase the possibility of stockpiling significant quantities.

We spend billions stockpiling for defense. Should we not spend a fraction of this amount stockpiling for health? It seems to me that the American people have a right to expect that antitoxins be available for even the rarest of diseases. I know that Government and industry working together under your leadership can provide this assurance.

Sincerely,

PHILIP A. HART,  
Chairman.

## OFFICE OF DEPUTY PRESIDENT

Mr. MCCARTHY. Mr. President, I introduce, for appropriate reference, a bill to establish the Office of Deputy President, to provide for the continuous discharge of the powers and duties of the Office of President, and for other purposes.

The Office of Vice President has been vacant on 16 occasions in our history—8 times because the Vice President succeeded to, the Presidency, 7 times

through the death of the Vice President, and once following resignation of the Vice President. No President has attained office under any of the succession laws, but even if the possibility of succession is remote, we should carefully consider adjustments in procedures which might better protect the national interest in case of succession.

The bill which I have introduced would create a new Office of Deputy President. The Office would be filled only in the event the Office of Vice President is vacant. Nomination to the position would be made by the President within 30 days following the vacancy in the Office of the Vice President, and confirmation by the Senate would be required according to the regular procedure. I would prefer that the approval of both the House of Representatives and the Senate be required for confirmation of the Deputy President, if this can be provided without a constitutional obstacle. If further study shows this can be done, I will move to amend my bill to provide it.

The bill designates the Deputy President as first in line of succession to the Presidency in event of the death or disability of the President. It removes the Speaker of the House of Representatives and the President of the Senate from the line of succession, but in other respects it follows the succession law of 1947 in providing for succession through the members of the Cabinet, in case the Office of Deputy President is vacant.

The proposal incorporated in my bill does not require a constitutional amendment. I am not absolutely opposed to adoption of a constitutional amendment to provide a more detailed system, but I believe there is advantage in retaining the flexibility which now exists.

The Constitution provides sufficient authority to enable Congress to act by statute. Article II, section 1, paragraph 5, of the Constitution states:

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

In addition to this direct grant of authority, the responsibility of Congress was set forth in the original section 1, paragraph 3, of article II, of the Constitution. This placed the right to elect the President with the House of Representatives, in the event the electoral college failed to elect.

This procedure was reaffirmed by the 12th amendment which was ratified in 1804. The 20th amendment in 1933 further extended the right of Congress by providing for congressional action when neither the President-elect or the Vice President-elect shall have qualified. All these powers taken together clearly indicate the importance of Congress in extraordinary occasions involving the Presidency.

Congress has exercised its responsibility for succession by law in 1792, 1886, and 1947. The law of 1792 designated the President pro tempore of the Senate as first in line for succession, followed by the Speaker of the House. The act of 1886 placed succession in the President's Cabinet, starting with the Secretary of State. The law of 1947 returned to Congress but this time the Speaker of the House was designated first in line, followed by the President pro tempore of the Senate and the members of the Cabinet.

These laws have protected the basic national interest, but conditions change, and I believe we should again examine the succession law to see if it can be improved.

The responsibilities of the President have increased greatly in recent years, and so has the need for the official next in line of succession to be experienced and well informed about the duties he may be called upon to assume.

The President cannot share his responsibilities or information fully, but it is possible for the officer next in line to have daily familiarity with the operations and policies of the administration which he may be called upon to head, and with the executive personnel with whom he must work.

The creation of the Office of Deputy President would provide an officer who could give full-time assistance to the President and who would gain practical experience with the responsibilities of the Presidency. Neither the Speaker of the House, as under the present law, nor the Secretary of State, as once provided, can as adequately fulfill this twofold responsibility. These are very important positions in their own right. They require the full attention of those holding them. On the other hand, their responsibilities are specialized.

The President has need of a Vice President, or equivalent officer, to assist him in the performance of his duties; and the Nation should have the assurance that the Vice President, or other officer, is prepared to assume the office if it becomes necessary.

In effect, my proposal returns the succession policy to the procedure provided from 1886 to 1947. During this time the Secretary of State, a Presidential appointee confirmed by the Senate, was next in line.

A major advantage of creating the new Office of Deputy President, which would be filled only in case the Office of Vice President was vacant, is that the choice of the Deputy President would be made under politically realistic conditions. A weakness of our succession laws has been that the designated successor often attained his position for reasons and considerations quite apart from the possibility of succession.

Under the terms of the bill I have introduced, the choice of the Deputy President will be made with the full understanding that he would have the right of succession.

The bill provides that the President shall nominate from among those experienced in Government: the members of the Cabinet, the Members of Congress,

the Justices of the Supreme Court, and the Governors of the States. The Deputy President would be required to resign this office on assuming his duties.

Finally, the proposal would guarantee continuation of leadership by the political party which won the previous election. In 8 of the past 18 years, the Speaker of the House has been a member of a different party from the President.

In the event of a double vacancy, a complete change of administration would have followed. The succession law should respect the mandate of the people, who vote not only for a man but also, in a broad way, for his party and its program. The elevation of a leader of another party in midterm is undesirable in principle and could have most unfortunate practical effects.

There might be difficulty in getting a Member of Congress to resign his office to fill an abbreviated term as Deputy President, but the choice is somewhat similar to that which one must make when he, in anticipation of election, accepts the nomination for Vice President. The procedure would present no difficulty at all if the President nominated a member of the Cabinet as Deputy President. In any case, we can be confident that when the President asked a man to help him and the Nation meet this serious problem, well-qualified men would be available.

The law which I propose would not become effective until January 20, 1965, inasmuch as President Johnson and Speaker McCORMACK have already made arrangements for keeping the Speaker informed and for action in the event of Presidential disability.

I hope that the succession law will be unused in the future as during the past 170 years, but the responsibilities of the President have become too great not to develop the most effective procedure possible in the event it is needed. I believe the creation of the Office of Deputy President will accomplish this.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 2597) to establish the Office of Deputy President, to provide for the continuous discharge of the powers and duties of the Office of President, and for other purposes, introduced by Mr. McCARTHY, was received, read twice by its title, and referred to the Committee on Rules and Administration.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. McCARTHY. I yield.

Mr. HRUSKA. I should like to commend the Senator from Minnesota for the interest he has taken in this subject and the study he has given it. The concern of the Senator from Minnesota in this field is one which is widely felt, particularly because of the tragic events of last fall. Nevertheless, even the interest which is expressed now has from time to time been expressed by many people. This has been expressly emphasized during the course of the first installment of hearings of the Judiciary Committee on a presidential succession and disability act.

It will be with a great deal of interest

that I personally shall want to study the proposal of the Senator from Minnesota. In the meantime I again commend him for the study he has given it and the interest he has expressed in it.

Mr. McCARTHY. I thank the Senator from Nebraska for his interest in the proposal.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. McCARTHY. I yield.

Mr. McGEE. I join in commending the Senator from Minnesota on his interest expressed in the central question involved; namely, presidential succession. The record of the Senator as a scholar and professor, and as a theoretician of government, is implemented by his many years of leadership in Government itself. I wonder if I correctly understood the Senator to say that the real reason focused on the succession act now in lieu of the existing bill is one of protecting the will of the people, so to speak, in the most recent presidential election, whenever that might be, in the event of a vacancy.

Mr. McCARTHY. This consideration must be of primary concern.

Mr. McGEE. Under the present organization, then, it would be possible for the party which lost the presidential election to end in the White House in the wake of a tragedy.

Mr. McCARTHY. It is quite possible. In the 8 years of the Eisenhower administration, there were only 2 years during which the Speaker of the House was of the same party as the President.

Mr. McGEE. Is it also the judgment of the Senator from Minnesota that a person closely identified with the administration in the White House would be more responsive to the feelings and the policies of the President than the President pro tempore of the Senate or the Speaker of the House, even though they were of the same party?

Mr. McCARTHY. I should think so, since the office of Speaker of the House is a very demanding office in itself, and the responsibility in a general way runs through a different area in terms of substance. It is a more limited area, and certainly the effects are very different in terms of procedure and the methods by which the House of Representatives operates, in contrast to the executive branch of the Government.

The office of Speaker of the House is of such importance in the whole structure of American democracy and American constitutional government that I think we ought to leave the House as free as possible to choose a person to fill that particular office, because of his qualities and not force it to take into account that it must select a person who could fill the office of President. It might find a person with the qualities combined in both offices, but the chances of that would be slight because the demands made upon a person by each office are so great. We ought not to place upon the House the burden of conditioning its judgment and consideration to their fear and anticipated that this person might have to succeed to the office of President.

Mr. McGEE. If I correctly understand the Senator, there is a factor of con-

siderable importance; namely, the separation of powers or division of powers in our constitutional framework, that suggests that there is an executive responsibility that ought not to be blended too completely with the legislative arm of the Government, as the existing situation would, in fact, require.

Mr. McCARTHY. The Senator is quite correct. There is one other point regarding the Speaker. If the President were to determine that the Speaker was the man whose nomination he would want to submit to the Senate for confirmation, the man whom he would want to succeed him, there would be no obstacle to the President's nominating the Speaker of the House and submitting his name for confirmation by the Senate.

In that case, the Speaker of the House would resign his office as Speaker and assume, not really the Vice-Presidency, but the Deputy Presidency, because it is not intended to pass on to a man holding that office the full constitutional powers of the Vice President, which includes the right to vote in case of a tie. That would be the only power that would be denied the Deputy President, except the power to preside over the Senate, which the Senate, by separate action, could extend to him or could extend to anyone else whom it saw fit to have preside.

Mr. MCGEE. Do I correctly understand the reason for returning to the 1947 arrangement for succession to be that in the event of a larger catastrophe, there would be an order of succession?

Mr. McCARTHY. If time intervened until the point at which the Deputy President succeeded to the Presidency, he in turn could submit the nomination of a successor for confirmation by the Senate. If there were no time for that—if there were a serious catastrophe, or if the time were too short—I would propose a reversion to the right of succession that was in effect for approximately 150 years, in which the Secretary of State would then take over the office of President. It would be for a short period of time.

Mr. MCGEE. And the following order of succession would be the order in which the Cabinet positions were created?

Mr. McCARTHY. Yes, the old order.

Mr. MCGEE. That would supply stability. But would the succession prescribe that the Deputy President, proposed by the Senator in his bill, would take precedence over the Secretary of State?

Mr. McCARTHY. It would.

Mr. MCGEE. Under all circumstances?

Mr. McCARTHY. Under all circumstances.

Mr. MCGEE. If he were physically able to do so. That was the point that was not clear to me.

I thank the Senator for his recommendations.

Mr. McCARTHY. I thank the Senator from Wyoming for his support and comments.

#### THE 200TH ANNIVERSARY OF CHARTER OF BROWN UNIVERSITY

Mr. PASTORE. Mr. President, on Monday, March 2, Brown University, at Providence, observed one of a series

of ceremonies marking the 200th anniversary of its charter. A plaque commemorating the occasion was accepted in behalf of Brown by John Nicholas Brown of the board of fellows of the university.

It was in 1764 that the General Assembly of the Governor and Company of the English Colony of Rhode Island and the Providence Plantations granted the college charter for the purpose of "preserving in the community a succession of men duly qualified for discharging the offices of life with usefulness and reputation."

An editorial in the Newport Daily News of Friday, February 28, 1964, is evidence of the statewide—and, indeed, nationwide—appreciation in which the university is held. The editorial suggests something of the intracolony competition to provide a permanent side for the college. As a historical contribution, I ask unanimous consent that the editorial be included at this point in my remarks.

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

Brown, 200 years old in March of 1964, marks the 200th anniversary of the granting by the colonial legislature of the charter of Brown University which originally was known as Rhode Island College.

The founding of this college was not without acrimony. The charter, finally granted at a sitting of the legislature in what is now Kent County Courthouse in East Greenwich, was the subject of much dispute. John Nicholas Brown will have meaty material to include in his discourse on Monday, at the opening of the bicentennial celebration when he speaks on the origin and evolution of the university charter.

Brown University, the Nation's seventh oldest college, taught its first students in Warren but the site of its permanent home was not finally decided until after Newport, Providence, Warren, and East Greenwich had each sought the honor. It was a matter of subscriptions that finally won the balance in favor of Providence. Newport though came close to being chosen.

Just as Rhode Island and Providence Plantations were founded on the premise of full liberty in religious concerns so was Brown University, whose charter was one of the most liberal of its kind written in the 18th century. It declared that: "All the members hereof shall forever enjoy full, free, absolute, and uninterrupted liberty of conscience."

Brown University, while it was founded under Baptist control, through subsequent amendments to the charter lost all denominational restrictions on membership on the corporation and faculty.

From a small colonial English college it has developed, in 200 years, into a distinctive "university college." Next Monday's ceremonies will be only the first of successive observances of this important anniversary in the history of this university, to which Newport has sent so many sons and daughters who have graduated with distinction.

It was in the atmosphere indicated by the editorial that the seventh oldest college in America and the third oldest in New England was established. Starting with a student body of one and a faculty of one at Warren, R.I., by the time of its first graduation in 1769, Providence had won out over Newport as the permanent site of the school; and in 1770 the college located on the very hill it at present adorns.

In 1804 the school adopted the name of Brown University in recognition of the generosity of Nicholas Brown of the class of 1786, a son of one of the founders of the college.

During the American Revolution the college was closed, as its faculty and students fought in the colonial forces. Its great building became a barracks and hospital for the French soldiers of Rochambeau.

In August of 1790 President George Washington, and his Secretary of State, Thomas Jefferson, came to Providence. Upon being awarded the honorary degree of doctor of laws, President Washington gave his promise, "You may rely on whatever protection I am able to afford in so important an object as the education of our youth."

Another President, Abraham Lincoln, had a Brown man, John Hay, as his secretary. He was later Secretary of State, as was Richard Olney, of Brown. Just a few other names in the university's two centuries of "usefulness and reputation" are Charles Evans Hughes, Theodore Francis Green, and John D. Rockefeller, Jr.

The 20th century for Brown has been a time of change and growth and challenge. They are the eras of President Faunce, President Wriston, and President Keeney.

The growing pains of the college are evidenced by a current \$15 million matching fund campaign to meet a challenge grant of \$7,500,000 from the Ford Foundation. This follows upon a successful \$15,100,000 capital funds drive. All these are dedicated dollars—dedicated to the most far reaching development program in Brown's history.

All that I have said is the heritage, too, of Pembroke College in Brown University, the separate woman's college which has been receiving its degrees from Brown University for just 70 years.

All—of both colleges, of both faculties, student bodies—all share in this time of challenge that reaches from College Hill to the home of every alumnus and alumna.

I am sure my colleagues of the Senate join me in this salute—salute to the two centuries of Brown University—success to the centuries of service that lie ahead, service to America in providing men and women with lives of usefulness and reputation.

#### TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 2455) to amend further the Peace Corps Act (75 Stat. 612), as amended.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. YARBOROUGH, from the Committee on Post Office and Civil Service, with amendments:

H.R. 7381. An act to simplify, modernize, and consolidate the laws relating to the employment of civilians in more than one position and the laws concerning the civilian employment of retired members of the uniformed services, and for other purposes (Rept. No. 935).

#### REPORT ENTITLED "THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES"—REPORT OF A COMMITTEE (S. REPT. NO. 934)

Mr. WILLIAMS of New Jersey. Mr. President, from the Committee on Labor and Public Welfare, I submit a report