



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 104<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 141

WASHINGTON, FRIDAY, DECEMBER 22, 1995

No. 207

## Senate

The Senate met at 10:15 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

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

*Glory to God in the Highest, on earth, peace, good will toward men.—Luke 2:14.*  
Almighty God, we praise You for Your faithfulness. Now in this sacred season, we join with Jews all over the world as they light their menorahs and remember Your faithfulness in keeping the eternal light burning in the temple. We gather with Christians around a manger scene and praise You for Your faithfulness to send the Light of the world to dispel the darkness. Your indefatigable love is incredible. You never give up on us. You persistently pursue us offering us the way of peace to replace our perversity. You offer Your good will to replace our grim wilfulness. In spite of everything we do to break Your heart, here You are, once again sending Your angel to tell us of Your good will to all humankind, Your pleasure in us just as we are, and for all we were intended to be. Change all our grim bah humbugs into humble adoration.

Make us Your Christmas miracles. Help us to be as kind to others as You have been to us, to express the same respect and tolerance for the struggles of others as You have been to help us turn our struggles into stepping stones, to understand us as we wish to be under-

stood. Light up the candles of our heart, Lord, and help us shine with Your peace and good will. In the name of the Light of the world. Amen.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator DOLE, is recognized.

### SCHEDULE

Mr. DOLE. Mr. President, we will immediately begin 30 minutes of debate on the veto message on H.R. 1058, the securities litigation bill. Following that debate, we will begin 30 minutes on the welfare reform conference report. At approximately 11:15 we will begin two consecutive rollcall votes, first on the veto message, to be followed by a vote on the welfare reform conference report.

Following those votes, the Senate will turn to consideration of the START II Treaty. Additional votes are therefore possible today on that treaty or any other matter that may become available, including a CR, if one is received from the House—I do not think that will happen—a Veterans' continuing resolution, which is at the desk, and any other available conference reports.

I will just indicate that the leaders will start their meeting with the President at 12 o'clock today in an effort to make progress on the balanced budget

over the next 7 years. That meeting will last approximately 3 hours. I do not have any idea what may develop during that session, but at least it is another indication that some progress is being made. We are negotiating. I hope that we can come to some agreement soon. I yield the floor.

Mr. DASCHLE addressed the Chair.

### RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The able minority leader is recognized.

### SECURITIES LITIGATION REFORM

Mr. DASCHLE. I wish the President pro tempore a good morning.

Mr. President, I would like to make a couple remarks, if I can, about the securities litigation reform legislation.

The bill before us highlights the real problem that faces companies when frivolous lawsuits are filed against them by lawyers for a quick profit. Our goal should be to address this problem without undermining the ability of investors to protect themselves against real fraud. Regrettably, the bill reported from conference goes too far, effectively closing the courthouse door on investors with legitimate claims.

While fixing the problem presented by frivolous lawsuits requires remedy, this bill goes beyond that and, as a result, leaves investors unprotected against fraud in many instances.

### NOTICE

#### LOBBYING DISCLOSURE ACT OF 1995

A special joint notice from the Secretary of the Senate and the Clerk of the House concerning implementation of the Lobbying Disclosure Act of 1995 (P.L. 104-65) appears in this issue of the Record following both the proceedings of the Senate and the House. See pages S19290-91 and H15634-35.

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



Printed on recycled paper containing 100% post consumer waste

S 19145

The well-targeted veto of the President can force this bill back on the right track. Proponents and opponents of this legislation recognize that our first priority must be to protect investors. Families, senior citizens, and working people need to feel secure when they invest. They need to be encouraged to save and invest for their health care, their retirement, and their education.

But such investors will only have confidence in the market if they consider them to be fair. They must expect that they will be protected if they are defrauded. They need to know that the law will continue to protect small investors, pension funds, and taxpayers against another Charles Keating. Yet, under this bill, when the next Charles Keating appears, and one will, victims will recover almost none of their losses. The victims of the Keating fraud recovered over \$260 million. Future victims will get a mere fraction of that. The lawyers who sued Keating say they would only have recovered \$16 million under the new bill—\$16 million—a fraction of the \$260 million under the current law they have received.

The President indicated in his veto message that he would be willing to sign this bill if improvements were made. By sustaining his veto, we can address real problems raised by frivolous lawsuits, while avoiding the overly broad language that is now in the bill.

The President's veto message focuses on three problems with the conference report.

First, the bill allows corporate insiders to make false statements, so long as they are accompanied by "cautionary language."

Second, it raises the bar so high on pleading standards that victims of fraud cannot get into court.

Finally, it forces victims to risk paying legal fees of wealthy defendants if they want their day in court.

Each of these problems should be addressed before this bill becomes law. Because the President's concerns are drawn very narrowly, a new bill with revisions to address these shortcomings can be written and approved. We can craft a better approach that protects investors while ending frivolous lawsuits. That should be the goal of this legislative exercise.

Mr. President, let me commend the distinguished Senator from Nevada, the Senator from Maryland, and others, who have laid out in a much more elaborate fashion over the last couple of days many of the same reservations

that I just expressed this morning. We need to join them in sustaining the President's veto.

I yield the floor. I suggest the absence of a quorum.

Mr. President, I withhold that request.

#### SECURITIES LITIGATION REFORM ACT—VETO

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, the Senate will resume consideration of the veto message with respect to H.R. 1058, the securities litigation bill. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

The Senate resumed the reconsideration of the bill.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York [Mr. D'AMATO] is recognized.

Mr. D'AMATO. Mr. President, I urge my colleagues to see to it that the much-needed reform in the area of securities litigation is undertaken. By overriding the President's veto, that reform would be ensured.

I have notes here, comprehensive notes that detail the reasons why we have to change this system—one reform the bill makes is to bar professional plaintiffs, people who have little interest in a corporation who might own 10 shares of stock who are literally hired by the lawyers to bring these suits. That is wrong, but that is what is going on.

The legislation makes all kinds of improvements, but let me put my notes aside and refer to this morning's Washington Post. In its lead editorial, the Washington Post says quite clearly: "Override the Securities Bill Veto."

Let me refer to just one part of it:

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness.

Mr. President, that is exactly what this legislation does. It corrects the law to protect investors. It gives to those people who are defrauded the opportunity, for the first time, to see to it that lawyers who will really represent their interests lead the case, as opposed to having a lawyer in charge who says, "I have the best practice in the world because I have no clients."

Imagine this attorney who, by the way, has contributed millions of dollars to a political party and who is exerting incredible pressure, who has

paid millions of dollars for people to take out ads, phony groups, little startup groups, groups that then say, "Protect the investors, protect the investors". He has spent millions of dollars to oppose this bill—millions of dollars, and he brags about the fact that he makes his living—a very comfortable one of millions of dollars—because he has no clients. "I have no clients. That's the best kind of practice to have."

We have to put those lawyers out of business. Let me say, when it comes to protecting the interests of attorneys and litigants and seeing to it that claims can and should be sustained where there is merit, this Senator has been there with his support every time. I am not suggesting to you that this bill is perfect. I am not suggesting to you that there may not be some areas in which we will have to reform this legislation, but to suggest that we are now going to permit fraud is as wrong as it is to suggest that what is taking place now is preferable to reform. It is not and this legislation is not going to permit fraud.

This practice is wrong. This is bilking the system. This is bilking the small investor. This system as it stands is encouraging the kind of operation that hurts small investors and makes no sense; this legislation is long overdue.

I ask unanimous consent that the full text of the Washington Post editorial that appeared today be printed in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

#### OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers' lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and