Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 115, submitted earlier by Senator WARNER.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 115) to authorize the printing of copies of the publication entitled “The United States Capitol” as a Senate document.

The Senate proceeded to consider the concurrent resolution.

Mr. JEFFORDS. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at this point in the RECORD.

The resolution (S. Res. 263) was agreed to, as follows:

Resolved. That, upon approval by the Committee on Rules and Administration, the Secretary of the Senate is authorized to pay, from the contingent fund of the Senate, the actual and necessary expenses incurred by the representatives of the Senate who attend the funeral of a Senator, including the funeral of a retired Senator. Expenses of the Senate representatives attending the funeral of a Senator shall be processed on vouchers submitted by the Secretary of the Senate and approved by the Chairman of the Committee on Rules and Administration.

CURT FLOOD ACT OF 1997

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 231, S. 53.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 53) to require the general application of the antitrust laws to major league baseball, and for other purposes.

The Senate proceeded to consider the bill which has been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Curt Flood Act of 1997.”

SEC. 2. PURPOSE.

It is the purpose of this legislation to clarify that major league baseball players are covered under the antitrust laws (i.e., that major league players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the applicability of the antitrust laws in any other context or with respect to any other person or entity.

SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following new section:

“SEC. 27. (a) The conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball relating to or affecting employment to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws engaged in by persons in any other professional sports business affecting interstate commerce: Provided, however, That nothing in this subsection shall be construed as providing the basis for any negative inference regarding the caselaw concerning the applicability of the antitrust laws to minor league baseball.

“(b) Nothing contained in subsection (a) of this section shall be deemed to change the application of the antitrust laws to the conduct, acts, practices, or agreements among persons engaging in, conducting, or participating in the business of professional baseball, except the conduct, acts, practices, or agreements to which subsection (a) of this section shall apply. More specifically, but not by way of limitation, this section shall not be deemed to change the application of the antitrust laws to—

“(1) the organized professional baseball amateur draft, the reserve clause as applied to minor league players, the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the Professional Baseball Agreement, the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to professional organized baseball minor leagues;

“(2) any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, and the relationship between the Office of the Commissioner and franchise owners;

“(3) any conduct, acts, practices, or agreements protected by Public Law 87-331 (15 U.S.C. 1291 et seq.) (commonly known as the ‘Sports Broadcasting Act of 1961’); or

“(4) any conduct, acts, practices, or agreements relating to the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons.

“(c) As used in this section, ‘persons’ means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.”

AMENDMENT NO. 3479

Mr. JEFFORDS. Senator HATCH has a substitute amendment at the desk. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS], for Mr. HATCH, proposes an amendment numbered 3479.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Curt Flood Act of 1998.”

SEC. 2. PURPOSE.

It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the applicability of the antitrust laws in any other context or with respect to any other person or entity.

SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following new section:
Sec. 27(a) Subject to subsections (b) and (d) below, the conduct, acts, practices or agreements of persons in the business of organized professional major league baseball relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent, practices or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, act, practice or agreement engaged in by any professional baseball team individually or collectively.

(c) Only a major league baseball player who is a party to a major league player’s contract by an alleged violation of the antitrust laws, provided however, that the application of the antitrust laws to any alleged antitrust violation shall not include any conduct, acts, practices or agreements of persons in the business of organized professional major league baseball affecting employment to play baseball at the major league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) In cases involving conduct, acts, practices or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(c) In cases involving conduct, acts, practices or agreements of persons in the business of organized professional major league baseball, or any other matter relating to organized professional baseball of the nonstatutory antitrust violation shall not include any conduct, acts, practices or agreements covered by subsection (b) above, only those components, portions or aspects of such conduct, acts, practices or agreements that directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(d)(1) As used in this section, ‘person’ means any entity, including an individual, partnership, corporation, trust or unincorporated association, or any combination thereof. As used in this section, the National Association of Professional Baseball Leagues, its members leagues and the teams of the National Association of Professional Baseball Leagues are not any one of the entities described in this section as a basis for changing the application of the antitrust laws, unlike any other industry in America. In every other industry in America, the antitrust laws apply to major league baseball labor relations, without impacting the minor leagues or team relocation issues. During the 104th Congress, the Senate Judiciary Committee introduced S. 53, a bill which was specifically supported by both the players and owners and which was reported out of the Senate Judiciary Committee in the new collective bargaining agreement, the owners pledged to work with the players to pass legislation which makes clear that major league baseball is subject to the federal antitrust laws with regard to owner-player relations.

In the 103d Congress, the House Judiciary Committee took the first important step by approving legislation which would have ensured that the antitrust laws apply to major league baseball labor relations, without impacting the minor leagues or team relocation issues. During the 104th Congress, the House Judiciary Committee introduced S. 53, a bill which was specifically supported by both the players and owners and which was reported out of the House Judiciary Committee in the new collective bargaining agreement, the owners pledged to work with the players to pass legislation which makes clear that major league baseball is subject to the federal antitrust laws with regard to owner-player relations. None of these bills were passed, however, as many Members of Congress were reluctant to take final action while there was an ongoing labor dispute.

With the settling of the labor dispute and with the signing of a long term agreement between the major league baseball players and owners, the time was right this Congress finally to address this matter. In fact, in the new collective bargaining agreement, the owners pledged to work with the players to pass legislation which makes clear that major league baseball is subject to the federal antitrust laws with regard to owner-player relations.

At the beginning of this Congress, we introduced S. 53, a bill which was specifically supported by both the players and owners and which was reported out of the Senate Judiciary Committee almost exactly one year ago. At the Committee markup, however, several Members indicated a concern that the bill might tell you that major league baseball players, along with both major and minor league club owners, have reached an agreement on a bill clarifying that the antitrust laws apply to major league professional baseball labor relations. This agreement upon language is reflected in the substitute we are offering today.

With this historic agreement, I am confident that Congress will, once and for all, make clear that professional baseball players have the same rights as other professional athletes, and will help assure baseball fans across the United States that our national pastime will not again be interrupted by strikes. With the home run battles and exciting pennant races, baseball is enjoying a resurgence. And, as fans are returning to the ballparks, they deserve to know that players will be on the field, not mired in labor disputes.

I am pleased that Congress will, it now appears, be able to help guarantee that this is the case.

Due to an aberrant Supreme Court decision in 1922, labor relations in major league baseball have not been subject to antitrust laws, unlike any other industry in America. In every other industry in America, the antitrust laws apply to major league baseball labor relations, without impacting the minor leagues or team relocation issues. During the 104th Congress, the Senate Judiciary Committee introduced S. 53, a bill which was specifically supported by both the players and owners and which was reported out of the Senate Judiciary Committee in the new collective bargaining agreement, the owners pledged to work with the players to pass legislation which makes clear that major league baseball is subject to the federal antitrust laws with regard to owner-player relations.

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inadvertently have a negative impact on the Minor Leagues. Although both Senator LEAHY and myself were firmly of the view that the bill as reported adequately protected the minor leagues against such a consequence, we pledged to work with the minor leagues representatives, in conjunction with the major league owners and players, to make certain that their concerns were fully addressed.

Although this process took much longer, and much more work, than I had anticipated, I am pleased to report that it has been completed. I have in my hand a letter from the minor leagues, and a letter co-signed by Don Fehr and Bud Selig, indicating that the major league players, and major and minor league owners, all support a new, slightly amended version of S. 53.

I ask unanimous consent that these letters be printed in the RECORD. There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEAR SENATOR HATCH AND SENATOR LEAHY:

DEAR MR. CHAIRMAN: As you know, the National Association of Professional Baseball Leagues, Inc. ("NAPBL") objected to S. 53 as it was reported. At a meeting of the Judiciary Committee last year. Since that time, we have been consulted about proposals to amend the bill to assure the continued survival of minor league baseball. We understand that a draft of an amended bill has been put forth by the major leagues and the Players' Association (copy attached) that I believe addresses the concerns of the NAPBL which we support in its final form.

Respectfully yours,

[Signature]

Stanley M. Brand.


DEAR SENATOR HATCH and SENATOR LEAHY:

As requested by the Committee, the parties represented below have met and agreed to the attached substitute language for S. 53. In particular, we believe the substitute language adequately addresses the concerns expressed by some members of the Judiciary Committee that S. 53, as reported, did not sufficiently protect the interests of the minor leagues. We understand that the minor leagues will advise you that they agree with our assessment by a separate letter.

We thank you for your leadership and patience. Although, obviously, you are under no obligation to use this language in your legislative activities regarding S. 53, we hope that you will look favorably upon it in light of the agreement of the parties and our joint commitment to work together to ensure its passage.

If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

DONALD M. FEHR, Executive Director, Major League Baseball Players Association.
the minor leagues, not the relationship between major league owners and players. Mr. President, I have a letter from the Commissioner of Baseball, Mr. Allan H. “Bud” Selig, to the Executive Director of the Major League Baseball Players Association, concerning the interpretation of the use of the word “directly” and I ask unanimous consent that it be inserted in the RECORD at this time.

As in S. 53, as reported, new subsection (d) implements the portion of the purpose section stating that the “passage of the Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity.” In other words, with respect to areas set forth in subsection (b), whatever the law was before the enactment of this legislation, it is unchanged by the passage of the legislation. With the exception of the express statutory exemption in the area of television rights recognized in paragraph (d)(4), each of the areas set forth depend upon judicial interpretation of the law. But Congress at this time seeks only to address the specific question of the application of the antitrust laws in the context of the employment of major league players at the major league level.

Thus, as to any matter set forth in subsection (b), a plaintiff will not be able to allege an antitrust violation by virtue of the enactment of this Act. Nor can the courts use the enactment of this Act to glean congressional intent as to the validity or lack thereof of such actions.

New subsection “c” deals specifically with the issue of standing. Although normally standing under such an act would be governed by the standing provision of the antitrust laws, S. U.S.C. Sec. 15, the minor leagues again expressed concern that without a more limited provision the enactment of this Act would make the minor leagues not in the business of major league baseball. This addition was requested by the minor leagues to ensure that they would not be named as party defendants in every action brought against the major leagues pursuant to subsection (a).

New paragraph (d)(1) defines “person” for the purposes of the Act, but includes a provision expressly recognizing that professional and amateur leagues are not in the business of major league baseball. This addition was requested by the minor leagues to ensure that they would not be named as party defendants in every action brought against the major leagues pursuant to subsection (a).

New paragraph (d)(2) was added to give the courts direction in cases involving matters that relate to both matters covered by subsection (a) and to the extent to which the Act is neutral as set forth in subsection (b). In such a case, the acts, conduct or agreements may be challenged under this Act as they directly relates to the employment of major league players at the major league level, but to the extent the practice is challenged as to its effect on any issue set forth in subsection (b), it must be challenged under current law, which may or may not provide relief.

New paragraph (d)(5) merely reflects the Committee’s intention that a court’s determination of which fact situations fall within subsection (b) should follow ordinary rules of statutory construction, and should not be subject to an exceptions or departures from these rules.

As stated in the Committee Report, nothing in this bill is intended to affect the scope or applicability of the “non-statutory” labor exemption from the antitrust laws. See, e.g., Brown v. Pro Football, 116 S.Ct. 2116 (1996).

Before yielding to my good friend from Vermont, I would like to thank him for his hard work on this bill. His bipartisan efforts have been vital to the success of this bill and I would also like to thank our original cosponsors, Senators Thurmond and Moya. I urge the quick adoption of this bill, which will help restore stability to major league baseball and what is at the heart of turmoil in baseball and what is at the heart of the breach of trust with the fans that marked the cancellation of the 1994 World Series. At least we can take this first step toward the continuity of the game and restoring public confidence in it.

When David Cone testified at our hearing three years ago, he posed a most perceptive question: If baseball were coming to Congress to ask us to provide a statutory antitrust exemption, would such a bill be passed? The answer to that question is a resounding no. Nor should the owners, sitting at the negotiating table in a labor dispute, think that their competitive behavior cannot be challenged. That is an advantage enjoyed by no other group of employers.

The certainty provided by this bill will level the playing field, making labor disruptions less likely in the future. The real beneficiaries will be the fans. They deserve it.

Mr. President, I just wanted to comment briefly on a couple of changes that may be found in the substitute bill as reported by the Committee. First, the changes in the language in subsection (a) are not intended to limit in any way the rights of players at the major league level as they would be construed under the language of the bill as reported by the Judiciary Committee last July. The additional language was added to ensure that a minor league player, or someone who had played at the major league level and returned to the minor leagues, cannot use subsection (a) to challenge the antitrust exemption Major League Baseball has enjoyed since 1922.

I am gratified that 76 years after an aberrant Supreme Court decision, we are finally making it clear that with respect to the antitrust laws, major league baseball teams are no different than teams in any other professional sport. For years, baseball was the only business or sport, of which I am aware, that claimed an exemption from antitrust law on the basis of regulation by a labor union. The Supreme Court refused to undue its mistake with respect to major league baseball made in the 1922 case of Federal Baseball. Finally, in the most well-known case on the issue, Flood v. Kuhn, the Court reaffirmed the Federal Baseball case on the basis of the legal principle of stare decisis while specifically finding that professional baseball is indeed an activity of interstate commerce, and thereby rejecting the legal basis for the Federal Baseball case.

Mr. President, as a result of that and subsequent decisions, and with the end of the major league reserve clause as the result of an arbitrator’s ruling in 1976, there has been a growing debate as to the continued vitality, if any, of any antitrust exemption for baseball. It is for precisely this reason that this bill is limited in its scope to employment relations between major league owners and major league players. That is what is at the heart of turmoil in baseball and what is at the heart of the breach of trust with the fans that marked the cancellation of the 1994 World Series. At least we can take this first step toward the continuity of the game and restoring public confidence in it.
Finally, the practices set forth in subsection (b) are not intended to be affected by this Act. While this is true, it should be remembered that although the pure entrepreneurial decisions in this area are unaffected by the Act, if those decisions are made in such a way as to implicate employment of major league players at the major league level, once again, those actions may be actionable under subsection (a). More importantly, we are making no findings as to how, under labor laws, those issues are to be treated.

In closing, Mr. President, I would like to thank all those involved in this undertaking: Chairman Hatch, of course, without whose unflagging efforts this result would not be possible; our fellow cosponsors, Senators Thurmond and Moynihan, and other members of our Committee; and John Conyers, the Ranking Democrat on the House Judiciary Committee, for making this bill a priority. And I want to commend the Interior Department working to find a solution they can all support. Not only have they done a service to the fans, but they may find, on reflection, that they have done a service to themselves by working together for the good of the game.

Finally, Mr. President, I would be remiss if I did not comment on the man for whom this legislation is named, Curt Flood. He was a superb athlete and a courageous man who sacrificed his career for perhaps a more lasting baseball legacy. When others refused, he stood up and said no to a system that he thought un-American as it implicated employment of major league players at the major league level, once again, those actions may be actionable under subsection (a). More importantly, we are making no findings as to how, under labor laws, those issues are to be treated.

In closing, Mr. President, I would like to thank all those involved in this undertaking: Chairman Hatch, of course, without whose unflagging efforts this result would not be possible; our fellow cosponsors, Senators Thurmond and Moynihan, and other members of our Committee; and John Conyers, the Ranking Democrat on the House Judiciary Committee, for making this bill a priority. And I want to commend the Interior Department working to find a solution they can all support. Not only have they done a service to the fans, but they may find, on reflection, that they have done a service to themselves by working together for the good of the game.

I am sad that he did not live long enough to see this day. In deference to his memory and in the interests of every fan of this great game, I hope that Congress will act quickly on this bill. I am delighted that we are moving forward in a way that we are finally able to enjoy the game once again.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the amendment be considered as read and agreed to, the bill be considered read a third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the Record.

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

The amendment (No. 3479) was agreed to.

The bill (S. 33), as amended, was considered read a third time and passed.

INTERSTATE FOREST FIRE PROTECTION COMPACT

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 471, S. 1134.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1134) granting the consent and approval of Congress to an interstate forest fire protection compact.

The Senate proceeded to consider the bill:

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be placed at the appropriate place in the Record.

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

The bill (S. 1134) was deemed read the third time and passed, as follows:

S. 1134

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

SECTION 1. CONSENT OF CONGRESS.

(a) IN GENERAL.—The consent and approval of Congress is given to an interstate forest fire protection compact, as set out in subsection (b).

(b) COMPACT.—The compact reads substantially as follows:

"THE NORTHWEST WILDLAND FIRE PROTECTION AGREEMENT"

"THIS AGREEMENT is entered into by and between the State, Provincial, and Territorial wildland fire protection agencies signatory hereto, hereinafter referred to as "Members".

"FOR AND IN CONSIDERATION of the following terms and conditions, the Members agree:

"Article I

"1.1 The purpose of this Agreement is to promote effective prevention, presuppression and control of forest fires in the Northwest Region of the United States and adjacent areas of Canada (by the Members) by providing mutual aid in prevention, presuppression and control of wildland fires, and by establishing procedures in operating plans that will facilitate such aid.

"Article II

"2.1 The role of the Members is to determine the extent of such assistance, and to coordinate the plans and the work of the appropriate agencies of the Members, and to coordinate the rendering of aid by the Members to each other in fighting wildland fires.

"2.2 Any State, Province, or Territory not a party to this Agreement may become a party to this Agreement by ratifying it.

"Article III

"3.1 The framework of this Agreement shall provide for an allocated area comprising the Member's territory; and by establishing procedures in operating plans that will facilitate such aid.

"3.2 The Members may develop cooperative operating plans for the programs covered by this Agreement. Operating plans shall include definition of terms, fiscal procedures, procedures for reporting and use of funds, standards applicable to the program. Other sections may be added as necessary.

"Article IV

"4.1 A majority of Members shall constitute a quorum for the transaction of its general business. Motions of Members present shall be carried by a simple majority except as stated in Article II. Each Member will have one vote on motions brought before them.

"Article V

"5.1 Whenever a Member requests aid from any other Member in controlling or preventing wildland fires, the Members agree, to the extent they possibly can, to render all possible aid.

"Article VI

"6.1 Whenever the forces of any Member are aiding another Member under this Agreement, the employees of such Member shall be treated by the officers of the Member to which they are rendering aid and be considered agents of the Member they are rendering aid to and, therefore, have the same privileges and responsibilities as comparable employees of the Member to which the are rendering aid.

"6.2 No Member or its officers or employees rendering aid within another State, Territory, or Province, pursuant to this Agreement shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith to the extent authorized by the laws of the Member receiving the assistance. The receiving Member, to the extent authorized by the laws of the State, Territory, or Province, agrees to indemnify and save-harmless the assisting Member from any such liability.

"6.3 Any Member rendering outside aid pursuant to this Agreement shall be reimbursed by the Member receiving such aid for any cost or damage to, or expense incurred in the operation of any equipment and for the cost of all materials, transportation, wages, salaries and maintenance of personnel and equipment, or incurred in connection with or in furtherance of such request in accordance with the provisions of the previous section. Nothing contained herein shall prevent any assisting Member from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving Member without charge or cost.

"6.4 For purposes of the Agreement, personnel shall be considered employees of each sending Member for the payment of compensation of the representatives of deceased employees injured or killed while rendering aid to another Member pursuant to this Agreement.

"6.5 The Members shall formulate procedures for claims and reimbursement under the provisions of this Article.

"Article VII

"7.1 When appropriations for support of this agreement, or for the support of common services in executing this agreement, are needed, costs will be allocated equally among the Members.

"7.2 As necessary, Members shall keep accurate books of account, showing in full, its receipts and disbursements, and the books of account shall be open at any reasonable time to the inspection of the representatives of the Members.

"7.3 The Members may accept any and all donations, gifts, and contributions, equipment, supplies, materials and services from the Federal or any local government, or any agency thereof and from any person, firm or corporation, for any or all purposes under this Agreement, and may receive and use the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

"Article VIII

"8.1 Nothing in this Agreement shall be construed to limit or restrict the powers of