

or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

#### SEC. 8. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this Act, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

#### SEC. 9. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this Act shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

#### SEC. 10. DEFINITIONS.

For purposes of this Act:

(1) **ELECTRONIC SIGNATURE.**—The term "electronic signature" means a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person's approval of the information contained in the electronic message.

(2) **EXECUTIVE AGENCY.**—The term "Executive agency" has the meaning given that term in section 105 of title 5, United States Code.

### AMENDING TITLE 35, UNITED STATES CODE, TO PROTECT PATENT OWNERS AGAINST THE UNAUTHORIZED SALE OF PLANT PARTS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1197, which was received from the House.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1197) to amend title 35, United States Code, to protect patent owners against the unauthorized sale of plant parts taken from plants illegally reproduced, and for other purposes.

The Senate proceeded to consider the bill.

#### AMENDMENT NO. 3830

(Purpose: To provide for access to electronic patent information)

Mr. CRAIG. Mr. President, Senators LEAHY, SMITH of Oregon, and HATCH have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. LEAHY, for himself, Mr. SMITH of Oregon and Mr. HATCH, proposes an amendment numbered 3830.

The amendment is as follows:

At the end of the bill add the following:

#### SEC. 4. ACCESS TO ELECTRONIC PATENT INFORMATION.

(a) **IN GENERAL.**—The United States Patent and Trademark Office shall develop and implement statewide computer networks with remote library sites in requesting rural States such that citizens in those States will have enhanced access to information in their State's patent and trademark depository library.

(b) **DEFINITION.**—In this section, the term "rural States" means the States that qualified on January 1, 1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 379bb(b)).

Mr. LEAHY. Mr. President, I am pleased that the Senate is considering the "Plant Patent Amendments Act of 1998," H.R. 1197. This legislation closes a loophole in the law by providing patent protection, not only for an entire plant, but for parts of a plant as well.

Since the 1930s, U.S. patent law has benefited agriculture, horticulture and the public by providing an incentive for breeders to develop new plant varieties. This incentive is the availability of patents for new plant varieties.

An unforeseen ambiguity in the law, however, is undermining the incentives for breeders holding U.S. plant patents. Because current U.S. law only provides patent protection for entire plants, plant parts are being traded in U.S. markets to the detriment of U.S. plant patent holders. The resulting lost royalty income has been inhibiting investment in domestic research and breeding activities associated with a wide variety of crops.

By clearly and explicitly providing that U.S. patent law protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced, H.R. 1197 will close the existing loophole in the law and will strengthen the ability of U.S. plant patent holders to enforce their patent rights.

Another matter of special interest to me is the amendment that I offered to the "Plant Patent Amendments Act of 1998" to enhance access to all types of patent information. I have long thought that electronic access should be more widespread and want to work with the United States Patent and Trademark Office (PTO) to ensure the effective implementation of statewide electronic accessibility of patent information in rural states and eventually in all areas to make it easier for inventors to study prior art and make further advances. This should be of particular benefit to Vermont, which last year established a patent and trademark depository library.

The Articles of Association of the Vermont Patent and Trademark Depository Library (Vermont PTDL) state that the library will "create a vital educational and economic development resource that will provide all Vermonters with access to patent and trademark records and supporting research materials and reference services." At this time, however, all Vermonters do not, in a practical sense, have access to the wealth of resources

at the Vermont PTDL. In fact, it can be as much as a four hour drive for certain Vermont citizens to drive to the Vermont PTDL at the University of Vermont's Bailey/Howe Library.

The intent of my amendment, which is cosponsored by Senator ORRIN HATCH of Utah and Senator GORDON SMITH of Oregon, is for the PTO to work with the people in the trenches currently operating the patent and trademark depository libraries to develop and implement the statewide computer networks with remote library sites; it only makes sense for the PTO to work with the people who most fully understand the needs of the constituents they currently serve and may serve in the future.

This legislation is timely, because the Senate is considering the United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999, H.R. 3723. As the lead Senate Democratic champion for H.R. 3723, I am hopeful that the Senate will pass this measure today so the PTO will not suffer a reduction in revenue for the current fiscal year. I am also committed to working with the PTO, now and in the future, as it ensures the effective implementation of statewide electronic accessibility of patent information in rural states.

I would like to pay a special thanks to Eric Benson, President of Vermont PTDL, former State representative KERRY KURT, who was instrumental in the development of the Vermont PTDL, and everybody who serves on the Board of the Vermont PTDL. These Vermonters were the inspiration for my amendment, and they have worked hard to make the Vermont PTDL an asset of which all Vermonters can be proud.

Mr. HATCH. Mr. President, I rise today in support of Senate passage of H.R. 1197, the Plant Patents Amendment Act of 1997. This legislation, passed by the House last Friday, would close a loophole in the Patent Act through which foreign infringers are able to exploit the products of their infringements within the United States, depriving American plant patent owners of millions of dollars in royalties. This bill is identical to legislation introduced in the Senate by Senator GORDON SMITH, and its substantive provisions are mirrored in the omnibus patent bill I introduced and which was reported favorably to the Senate by the Judiciary Committee last year.

The development of new plant varieties in the United States is encouraged by chapter 15 of the Patent Act, which grants patent-like protection to anyone who develops new, distinct varieties of asexually reproduced plants. Plant patent owners are rewarded for their ingenuity with a limited monopoly that allows them to prevent others from asexually reproducing the plant or selling or using a plant so reproduced.

The so-called loophole exists because the sale or use of plant parts is not explicitly prohibited. As a result, plant

patent owners must stand by while their patents are infringed abroad and the products of such infringement—for example, fruit or cut flowers—are then imported to and sold within the United States, without a single dime in royalty revenue to the patent owner. This is no small problem. Royalty losses with respect to some key horticultural plants have been estimated to reach between \$50 to \$100 million over the past five to ten years. This is money that rightfully should be directed to American plant patent owners—many of whom are small businesses and family farmers—and which would otherwise contribute tremendously to the U.S. economy.

Enactment of this legislation is not only good for American business and the economy, it is consistent with our international treaty obligations. The International Convention for the Protection of New Varieties of Plants (UPOV) was last revised in March 1991, and the United States signed the convention in October 1991. This convention provides protection for plant breeders by requiring member countries to accord certain plant patent rights, including specifically the right to prohibit others from selling, importing, or exporting harvested material (i.e., plant parts) derived from unauthorized asexually reproduced plants.

Mr. President, I had hoped to expect this change in the context of a comprehensive patent reform bill. I am disappointed that consideration of that bill has been blocked by a few senators with unrelated and rather non-descript objections, and that we are forced to take this measure up as a stand-alone bill. Nevertheless, I am pleased that the House has acted on this measure, and I commend the efforts of my colleague, Senator SMITH, to bring this bill to a vote in the Senate.

Mr. CRAIG. Mr. President, I ask unanimous consent the amendment be agreed to, the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3830) was agreed to.

The bill (H.R. 1197), as amended, was considered read the third time and passed.

#### THROTTLE CRIMINAL USE OF GUNS

Mr. CRAIG. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 191) to throttle criminal use of guns.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 191) entitled "An Act to throttle criminal use of guns", do pass with the following amendment:

Strike out all after the enacting clause and insert:

#### SECTION 1. AMENDMENT TO TITLE 18, UNITED STATES CODE.

(a) *IN GENERAL.*—Section 924(c) of title 18, United States Code, is amended—

(1) by striking "(c)" and all that follows through the end of paragraph (1) and inserting the following:

"(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

"(i) be sentenced to a term of imprisonment of not less than 5 years;

"(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

"(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

"(B) If the firearm possessed by a person convicted of a violation of this subsection—

"(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

"(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

"(C) In the case of a second or subsequent conviction under this subsection, the person shall—

"(i) be sentenced to a term of imprisonment of not less than 25 years; and

"(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

"(D) Notwithstanding any other provision of law—

"(i) a court shall not place on probation any person convicted of a violation of this subsection; and

"(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed."; and

(2) by adding at the end the following:

"(4) For purposes of this subsection, the term 'brandish' means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person."

(b) *CONFORMING AMENDMENT.*—Section 3559(c)(2)(F)(i) of title 18, United States Code, is amended by inserting "firearms possession (as described in section 924(c));" after "firearms use;"

Mr. CRAIG. I ask unanimous consent the Senate agree to the amendment of the House.

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

#### RHINO AND TIGER PRODUCT LABELING ACT

Mr. CRAIG. Mr. President, I ask the Chair lay before the Senate a message

from the House of Representatives on the bill (H.R. 2807) to amend the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products labeled as containing substances derived from rhinoceros or tiger.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 2807) entitled "An Act to amend the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products labeled as containing substances derived from rhinoceros or tiger", with the following amendments:

In lieu of the matter proposed to be inserted by the amendment of the Senate, insert the following:

#### TITLE I—MIGRATORY BIRD TREATY REFORM

##### SEC. 101. SHORT TITLE.

This title may be cited as the "Migratory Bird Treaty Reform Act of 1998".

##### SEC. 102. ELIMINATING STRICT LIABILITY FOR BAITING.

Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) is amended—

(1) by inserting "(a)" after "SEC. 3."; and

(2) by adding at the end the following:

"(b) It shall be unlawful for any person to—

"(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

"(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area."

##### SEC. 103. CRIMINAL PENALTIES.

Section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) is amended—

(1) in subsection (a), by striking "\$500" and inserting "\$15,000";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

"(c) Whoever violates section 3(b)(2) shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both."

##### SEC. 104. REPORT.

Not later than 5 years after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report analyzing the effect of the amendments made by section 2, and the general practice of baiting, on migratory bird conservation and law enforcement efforts under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.).

#### TITLE II—NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT

##### SEC. 201. SHORT TITLE.

This title may be cited as the "National Wildlife Refuge System Improvement Act of 1998".

##### SEC. 202. UPPER MISSISSIPPI RIVER NATIONAL WILDLIFE AND FISH REFUGE.

(a) *IN GENERAL.*—In accordance with section 4(a)(5) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)(5)), there are transferred to the Corps of Engineers, without reimbursement, approximately 37.36 acres of land of the Upper Mississippi River Wildlife and Fish Refuge in the State of Minnesota, as designated on the map entitled "Upper Mississippi National Wildlife and Fish Refuge lands transferred to Corps of Engineers", dated January 1998, and available, with accompanying legal descriptions of the