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Senate

The Senate met at 10 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:

Almighty God, the true Source of spiritual, intellectual, emotional, volitional, and physical power, we need a fresh flow of Your Spirit for the work of this day. We confess our insufficiency and pray for Your power to think Your thoughts, to do Your will as You reveal it, to love unselfishly, to forgive graciously, and to act energetically with renewed strength and endurance. You have told us that You pour out Your greatest blessings on those who put their ultimate trust in You alone. You are the Rock of Ages on which we can stand, the Intervener when we are in trouble, the One who opens doors of opportunity for the next step of Your strategy for us, our Friend in life's lonely moments, and the Source of courage whenever we are tempted to give up in the battle for truth and righteousness in America.

Bless the Senators and all of us who are privileged to work with and for them. May this be a day in which we all sense Your presence and receive Your power. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. VOINOVICH. Mr. President, today the Senate will be in a period of morning business until 11:30 a.m. Following morning business, the Senate will begin debate on S. 96, the Y2K bill, with amendments expected to be offered.

ORDER FOR RECESS

I ask unanimous consent that at 12:30 p.m. the Senate stand in recess until 2:15 p.m. for the weekly party caucus luncheons.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. VOINOVICH. Mr. President, following the policy lunch, at 2:15 the Senate will resume consideration of the Y2K bill. Rollcall votes on amendments to the bill are expected during today's session. Votes are also possible on any other legislative or executive item cleared for action.

I thank my colleagues for their attention.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. VOINOVICH assumed the chair.)

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

MORNING BUSINESS

Mr. LEAHY. Mr. President, on March 17, Senator George Mitchell received the Medal of Freedom at the White House.

The day was picked especially because Irish Americans had gathered at the White House, but also Irish from both Northern Ireland and the Republic of Ireland were in attendance.

All together, with the President of the United States, we honored the extraordinary achievements of the United States Senate's former majority leader.

Marcelle and I were in attendance with great pride in watching our friend, Senator Mitchell. We were honored also to be with his wife, Heather, and other members of his family. Having served with him, I know he is an extraordinarily capable, patient, and talented person. No one else could have done what he did.

Senator Mitchell received a standing ovation for his words that evening—words that came from his heart and mind.

I ask unanimous consent that his words be printed in the RECORD.

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

REMARKS BY SENATOR GEORGE J. MITCHELL ON RECEIPT OF THE MEDAL OF FREEDOM, THE WHITE HOUSE, MARCH 17, 1999

Thank you, Mr. President, for your generous remarks, and for your commitment to peace and reconciliation in Northern Ireland. You are the only American President ever to have placed Northern Ireland high on our national agenda, the only President ever to have visited there while in office. The people of Ireland, North and South, know of your concern for their future; and they are deeply grateful. In behalf of peace loving people everywhere, I thank you.

I also want to thank you for giving me the chance to serve in Northern Ireland. I must admit that I didn't always feel this way. During the years that I sat and listened to the same arguments, over and over again, I had other, less charitable thoughts about you and about my role there.

It was difficult and demanding, but it also was deeply rewarding. For me to have played a part in trying to end an ancient conflict, trying to make possible a more safe and secure life for generations to come; for me to have come to know, to admire, and to love the people of Northern Ireland—these are rewards which cannot be measured, or even described.

I can only say that my heart is overflowing with gratitude—to you, Mr. President; to the political leaders and to the people of Northern Ireland; to Prime Ministers Ahern and Blair and their predecessors; to Mo Mowlam and David Andrews and their predecessors and colleagues; to my colleagues, John de Chastelain and Harri Holkeri; to my staff, Martha Pope, David Pozorski, and Kelly Currie; and especially to my wife, Heather, who was patient and understanding through three-and-a-half long, lonely years.

On an occasion like this, it is tempting for me to take a nostalgic look back on my life.

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

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But instead we must look forward, with urgency, not to my life, but to the lives of the people of Northern Ireland.

The events of the past year have shown the great promise of peace. But they also have shown that huge obstacles remain to a durable and sustainable peace. On Good Friday of last year, the political leaders of Northern Ireland showed the world the meaning of political courage. Many of these leaders are present, and I'd like to recognize some of them: David Trimble, John Hume, Seamus Mallon, Reg Empey, Gerry Adams, John Alderdice, Sean Neeson, David Ervine, Monica McWilliams and Gary McMichael.

Ladies and gentlemen, these are the heroes of the Northern Ireland Peace process. These are the men and women who deserve the medals and the applause. They are my friends, and yours. Please join me in letting them know how much you value their Good Friday agreement.

I'd like to address those leaders directly. You've heard the applause. Perhaps better than anyone, I know how well deserved it was. But even before the applause fades, the future intrudes.

Getting the agreement was historic. But, as you know, by itself it doesn't provide or guarantee peace. It makes peace possible. Whether it will be realized is up to you.

The Good Friday Agreement transformed Northern Ireland. It also transformed you. You are no longer just the leaders of your parties, or members of the assembly. You are the vessels into which the people of Northern Ireland have poured their hopes and dreams. You sought public office and with it comes power and responsibility. You have the awesome responsibility of life or death. What you do, or don't do, could mean life or death for many of your fellow citizens.

As he left London to join us at the talks last April, Tony Blair said he felt the hand of history on his shoulder. It's still there, on your shoulders.

For a moment, come back in time with me to December 16, 1997, the last negotiating session of that year. We met in the small conference room at Stormont. We had tried for two intense weeks to get agreement on a statement of the key issues to be resolved, and we had failed. We were all bitterly frustrated and deeply discouraged.

As we walked out into the windswept and rainy night, it seemed so hopeless, so impossible. And yet, less than four months later, you reached agreement.

How did you do it? You did it because each of you took a risk for peace, each of you acted with wisdom and courage. And you did it because you knew, in your hearts, that the alternative was unacceptable.

It stills is. The alternative to peace in Northern Ireland is unacceptable. It should be unspeakable, unthinkable. The continued punishment beatings and the savage murder of Rosemary Nelson, who on Sunday was blown to death just a few yards from her eight year old daughter's school, are like alarm bells ringing in the night. They warn that the cancer of violence and sectarian hatred lurks just below the surface and could erupt at any time into wide-spread conflict.

History might have forgiven failure to reach an agreement, since no one thought it possible. But once the agreement was reached, history will never forgive the failure to carry it out. The people of Northern Ireland don't want to slip back into the cauldron of sectarian conflict. You can prevent it.

Those who oppose the agreement have failed to bring it down. As Seamus Mallon has said, the only people who can bring the Good Friday down are those who supported it. You cannot let that happen.

I know you. I trust you. I believe in you. And I say to you that the problems you now face are no greater or more difficult than those you faced, and dealt with, last year. You must once more rise above adversity. You must again defy history.

You must come together, now and as often as necessary until peace is assured. Then you will deserve and receive the honor that will transcend all others: the satisfaction of knowing that, in the most difficult and dangerous of circumstances, you have bestowed on your countrymen the ultimate prize peace and reconciliation.

After you reached agreement on Good Friday, we were exhausted, elated, and emotional. I conclude tonight by repeating what I told some of you then.

The agreement was for me the realization of a dream that had sustained me for three-and-a-half years. Now, I have a new dream. In a few years, I will take my young son to Northern Ireland. We will roam the country, taking in the sights and sounds of one of the most beautiful landscapes on earth, feeling the warmth and generosity of a great people. Then, on a rainy afternoon, we will go to the Northern Ireland Assembly. We will sit quietly in the visitors' gallery and watch and listen as you debate the ordinary issues of life in a democratic society: education, health care, agriculture, tourism. There will be no talk of war, for the war will have long been over. There will be no talk of peace, for peace will be taken for granted.

On that day, the day on which peace is taken for granted in Northern Ireland, I will be truly and finally fulfilled.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant called the roll.

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

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

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate is in morning business. The Senator is granted 10 minutes.

Mr. BAUCUS. I thank the Chair.

FEDERALLY IMPACTED SCHOOL IMPROVEMENT ACT

Mr. BAUCUS. Mr. President, I rise today to speak to the Federally Impacted School Improvement Act.

As we all know, there is a very important debate going on in our country today concerning our Nation's schools. Schools all across our country are crumbling, in many cases in such disrepair that it affects the child's ability to learn or even feel safe. I hope and expect that this Congress will reach a consensus on a school construction bill very soon.

I support and have cosponsored several bills in the last Congress that encourage a nationwide effort to rebuild our public schools. Quite simply, it is the right thing to do.

But in a heated national debate, one group of children is continually left out in the cold; that is, students who live on federally owned land, usually an Indian reservation, very often a military installation. In my State of Montana, about 12,000 children are classified as federally impacted; that is, they live on Federal land.

For almost 50 years, Congress has provided financial assistance to school districts that are impacted by a Federal presence. We call this Impact Aid funding. Unfortunately, it has been underfunded for the last 15 years. And even worse, for the last 5 years Impact Aid schools have received zero dollars to help in paying for badly needed repairs and construction.

This has created an underclass of schools with glaring infrastructure problems that border on dangerous and inhumane.

How bad is it, you may ask? Let me tell you.

In one school in Montana, the Hays Lodge Pole Elementary School on the Fort Belknap Reservation, they say that the high school has infrastructure problems that are so bad that saying it has problems is like saying that the Titanic had a small leak.

Whenever it rains or snows, the roof leaks making classrooms unusable. The kindergarten is located on a stage, not in a classroom. The school nurse and counselor work out of a converted locker room shower with no ventilation. The decrepit sewage system regularly backs up into this same shower, filling the nurse's and counselor's office with raw sewage. And all special education services, which a large percentage of students use, are provided in a separate house requiring the children or staff to walk over an ice rink in high winds and adverse weather just to get to class.

While some may say, OK, that sounds like a bad deal, shouldn't the local taxpayers pass a mill levy to build a new school? Or shouldn't they get help from the President's school construction bill which gives billions of dollars in bonding authority to school districts for just these sorts of problems? The answer, sadly, is no.

The problem is that these schools have no bonding authority. Since the land is owned by the Federal Government, there is no local mill levy to raise. And since the Federal Government has, for 5 consecutive years, provided zero dollars for repairing Impact Aid schools, these problems have just gotten worse and more expensive. And it is our children who pay the price.

So the Baucus-Hagel Federal Impacted School Improvement Act aims to fix that. Make no mistake, this is not some budget-busting Government handout. The act authorizes a small but meaningful $50 million a year appropriation for the next 5 years for Impact Aid school construction and repair.

And 45 percent of the funds appropriated under the bill go to Indian lands. Another 45 percent is dedicated to military schools. The final 10 percent is reserved for emergency situations.

In order to make this small appropriation go further, our bill requires local school districts to match every

Federal dollar except for the 10 percent reserved for true emergencies. The act also limits to $3 million the amount an individual school district can receive in any 5-year period. This is done to ensure that all—or at least more—impacted schools will have the opportunity to use these grants to improve the lives of their children.

Mr. President, this bill is vital to a vast number of children in Montana, Nebraska, and all across our country. I am hopeful that a comprehensive school construction bill can pass this Congress. But let me tell the Senate today, Senator HAGEL and I plan to make sure that any school construction bill that passes this Senate will also take care of federally impacted school districts.

We hope to pass this bill regardless of the larger debate. But if that does not happen, we will also work to include this act in a broader school construction bill.

In closing, I want to reiterate that the children who attend schools on Indian lands or military installations are all of our children. We must not ignore them or allow their schools to fall into dangerous disrepair. They deserve the same education as every other child. Let us take this opportunity to redress our negligence in ignoring these children, and show them that we care. Let's pass this bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

AMERICA'S FAMILY FARMERS

Mr. DORGAN. Mr. President, I know there has been discussion about the agenda here in the Senate, what the Senate will take up, what it will consider, what it will debate in the coming days and weeks and months. I hear very little discussion about the need to respond to the farm crisis in the rural parts of our country.

I have, on half dozen occasions now, brought to the floor of the Senate a chart that shows our entire country with those counties blocked out in red that are losing population. What it shows is a large part of the middle of our country is being depopulated. We have a serious and abiding farm crisis. That depopulation in the middle part of America stems in large part from a farm economy that means family farmers are not making a living and all too often are having to leave the farm.

We keep hearing that it is a global economy. If it is a global economy, then why on earth do we have so many people hungry in the rest of the world? We are told 500 to 600 million people go to bed with an ache in their belly every night because they did not have enough to eat. Then in the same global economy, with so many hungry people, a farmer somewhere in Cando, ND, or Regent, ND, today loads up a truckload of wheat and takes it to the county elevator and is told that the food has no value. That is not a global economy that seems to work, in my judgment.

This chart shows what is happening in the heartland of our country. Most of it is because of the urgency of the economic crisis facing family farmers. These red counties are the counties which have lost more than 10 percent of their population. Many of them have lost far more. My home county [Hettinger] is right up in here. It has lost almost half of its population in the last 25 years.

The middle part of America is being depopulated. We have a farm program that doesn't work. We have natural disasters that affect these family farmers. We have crop diseases. A GAO study I just released last week shows that in North Dakota a crop disease called scab or vomitoxin has cost our farmers $200 million a year in lost income. They say 750 farmers have lost their farms because of just that one crop disease, the worst crop disease in a century in my home State.

Natural disasters, crop diseases; how about trade? How about telling our family farmers to compete in the global economy with the Europeans subsidizing their farmers in multiples of what we are while we try to help our farmers open foreign markets. You compete in the international marketplace with one hand tied behind your back. Or how about international trade that says, why don't we have the Canadians dump tens of thousands of semi-truckloads of their grain, their durum wheat and their spring wheat into our marketplace in conditions of unfair trade, driving down our prices. That is all right, and we will sit by and do nothing about it.

That is not a fair circumstance for our farmers. Japan, China; how many in this Chamber know that currently the tariff on American beef going into Japan is 45 percent, a 45-percent tariff? If we imposed that on anybody, we would be considered a massive failure. China says maybe they will decrease their tariff on American beef going into China. It is now 42.5 percent.

Our farmers deserve better trade policies than they are getting from this Government of ours. Our Government cannot do much about natural disasters except respond to them with a helping hand at a time when people need help. It can do something about trade policy that is unfair to our producers. And certainly, this administration and this Congress, especially this Congress, ought to do something about a farm bill that shortchanges American farmers.

The current farm bill we have is a wonderful bill if you are Cargill or Continental or some large grain trading company. If you are one of the behemoths, one of the giant agrifactories in America, you have to like the current circumstance. You have low prices at which you can buy the grain. Then you can put it in your plant, apply some air to it, and you can puff it up. Now you can call it puffed wheat and put it on the grocery store shelf. And while you are paying less for the grain, you can increase your prices. That is exactly what is happening, and that is exactly what was announced last week.

Grain prices for family farmers are collapsed. Cereal manufacturers are saying, we want to increase cereal prices 2.5 percent. You talk about a disconnection. You talk about short-circuiting the economic system. That is a short-circuit.

The question for this Congress is, Do we care? I do. Do enough others care to want to save family farmers? Or is America's food production destined to go to the giant agrifactories that farm America from California to Maine with nary a person in sight—no farm lights, no yard lights out there illuminating where a family lives and does its work—because there won't be families on the farm?

Or does this country, does this Congress, as many other countries, believe that a broad network of family producers on America's farms and ranches represents the best economic system? Do we believe in the Jeffersonian model that Thomas Jefferson talked about: That which keeps America free is broad-based economic ownership, because economic freedom relates to political freedom?

Do we really believe in broad-based economic ownership? If so, let's start to manifest that belief in farm policy. Let's decide that current farm policy is a bankrupt policy. The bill that was passed, the current farm bill that was passed that pulls the rug out from under family farmers says, when prices collapsed, do not bank on us for help—when that bill was passed, without my vote in this Congress, there was feasting and rejoicing and celebrating here in this town by the largest agribusinesses because they thought they had just won the lottery. What a wonderful deal for them.

Someday we will have lower grain prices, they thought, and we will buy this grain from family farmers cheap, and then eventually the family farmers will be gone. They will take over the farms and farm all of our country. They will put that grain in plants and will make substantial money off of it. That is exactly what happened at the expense of family farmers.

The question before this Congress is: Are we going to have the will to do what is necessary to repair the hole in the safety net for family farmers? Do we care whether there are family farmers left in our country?

Wheat prices have fallen 53 percent. Let me show a chart which demonstrates what has happened to wheat prices. I ask any American, I ask any Member of the Senate, how would you

feel if this was what was happening to your paycheck? How well would you do if this was what your income looked like? That is what the income looks like on our farms.

On America's farms, they see Depression-era prices in constant dollars, but their expenses keep going up. Try to buy a tractor or a combine, fertilizer, seed, fuel, at today's prices. See if you get a bargain. But then sell the grain that comes from the sweat and the labor, from driving the tractor, planting the seeds in the spring, tending that crop through the year and at harvesting in the fall. Try to sell that crop, and see what they tell you. Then it is not so much a circumstance where they say, well, times have changed and things cost more. They say, your product that you worked so hard to create is worth less, worth less or worthless.

This country can do better than that. If we don't do better than that, we won't have any farmers left.

We need to decide that by the Memorial Day break or by the July 4 break at the very latest, we need to do something to repair this safety net. The first step is obvious. I just spoke over in the Appropriations Committee hearing. We have an emergency bill which provides for the first spring planting loans. That emergency bill was passed many weeks ago here in the Senate and now, of course, awaits action on the Kosovo emergency question. But the climate doesn't wait. The spring doesn't wait. Spring planting is needed to move ahead now. Yet the loans that many farmers need to get into the field for the spring, to buy the fuel and buy the seed, those loans are not available because we haven't passed that emergency supplemental dealing with those emergency loans.

That is the first step. That ought to be done immediately.

The second step is, between now and the Memorial Day break or the July 4 break, we ought to do something to put in place a fair price plan for family farmers. We ought to have the good sense to do that. There is nothing wrong with making a U-turn when you discover where you are headed is the wrong direction. The current farm bill is the wrong direction. It seemed right at the time for a lot of folks who voted for it. As I said, I didn't. For those who voted for it when farm prices were better, it seemed like it was the right thing to do. But it was the wrong thing to do.

Now that farm prices have collapsed, the question is, Do we have a safety net left in this country for family farmers to try to get them across those price valleys? The answer is no. But we can repair and provide a safety net for family farmers if this Congress and this country believes it is important to have a broad-based network of family farm ownership across this country. I believe that very strongly, and I hope my colleagues who support family farming will feel the same way.

Now, Mr. President, last week, when I came to the floor of the Senate, I held up a newspaper that I got on an airplane in Minneapolis. This paper said: ''Cargill Profits From Decline in Farm Prices; 53 percent jump in earnings.'' I don't know Cargill. It is a big agrifactory. ''Cargill Profits From Decline in Farm Prices.'' As do all of the big economic interests. This was in the same newspaper: ''General Mills to Boost Cereal Prices 2.5 Percent.'' There is a decline in farm prices, farm prices have collapsed, but cereal manufacturers are going to increase the price of breakfast food 2.5 percent.

I think the consumers and farmers are both victimized, and they have a right to ask what on Earth is going on in this country. Farmers are being shortchanged and consumers are being overcharged. What on Earth is happening and when is somebody going to do something about it?

On the same day in that newspaper, these two stories tell of the sad, sad events that now confront our family farmers: collapsed prices and a circumstance where all of those who take their product and use it, turn it into cereal for store shelves, those who haul it, those who trade it, and those who add value to that product are making record profits, increasing prices, and are doing fine. But family farmers, of course, are going broke.

This Congress must decide, and decide quickly. I and others will be coming to the floor repeatedly to ask this question: Why is it when people talk about family values they only refer to cultural values? Why is the family not valued as an economic unit in this country? Why aren't family economics important? The family farm, the family business—that is an economic unit that is important to this country, and our public policy ought to reflect that. It is long past the time when Congress ought to address this farm crisis in a serious and thoughtful way.

Mr. President, I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Alaska.

(The remarks of Mr. MURKOWSKI, Mr. HAGEL, and Mr. GRAMS pertaining to the introduction of S. 882 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AGRICULTURE

Mr. CONRAD. Mr. President, I rise to speak today about the continuing crisis in agriculture. Last night I was watching CNN. They had the first of a series of programs on the crisis in agriculture. They interviewed a cotton farmer from the Deep South who has a 2,500-acre farm, which is not a small farm but certainly not one of the largest. He was telling the interviewer that he lost $500,000 last year.

I tell that story because that was a farmer from the Deep South. I represent North Dakota, the opposite end of the country. We are having exactly the same experience in our part of the country, a farm depression.

This is a cartoon that ran in the major newspaper back home. It is a picture of vultures sitting on signs of farm auctions, pointing the way to farm auctions. There are one, two, three, four, five, six, seven different signs pointing towards farm auctions with the buzzard sitting on top of the sign. The cartoon says, ''Tis spring! Tis spring! Tis spring!''

That is how an awful lot of us are feeling because in most of the country we are celebrating spring. Certainly here in the Nation's Capital we see beautiful flowers in bloom and we are enjoying absolutely gorgeous weather. We are celebrating a rebirth, a renewal.

But we are not celebrating in farm country because spring has brought us up against hard reality. The hard reality is that our operations are not going to make it. They are not cash-flowing. Many farmers are not getting the credit they need to get into the field this spring.

That is why the now stalled emergency supplemental is important. It provides emergency disaster funding for farm credit to assure that those who are credit worthy can get into the field to plant this year's crop.

Too many feel that agriculture has turned against them, that policy here has turned against them, that trade policy has turned against them, and, yes, that market forces have turned against them.

Look at the very tough facts that our producers face. This chart shows wheat prices. The red line on the chart shows the cost of production across the country. Producing a bushel of wheat costs about $5. This jagged line shows what has happened to wheat prices. Wheat prices are now $2.40 a bushel, and it costs over $5 to produce it.

This is the pattern going back to 1996. The last time we were at the cost of production was back in 1996. Since that time, wheat prices have plunged. Why? It is a complicated series of factors, starting with the Asian financial collapse that cost us some of our best markets, followed by the financial collapse in Russia that did further damage to our farmers because, of course, Russia was a big customer of ours. Yet now they cannot pay because they are out of hard currency. We have had that double whammy. On top of that, we have had good production weather around most of the world, so production has been up, yet because of the financial problems in Asia and Russia, demand is down. That has led to a dramatic price weakening.

In the midst of that, we passed a new farm bill. The new farm bill, unfortunately, doesn't work well when prices collapse because there is no adjustment for price collapses. Under the old farm policy, when prices went down, support

went up. Under this new policy, support goes down year by year no matter what happens to prices. The combination is leaving our farmers in the ditch, literally and figuratively. Our prices are so bad, so ruinously low, that literally tens of thousands of farm families face foreclosure.

This is not just true in our part of the country. The distinguished Chair is from a nearby State. They are experiencing the effect of these very low prices, not only in terms of row crops, not only in terms of wheat, barley, and other commodities, but in terms of beef, in terms of hogs. We see hog prices as low as 8.5 cents a pound. It costs 40 cents a pound to produce a hog. If farmers only get 8.5 cents a pound when they go to sell, they are in deep trouble.

We are down to only 800 hog producers in my State. We anticipate losing as many as three-quarters of them this year; 600 of the 800 are going to go out of business. The story is not much different in terms of beef because we see cattle prices at very, very low levels.

The combination—whether it is in our part of the country, the northern plains, or as I started these remarks talking about this cotton farmer in the Deep South losing $500,000 last year on only 2,500 acres—is a calamity. What is especially ironic is it is in the midst of a great economic boom across the country. We have probably never had better economic times in the larger economy, yet when we look at agriculture, we see the worst of times.

It is really a result of a triple whammy: bad prices, bad policy, and bad weather. To top it all off, in addition to the bad prices, these are the lowest prices in 52 years; on top of that, the bad policy—trade policy and farm policy—that has left farmers without much help in a time of this financial collapse; on top of that, we have had bad weather. In my State, 5 years of overly wet conditions have led to the biggest outbreak of a disease called scab that has also dramatically reduced production. Talk about a bad set of facts, that is it: bad prices, bad weather, and bad policy.

We have a chance to do something on the policy front. It won't solve the problem, but it will help. It is urgently needed. That is the disaster supplemental that is before the Senate.

I ask my colleagues, can't we move on that disaster supplemental? Can't we move on that legislation now? Can't we pass it? If we wait, it will be too late. If we wait, it is simply going to be too late. Farmers need to be in the field now. This is the end of April. Time waits for no man. Time does not wait when you are planting a crop.

I hope my colleagues will respond to this plea that we pass the urgent supplemental directly. I hope we do it this week and get that money out there where it can do some good and help these farmers through what is the worst crisis they have faced since the 1930s.

The time to act is now. I urge my colleagues to participate in that effort. We passed it here the end of March, and now here we are at the end of April. There is something dysfunctional when we have disaster emergency legislation before us and we passed it in this Chamber a month ago and it still is not out there; it is still not implemented.

Mr. President, I ask our colleagues to act on that disaster supplemental and to do it now. I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ASHCROFT. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it so ordered.

NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is with great honor and privilege that I congratulate Dr. Robert T. Fraley, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Robert T. Fraley is the co-President of the Agricultural Sector of Monsanto, and has worked extensively on the integration of Monsanto's chemical, biotech and seed businesses. He earned his Doctorate in microbiology and biochemistry in 1978, from the University of Illinois. Among his accomplishments, Dr. Fraley was a member of the science team that developed the world's first practical system to introduce foreign genes into crop plants. He continues to work on new improved methods in agriculture through his contributions in the development of insect and herbicide resistant plants.

Agriculture is the foundation of many countries' economies, and consequently, the majority of the world's population makes its living in agriculture and food-based activities. Transforming these agricultural economies is important to achieving broad-based economic growth, not only in the United States, but worldwide. In this respect, investments in new agricultural technologies will increase farmer incomes, promote food security, advance other critical development initiatives, and contribute to environmental improvements. Agricultural biotechnology was first introduced to farms in 1995, and today in the United States, there are over 53 million acres of biotech crops.

As global food demand continues to increase, there is an immediate need to develop new agriculture tools that are productive and sustainable. With the use of new agricultural biotechnologies, genetically enhanced seeds are already decreasing pest infestation, increasing crop yields, and reducing the need for pesticides. I believe that these new farming methods offer tremendous potential for farmers and consumers from an agronomic, economic, and environmental standpoint. As a result, our rural economies are strengthened, and our agricultural products are becoming more competitive in the global market.

I rise today to acknowledge and commend Dr. Robert Fraley and the Monsanto team of researchers for their excellent work. They have played a critical role in the pioneering of gene transfer technology and plant regeneration which began more than 15 years ago. As a result of their relentless pursuit of a vision, their development of agricultural biotechnology, as a science and as an industry, will continue to keep the United States at the forefront of food production.

Dr. Fraley and the Monsanto team of scientists are visionaries in their quest to improve the quality of life. Their perseverance, commitment, and dedication to science is an inspiration for others to reach their ''highest and best.'' I wish them continued success as they guide us on a revolutionary path into the Twenty-First Century.

NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is with great honor and privilege that I congratulate Dr. Robert B. Horsch, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Robert Horsch is the co-President of Monsanto's Sustainable Development Sector and general manager of Monsanto's Agracetus Campus. He earned his Doctorate in genetics in 1979, from the University of California. Among his accomplishments, Dr. Horsch was a member of the team that developed the world's first practical system to introduce improved genes into crop plants. Thereafter, he expanded Monsanto's gene transfer capability to most important crops such as soybeans, corn, wheat, cotton, canola, tomatoes, and potatoes.

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NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is with great honor and privilege that I congratulate Dr. Ernest G. Jaworski, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Ernest G. Jaworski was the Director of Biological Sciences before retiring from Monsanto in 1993. Since then, he has served as Scientist In Residence at the St. Louis Science Center and Interim Director of the Donald Danforth Plant Science Center. He earned his Doctorate in biochemistry in 1952, from Oregon State University. Among his accomplishments, Dr. Jaworski assembled and led the team that developed the world's first practical system to introduce foreign genes into plants.

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NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is a great honor and privilege to congratulate Dr. Stephen G. Rogers, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Stephen G. Rogers is the director of biotechnology projects for Europe located at Monsanto's Cereals Technology Center in Cambridge, England, where he is presently working on the integration of modern crop breeding with improved crop methods. He earned his Doctorate in biology in 1976, from the Johns Hopkins University. Among his accomplishments, Dr. Rogers is a member of the team that developed the first method for producing new proteins in plants, leading to the discovery of virus resistance and insect protection traits for crops—a development that is revolutionizing modern farming.

Agriculture is the foundation of many countries' economies, and consequently, the majority of the world's population makes its living in agriculture and food-based activities. Transforming these agricultural economies is important to achieving broad-based economic growth, not only in the United States, but worldwide. In this respect, investments in new agricultural technologies will increase farmer incomes, promote food security, advance other critical development initiatives, and contribute to environmental improvements. Agricultural biotechnology was first introduced to farms in 1995, and today in the United States, there are over 53 million acres of biotech crops.

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CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

Y2K ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 96. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems relating to processing data that includes a 2-digit expression of that year's date.

The Senate proceeded to consider the bill, which had been reported from the

Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.

TITLE I—OPPORTUNITY TO RESOLVE Y2K PROBLEMS.

Sec. 101. Pre-filing notice.
Sec. 102. Pleading requirements.
Sec. 103. Duty to mitigate.
Sec. 104. Proportionate liability.

TITLE II—Y2K ACTIONS INVOLVING CONTRACT-RELATED CLAIMS.

Sec. 201. Contracts enforced.
Sec. 202. Defenses.
Sec. 203. Damages limitation .
Sec. 204. Mixed actions.

TITLE III—Y2K ACTIONS INVOLVING TORT CLAIMS.

Sec. 301. Damages in tort claims.
Sec. 302. Certain defenses.
Sec. 303. Liability of officers and directors.

TITLE IV—Y2K CLASS ACTIONS.

Sec. 401. Minimum injury requirement.
Sec. 402. Notification.
Sec. 403. Forum for Y2K class actions.

SEC. 2. FINDINGS AND PURPOSES.

The Congress finds that:

(1) The majority of responsible business enterprises in the United States are committed to working in cooperation with their contracting partners towards the timely and cost-effective resolution of the many technological, business, and legal issues associated with the Y2K date change.

(2) Congress seeks to encourage businesses to concentrate their attention and resources in short time remaining before January 1, 2000, on addressing, assessing, remediating, and testing their Y2K problems, and to minimize any possible business disruptions associated with the Y2K issues.

(3) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(4) Y2K issues will potentially affect practically all business enterprises to at least some degree, giving rise possibly to a large number of disputes.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses, particularly small businesses, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with the Y2K date change, and work against the successful resolution of those difficulties.

(7) Congress recognizes that every business in the United States should be concerned that widespread and protracted Y2K litigation may threaten the network of valued and trusted business relationships that are so important to the effective functioning of the world economy, and which may put unbearable strains on an overburdened and sometime ineffective judicial system.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, nonbinding mediation rather than litigation.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action'' means a civil action commenced in any Federal or State court in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense of a defendant is related directly or indirectly to an actual or potential Y2K failure.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) ACTUAL DAMAGES.—The term ''actual damages'' means direct damages for injury to tangible property, and the cost of repairing or replacing products that have a material defect.

(4) ECONOMIC LOSS.—Except as otherwise specifically provided in a written contract between the plaintiff and the defendant in a Y2K action (and subject to applicable State law), the term ''economic loss''—

(A) means amounts awarded to compensate an injured party for any loss other than for personal injury or damage to tangible property (other than property that is the subject of the contract); and

(B) includes amounts awarded for—

(i) lost profits or sales;

(ii) business interruption;

(iii) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(iv) losses that arise because of the claims of third parties;

(v) losses that must be pleaded as special damages; and

(vi) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law); but

(C) does not include actual damages.

(5) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or intended. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only on a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(6) PERSONAL INJURY.—The term ''personal injury''—

(A) means any physical injury to a natural person, including death of the person; but

(B) does not include mental suffering, emotional distress, or like elements of injury that do not constitute physical harm to a natural person.

(7) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(8) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(9) PERSON.—

(A) IN GENERAL.—The term ''person'' has the meaning given to that term by section 1 of title 1, United States Code.

(B) GOVERNMENT ENTITIES.—The term ''person'' includes an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities) when that agency, instrumentality, or other entity is a plaintiff or a defendant in a Y2K action.

(10) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action under Federal or State law.

(c) ACTIONS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) WRITTEN CONTRACT CONTROLS.—The provisions of this Act do not supersede a valid, enforceable written contract between a plaintiff and a defendant in a Y2K action.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages may be awarded under applicable State law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the defendant acted with conscious and flagrant disregard for the rights and property of others.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Punitive damages against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for actual damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as a individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(c) GOVERNMENT ENTITIES.—Punitive damages in such a Y2K action may not be awarded against a person described in section 3(8)(B).

TITLE I—OPPORTUNITY TO RESOLVE Y2K PROBLEMS

SEC. 101. PRE-FILING NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K

claim shall serve on each prospective defendant in that action a written notice that identifies with particularity—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) the remedy sought by the prospective plaintiff;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) DELAY OF ACTION.—Except as provided in subsection (d), a prospective plaintiff may not commence a Y2K action in Federal or State court until the expiration of 90 days from the date of service of the notice required by subsection (a).

(c) RESPONSE TO NOTICE.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall serve on each prospective plaintiff a written statement acknowledging receipt of the notice, and proposing the actions it has taken or will take to address the problem identified by the prospective plaintiff. The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c); or

(2) does not describe the action, if any, the prospective defendant will take to address the problem identified by the prospective plaintiff,

then the 90-day period specified in subsection (a) will terminate at the end of the 30-day period as to that prospective defendant and the prospective plaintiff may commence its action against that prospective defendant.

(e) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) and without awaiting the expiration of the 90-day period specified in subsection (b), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for 90 days after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during this 90-day period.

(f) EFFECT OF CONTRACTUAL WAITING PERIODS.—In cases in which a contract requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided in the contract is controlling over the waiting period specified in subsections (a) and (e).

(g) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

SEC. 102. PLEADING REQUIREMENTS.

(a) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, the complaint shall provide specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(b) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that a product or service is defective, the complaint shall contain specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(c) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each element of that claim, state with particularity the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 103. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably could have been, aware, including reasonable efforts made by a defendant to make information available to purchasers or users of the defendant's product or services concerning means of remedying or avoiding Y2K failure.

SEC. 104. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—A person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) SEVERAL LIABILITY.—Liability in a Y2K action shall be several but not joint.

TITLE II—Y2K ACTIONS INVOLVING CONTRACT-RELATED CLAIMS

SEC. 201. CONTRACTS ENFORCED.

In any Y2K action, any written term or condition of a valid and enforceable contract between the plaintiff and the defendant, including limitations or exclusions of liability and disclaimers of warranty, is fully enforceable, unless the court determines that the contract as a whole is unenforceable. If the contract is silent with respect to any matter, the interpretation of the contract with respect to that matter shall be determined by applicable law in force at the time the contract was executed.

SEC. 202. DEFENSES.

(a) REASONABLE EFFORTS.—In any Y2K action in which breach of contract is alleged, in addition to any other rights provided by applicable law, the party against whom the claim of breach is asserted shall be allowed to offer evidence that its implementation of the contract, or its efforts to implement the contract, were reasonable in light of the circumstances for the purpose of limiting or eliminating the defendant's liability.

(b) IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY.—In any Y2K action in which breach of contract is alleged, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by applicable law in existence on January 1, 1999, and nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 203. DAMAGES LIMITATION.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, consequential or punitive damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was executed or by operation of Federal law.

SEC. 204. MIXED ACTIONS.

If a Y2K action includes claims based on breach of contract and tort or other noncontract claims, then this title shall apply to the contract-related claims and title III shall apply to the tort or other noncontract claims.

TITLE III—Y2K ACTIONS INVOLVING TORT CLAIMS

SEC. 301. DAMAGES IN TORT CLAIMS.

A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party;

(2) such losses result directly from a personal injury claim resulting from the Y2K failure; or

(3) such losses result directly from damage to tangible property caused by the Y2K failure (other than damage to property that is the subject of the contract),

and such damages are permitted under applicable Federal or State law.

SEC. 302. CERTAIN DEFENSES.

(a) GOOD FAITH; REASONABLE EFFORTS.—In any Y2K action except an action for breach or repudiation of contract, the party against whom the claim is asserted shall be entitled to establish, as a complete defense to any claim for damages, that it acted in good faith and took measures that were reasonable under the circumstances to prevent the Y2K failure from occurring or from causing the damages upon which the claim is based.

(b) DEFENDANT'S STATE OF MIND.—In a Y2K action making a claim for money damages in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant knew, or recklessly disregarded a known and substantial risk, that the failure would occur in the specific facts and circumstances of the claim.

(c) FORESEEABILITY.—In a Y2K action making a claim for money damages, the defendant is not liable unless the plaintiff proves by clear and convincing evidence, in addition to all other requisite elements of the claim, that the defendant knew, or should have known, that the defendant's action or failure to act would cause harm to the plaintiff in the specific facts and circumstances of the claim.

(d) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was within the control of the party against whom a claim for money damages is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action.

(e) PRESERVATION OF EXISTING LAW.—The provisions of this section are in addition to, and not in lieu of, any requirement under applicable law as to burdens of proof and elements necessary for prevailing in a claim for money damages.

SEC. 303. LIABILITY OF OFFICERS AND DIRECTORS.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or non-profit organization) shall not be personally liable in any Y2K action making a tort or other noncontract claim in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability was imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) intentionally made misleading statements regarding any actual or potential year 2000 problem; or

(2) intentionally withheld from the public significant information there was a legal duty to disclose to the public regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of

State law, charter, or a bylaw authorized by State law, in existence on January 1, 1999, that establishes lower limits on the liability of a director, officer, trustee, or employee of such a business or organization.

TITLE IV—Y2K CLASS ACTIONS

SEC. 401. MINIMUM INJURY REQUIREMENT.

In any Y2K action involving a claim that a product or service is defective, the action may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law or applicable rules of civil procedure; and

(2) the court finds that the alleged defect in a product or service is material as to the majority of the members of the class.

SEC. 402. NOTIFICATION.

(a) NOTICE BY MAIL.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class by United States mail, return receipt requested. Persons whose receipt of the notice is not verified by the court or by counsel for one of the parties shall be excluded from the class unless those persons inform the court in writing, on a date no later than the commencement of trial or entry of judgment, that they wish to join the class.

(b) CONTENTS OF NOTICE.—In addition to any information required by applicable Federal or State law, the notice described in this subsection shall—

(1) concisely and clearly describe the nature of the action;

(2) identify the jurisdiction where the case is pending; and

(3) describe the fee arrangement of class counsel.

SEC. 403. FORUM FOR Y2K CLASS ACTIONS.

(a) JURISDICTION.—The District Courts of the United States have original jurisdiction of any Y2K action, without regard to the sum or value of the matter in controversy involved, that is brought as a class action if—

(1) any member of the proposed plaintiff class is a citizen of a State different from the State of which any defendant is a citizen;

(2) any member of the proposed plaintiff class is a foreign Nation or a citizen of a foreign Nation and any defendant is a citizen or lawful permanent resident of the United States; or

(3) any member of the proposed plaintiff class is a citizen or lawful permanent resident of the United States and any defendant is a citizen or lawful permanent resident of a foreign Nation.

(b) PREDOMINANT STATE INTEREST.—A United States District Court in an action described in subsection (a) may abstain from hearing the action if—

(1) a substantial majority of the members of all proposed plaintiff classes are citizens of a single State;

(2) the primary defendants are citizens of that State; and

(3) the claims asserted will be governed primarily by the laws of that State.

(c) LIMITED CONTROVERSIES.—A United States District Court in an action described in subsection (a) may abstain from hearing the action if—

(1) the value of all matters in controversy asserted by the individual members of all proposed plaintiff classes in the aggregate does not exceed $1,000,000, exclusive of interest and costs;

(2) the number of members of all proposed plaintiff classes in the aggregate in less than 100; or

(3) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.

(d) DIVERSITY DETERMINATION.—For purposes of applying section 1322(b) of title 28, United States Code, to actions described in subsection (a) of this section, a member of a proposed class is deemed to be a citizen of a State different from a corporation that is a defendant if that member is a citizen of a State different from each State of which that corporation is deemed a citizen.

(e) REMOVAL.—

(1) IN GENERAL.—A class action described in subsection (a) may be removed to a district court of the United States in accordance with chapter 89 of title 28, United States Code, except that the action may be removed—

(A) by any defendant without the consent of all defendants; or

(B) any plaintiff class member who is not a named or representative class member of the action for which removal is sought, without the consent of all members of the class.

(2) TIMING.—This subsection applies to any class before or after the entry of any order certifying a class.

(3) PROCEDURE.—

(A) IN GENERAL.—Section 1446(a) of title 28, United States Code, shall be applied to a plaintiff removing a case under this section by treating the 30-day filing period as met if a plaintiff class member who is not a named or representative class member of the action for which removal is sought files notice of removal within 30 days after receipt by such class member of the initial written notice of the class action provided at the trial court's direction.

(B) APPLICATION OF SECTION 1446.—Section 1446 of title 28, United States Code, shall be applied—

(i) to the removal of a case by a plaintiff under this section by substituting the term ''plaintiff'' for the term ''defendant'' each place it appears; and

(ii) to the removal of a case by a plaintiff or a defendant under this section—

(I) by inserting the phrase ''by exercising due diligence'' after ''ascertained'' in the second paragraph of subsection (b); and

(II) by treating the reference to ''jurisdiction conferred by section 1332 of this title'' as a reference to subsection (a) of this section.

(f) APPLICATION OF SUBSTANTIVE STATE LAW.—Nothing in this section alters the substantive law applicable to an action described in subsection (a).

(g) PROCEDURE AFTER REMOVAL.—If, after removal, the court determines that no aspect of an action that is subject to its jurisdiction solely under the provisions of section 1332(b) of title 28, United States Code, may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the court shall strike the class allegations from the action and remand the action to the State court. Upon remand of the action, the period of limitations for any claim that was asserted in the action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I am going to offer a compromise amendment that is at the desk, and I further ask unanimous consent that debate only be in order following the offering of that amendment until 2:15 today.

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

COMMITTEE AMENDMENT WITHDRAWN

Mr. MCCAIN. Mr. President, as chairman of the Commerce Committee and with the authority of the committee, I withdraw the committee amendment.

The PRESIDING OFFICER. The committee amendment is withdrawn.

The committee amendment was withdrawn.

AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from Year 2000 problem-related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. MCCAIN. I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report the substitute amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. WYDEN, Mr. GORTON, Mr. ABRAHAM, Mr. LOTT, Mr. FRIST, Mr. BURNS, Mr. SMITH of Oregon, and Mr. SANTORUM proposes an amendment numbered 267.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Mr. President, I am pleased to offer, with my friend and colleague from Oregon, Senator WYDEN, a substitute amendment to S. 96, the Y2K Act. The substitute amendment we offer is truly a bipartisan effort. We have worked diligently with our colleagues on both sides of the aisle and will continue to do so to address concerns, narrow some provisions, and assure that this bill will sunset when it is no longer pertinent and necessary.

Senator WYDEN, who said at our committee markup that he wants to get to ''yes,'' has worked tirelessly with me to get there. He has offered excellent suggestions and comments, and I think the substitute we bring today is a better piece of legislation for his efforts.

Specifically, this substitute would provide time for plaintiffs and defendants to resolve Y2K problems without litigation. It reiterates the plaintiff's duty to mitigate damages and highlights the defendant's opportunity to assist plaintiffs in doing that by providing information and resources. It provides for proportional liability in most cases with exceptions for fraudulent or intentional conduct or where the plaintiff has limited assets.

It protects governmental entities, including municipalities, school, fire, water and sanitation districts from punitive damages, and it eliminates punitive damage limits for egregious conduct while providing some protection against runaway punitive damage awards. It provides protection for those not directly involved in a Y2K failure.

The bill as amended does not cover personal injury and wrongful death cases. It is important to keep in mind the broad support this bill has from virtually every segment of our economy. This bill is important not only to the high-tech industry or to big business but carries the strong support of small business, retailers and wholesalers. Many of those supporting the

bill will find themselves as both plaintiffs and defendants. They have weighed the benefits and drawbacks of the provisions of this bill and have overwhelmingly concluded that their chief priority is to prevent and fix Y2K problems and make our technology work and not divert the resources into time-consuming and costly litigation.

Mr. President, I would like to interrupt my prepared statement at this time to mention that when we passed this legislation through the Commerce Committee, unfortunately, on one of the rare occasions in the more than 2 years that I have been chairman of the committee, it was passed on a party line vote, on a vote of 11 to 9.

At that time Senator WYDEN, Senator KERRY, Senator DORGAN and others expressed a strong desire to work in a bipartisan fashion so that we could pass this legislation. Most of us are aware that when legislation goes to the floor along party lines and is divided on party lines, the chances of passage are minimal, to say the least.

We worked with Senator WYDEN and others, and we made eight major compromises in the original legislation, sufficient in the view of many to enhance the ability of this legislation to be passed and, very frankly, satisfy at least some of the concerns of the trial lawyers and others that had been voiced about the legislation.

Last night, Senator WYDEN and the Senator from Connecticut, Senator DODD, and I met, and we discussed three major concerns that Senator DODD had, which two we could agree to, and on the third there was some discussion about language. It was my distinct impression at that time that we had come to an agreement on these three particular additional items.

Apparently this morning that is not the case. On the third item there is still not agreement between ourselves and Senator DODD and his staff. I hope we can continue to work on that language.

Mr. President, I have been around here now for 13 years. I have seen legislation compromise after compromise made to the point where the legislation itself becomes meaningless. We are approaching that point now.

I will be glad to negotiate with anyone. My friend from Massachusetts, Senator KERRY, and I have been in discussions as well. But we cannot violate some of the fundamental principles that I just articulated as the reason for this legislation. If we weren't facing a very severe crisis in about 7 or 8 months from now—7 months, I guess—then there would not be a need for this legislation.

Our object is to protect innocent business people, both large, medium and small, from being exposed to the kind of lawsuits which we know will transpire if we do not do something about the problem.

It is not only important that we receive the support of the ''high-tech community,'' which is very important to the future of our Nation's economy, but the medium-size businesses, the small businesses, the retailers and others are all in support of this legislation.

I am aware of the power of the American Trial Lawyers Association. I have been beaten by them on several occasions. They have a string of victories to their credit. They are also, among others, another argument for campaign finance reform, which is a diatribe I will not enter in today. The fact is this issue needs to be resolved. I would be very disappointed if over a couple of points we cannot agree and this legislation fails to proceed.

Did my friend from Oregon have a question or a comment?

Mr. WYDEN. Yes.

Mr. MCCAIN. Mr. President, I ask unanimous consent to yield to the Senator from Oregon, without losing my claim to the floor.

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

The Senator from Oregon is recognized.

Mr. WYDEN. Thank you, Mr. President. I thank the chairman of the Commerce Committee for his comments. I will just advise my colleagues where I think we are.

First, I think it is important to note that the chairman of the Commerce Committee has made nine major changes in the legislation—all of them proconsumer, proplaintiff—since the time this legislation left the Commerce Committee. I and other Democrats felt it was important. I want the RECORD to show that those are major, substantive changes, and as the chairman indicated, we had some discussions with Senator DODD last night and I am hopeful they are going to bear fruit as well, because Senator DODD has tackled this in a very thoughtful way as well.

I also think it is important that our leadership, Senator LOTT and Senator DASCHLE, continue, as they have tried to do, to help us work through some of the procedural issues which are not directly relevant to this legislation, so that it is possible to vote on the McCain-Wyden substitute expeditiously.

I want to tell the Senate that now is the time when this can be done in a thoughtful and deliberative way. I don't think the Senate wants to come back next January, when there is a state of panic, as I believe there well could be, over this problem. The time to do it is now. That is what we have been working on in committee.

This is not a partisan issue. It affects every computer system that uses date information, and I want it understood how this happened. Y2K is not a design flaw; it was an engineering tradeoff. In order to get more space on a disc and in memory, the precision of century indicators was abandoned. Now, it is hard to believe today that disc and memory space used to be at a premium, but it was. The tradeoff became an industry standard, and computers cannot work at all without these industry standards. The standards are the means by which programs and systems exchange information, and it was recently noted: ''The near immortality of computer software came as a shock to programmers. Ask anybody who was there. We never expected this stuff to still be around.''

One way to solve the problem might be to dump all the old layers of computer code, but that is not realistic. So our goal ought to be to try to bring these systems into compliance as soon as possible and, at the same time—and this is what the McCain-Wyden substitute does—have a safety net in place.

This is a bipartisan effort. I would like to briefly wrap up by outlining several of the major changes. The first is that there is a 3-year sunset provision. There are a number of individuals and groups who said, ''Well, this is just an effort to rewrite the tort law and make changes that are going to stand for all time.'' This provision says that any Y2K failure must occur before January 1, 2003, in order to be eligible to be covered by the legislation.

Second, there were various concerns that there were vague defenses in the legislation, particularly terms that involve a reasonable effort. We said that that ought to be changed, we ought to make sure there aren't any new and ill-defined Federal defenses. That has been changed.

Finally, and especially important, for truly egregious kinds of conduct and fraudulent activity, where people simply misrepresent the facts in the marketplace, we ensure that punitive damages and the opportunity to send a deterrent to egregious and fraudulent activity are still in place.

So I think these are just some of the major changes we are going to outline in the course of the debate. I also say that the latest draft also restores liability for directors and officers, which was again an effort to try to be responsive to those who felt that the legislation was not sufficiently proconsumer.

I only say—and I appreciate that the chairman of the committee yielded me this time—that I think after all of these major changes, which have taken many hours and, in fact, weeks since the time this legislation came before the Committee on Commerce, we have now produced legislation that particularly Democratic Members of the Senate can support.

This is not legislation where, for example, if someone had their arm cut off tragically in a tractor accident, they would not have a remedy. We make sure that all personal injuries which could come about—say an elevator doesn't work and a person is tragically injured. This legislation doesn't affect that. That person has all the remedies in the tort law and the personal injury laws that are on the books. This involves ensuring that there is not chaos in the marketplace early next year, that we don't tie up thousands of our

businesses in frivolous suits and do great damage to the emerging sector of our economy that is information driven.

I thank the chairman for the many changes he has made, and I am especially hopeful that over the next few hours the two leaders, Senator LOTT and Senator DASCHLE, can help us work through the procedural quagmire the Senate is in, so we can pass this legislation now, at a time where there is an opportunity to pursue it in a deliberative way.

I yield the floor.

Mr. MCCAIN. Mr. President, I thank the Senator from Oregon for his enormous work on this legislation. I think it bears repeating what we have been able to do here. I believe any objective observer would agree that what Senator WYDEN has brought to the bill represents a tremendous movement from the bill we originally passed in the Commerce Committee.

These discussions with Senator WYDEN and others resulted in at least eight major changes. The biggest change was that we eliminated the so-called good-faith defense, because we could not define good faith and reasonable efforts.

We also put in, as Senator WYDEN mentioned, a sunset of January 1, 2003. There is no cap on punitive damages when the defendant has intentionally caused harm to the plaintiff. It clarifies that if a plaintiff gives 30 days notice of a problem to the defendant, the defendant has 60 days to fix it. This doesn't result in a 90-day delay for litigation but does offer a critical opportunity to solve problems rather than litigate.

Language regarding the state of mind and liability of bystanders was significantly narrowed, redrafted, and clarified in order to assure that the provisions are consistent with the Year 2000 Information and Readiness Disclosure Act of 1998.

The economic loss rule was likewise rewritten and narrowed to reflect the current law in the majority of States.

Proportionate liability was significantly compromised to incorporate exceptions to the general rule to protect plaintiffs from suffering loss.

Class action language was revised and narrowed, and language respecting the effect of State law on contracts and the rules with respect to contract interpretation was also revised to address concerns that Senator WYDEN raised.

In other words, I believe we have gone a long way.

Mr. President, the opponents of this legislation will make several arguments. I respect those arguments. One will be that we are changing tort law—that we are somehow fundamentally changing the law despite the fact that this has a sunset provision in it of January 1, 2003.

Also, they will say it is not a big problem; it is not nearly as big a problem as you think it is; there are going to be suits dismissed; that the manufacturers and the high-tech community and the businesspeople are setting up a straw man here because it is not that huge an issue despite the estimates that there can be as much as $300 billion to $1 trillion taken out of the economy.

Let me quote from the Progressive Policy Institute backgrounder of March 1999. They state:

> As the millennium nears, the year 2000 computer problem poses a critical challenge to our economy. Tremendous investments are being made to fix Y2K problems with U.S. companies expected to spend more than $50 billion. However, these efforts could be hampered by a barrage of potential legislation as fear of liability may keep some businesses from effectively engaging in Y2K remediation efforts.

Trial attorneys across the country are actually preparing for the potential windfall. For those who doubt the emergence of such leviathan litigation, one only needs to listen to what is coming out of certain quarters of the legal community. At the American Bar Association annual convention in Toronto last August, a panel of experts predicted that the legal costs associated with Y2K will exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined. That is more than three times the total annual estimated cost of all civil litigation in the United States.

That is what was propounded at the American Bar Association convention in Toronto last August.

Mr. President, it isn't the Bank of America that is saying that. It isn't the high-tech community. It is the American Bar Association.

> Seminars on how to try Y2K cases are well underway, and approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on the event. Also, several lawsuits have already been filed making trial attorneys confident that a large number of businesses, big and small, will end up in court as both a plaintiff and a defendant. Such overwhelming litigation would reduce investment and slow income growth for American workers.
>
> Indeed, innovation and economic growth will be stifled by the rapacity of strident litigators. In addition to the potentially huge costs of litigation, there is another unique element to the Y2K problem. In contrast to past cases of business liability where individual firms or even industries engaged in some wrongful and damaging practices, the Y2K problem potentially affects all aspects of the economy as it is for all intents and purposes a unique one-time event. It is best understood as an incomparable societal problem rooted in the early stages of our Nation's transformation to a digital economy. Applying some of the existing standards of litigation to such a distinct and communal problem is simply not appropriate.
>
> Legislation is needed to provide incentives for businesses to fix Y2K problems, to encourage resolution of Y2K conflicts outside of the courtroom, and to ensure that the problem is not exploited by untenable lawsuits.

The Progressive Policy Institute goes on to say at the end:

> In order to diminish the threat of burdensome and unwarranted litigation, it is essential that any legislation addressing Y2K liability do the following:
>
> Encourage remediation over litigation and the assignment of blame;
>
> Enact fair rules that reassure businesses;
>
> That honest efforts at remediation will be rewarded by limiting liability while enforcing contracts and punishing negligence;
>
> Promote alternative dispute resolution;
>
> And, finally discourage frivolous lawsuits while protecting avenues of redress for parties that suffer real injuries.

Mr. President, on those four principles we acted in this legislation, and then we moved back to, if not the principles of it, some of what, in my view, were the most desirable parts of the legislation on the nine major issues which I just described in our negotiations with Senator WYDEN and others. Then we even made concessions in two additional areas with Senator DODD. And now it is not enough.

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

Mr. MCCAIN. Does the Senator from Oregon have a question?

Mr. WYDEN. I do. I think there is one other important point that needs to be made. It seems to me that the legislation as it stands now makes it very clear that what is really going to govern the vast majority of cases is the written contractual terms between businesses.

If you look at page 11 of the subcommittee report, it makes it very clear that the act doesn't apply to personal injuries or to wrongful deaths. What is going to apply are the written contractual terms between businesses.

As I recall, the chairman of the Commerce Committee thought originally that in this and other major changes there ought to be a Federal standard in this area. There was a concern that was, again, writing new law and tort law. The chairman decided to make it clear that it was going to be written in contractual terms that were going to govern these agreements between businesses.

What is the chairman's understanding of how that came about, and why those written contractual terms were important in this reform?

Mr. MCCAIN. I say to my friend from Oregon that he has pretty well pointed out that there were several standards which could be used for both legal as well as the sense of how the people who are involved in the Y2K situation are involved. To have one standard, I think, was clearly called for, although perhaps I would have liked to have seen a tougher standard. But the fact is that this was a process of how we develop legislation. We also wanted to respect the individual contracts, as the Senator from Oregon knows.

Mr. President, I just want to say again that my dear friend from South Carolina has been very patient, and I know that he wants to speak at some length. I appreciate both his compassion and commitment and knowledge of the issue.

We have tried to compromise. We will continue to try to compromise. We

are now reaching close to a point where the legislation would be meaningless.

I am all in favor of a process where amendments are proposed, where they are debated and voted on. I think that is the way we should do business.

If the Senator from South Carolina has a problem with this legislation, I hope he will propose an amendment to this legislation. I will be glad to debate it, and we will be glad to have votes.

It is important that we resolve this legislation. I would not like to see, nor do I think the people of this country deserve, a gridlock where blocking of any legislation to move forward on this issue takes place. I don't think that is fair. I don't think it is fair or appropriate on an issue of this magnitude of which time is of the essence. We can't have a blockage of this issue and take this legislation up several months from now.

I respect the views of others who oppose this legislation. But let's go through a legislative process. I am willing to stay here all day and all night to debate the amendments, whatever they may be. I don't want to introduce a cloture motion, because obviously that cuts off people's ability to debate this issue because of the timeframe and time limits involved in a cloture motion.

But I also urge my colleagues who oppose this legislation, let's not engage in extraneous amendments on minimum wage, or violence on TV, or guns, or anything else. That, frankly, in all due respect to my colleagues, is avoiding this issue. This issue needs to be addressed.

In the eyes of every American, there is a huge problem arising at 12:01, January 1 of the year 2000. We have an obligation to address that problem.

For us to now be sidetracked with other issues and extraneous amendments, or others, is doing a great disservice to those men and women, small businesses and large and medium size, which will be affected by this serious problem, of which, by the way, even with a select committee we really haven't gotten a good handle on the magnitude of the problem. It depends on what part of our economy, what part of government, et cetera.

But there is no one who alleges that there is no problem. It is our obligation to try to address this problem. Let's do it in an orderly fashion with debate, with amendments, and then vote on final passage.

I urge my colleagues to respect such a process.

UNANIMOUS-CONSENT AGREEMENT

Mr. MCCAIN. Mr. President, I ask unanimous consent when the Senate reconvenes at 2:15 it be in order for the Senate Chaplain to offer a prayer in honor of the moment of silence being observed in Colorado, and following the prayer the junior Senator from Colorado be recognized to speak, to be followed by the senior Senator from Colorado who, after some remarks, will offer a moment of silence.

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

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the 12:30 recess be extended 10 minutes, until 12:40.

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

Mr. HOLLINGS. Mr. President, I will go right to the point with respect to the compromise. I have in hand a letter from Craig R. Barrett, the distinguished CEO of Intel. Without reading the entire letter, the consensus is that what they would really need is a settlement or compromise regarding four particular points. One is procedural incentives; another is with respect to the provisions of contracts, that they have specificity; third, threshold pleading provisions and the amount of damages in materiality of defects which would help constrain class action suits; and, of course, the matter of proportionality, or joint and several.

I contacted Mr. Grove and told him we would yield on three points, but we didn't want to get into tort law with a contract provision—all triable under the Uniform Commercial Code. He didn't think he could yield on that fourth one.

Since that time, I understand that the downtown Chamber of Commerce says they are not yielding at all with respect to the test in tort law.

My colleague from Oregon says there are nine points and that we have gotten together. That is garbage. That is not the case at all, I can say that right now.

They are determined to change the proof of neglect by ''the greater weight of the preponderance of evidence'' to ''clear and convincing.'' I thought that was compromise. Reviewing the McCain-Wyden amendment that is now under debate, Members will find on that page scratched out and written in, ''clear and convincing evidence.'' They want to change the burden in tort cases from ''the greater weight of the preponderance of evidence'' to ''clear and convincing.''

How can you do that when you do not have the elements before you? You do not have control of the manufacturer; you do not have control of the software. If you are like me and other professionals like our doctor friends or CPAs, they don't know those kinds of things. They have to do the best they can by the greater weight of the preponderance of evidence—not clear and convincing.

So they stick to punitive, they stick to clear and convincing, they stick to joint and several, but they come on the floor of the Senate and exclaim how reasonable they are and then allude, of course, to the trial lawyers and talk about campaign financing, but say as an aside, We don't want to get into it—as if the Senator from South Carolina is paid by trial lawyers to do this.

I represented corporate America, and I will list those companies. I was proud of the Electric and Gas. I was proud of the wholesale grocer, Piggly Wiggly firm. We had 121 stores. I was their chief counsel on an antitrust case which I took all the way to the U.S. Supreme Court. I won. I had good corporate clients, too. I am proud of trial lawyers. We don't have time for frivolous cases.

This downtown crowd will never see the courtroom. They sit there in the mahogany rooms with the Persian rugs. Their colleagues call and say, Let's get a continuance, I want to play golf this afternoon—the clock runs on billable hours. The clock is running and the clients never know the difference. And they pay $450 to $500 an hour.

The distinguished Senator from Ohio who sat in front of me, now a national hero, is indebted to a case for billable hours.

We know about downtown. I don't understand aspersions with respect to the trial bar—we are looking out for the injured parties.

I want these matters in the RECORD. The case is clear cut, in this Senator's mind. For example, I talked for about an hour in the office with the distinguished head of Intel, Andy Grove, some weeks back. I don't want anyone to be misled, he is for proportionality. That is explained in the letter. However, he said it wasn't a real problem.

I ask unanimous consent that an article in the March issue of Business Week entitled ''Be Bug-Free or Get Squashed'' be printed in the RECORD.

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

[From the Business Week, Mar. 1, 1999]

BE BUG-FREE OR GET SQUASHED—BIG COMPANIES MAY SOON DUMP SUPPLIERS THAT AREN'T Y2K-READY

Lloyd Davis is feeling squeezed. In 1998, his $2 million, 25-employee fertilizer-equipment business was buffeted by the harsh winds that swept the farm economy. This year, his Golden Plains Agricultural Technologies Inc. in Colby, Kan., is getting slammed by Y2K. Davis needs $71,000 to make his computer systems bug-free by Jan. 1. But he has been able to rustle up only $39,000. His bank has denied him a loan because—ironically—he's not Y2K-ready. But Davis knows he must make the fixes or lose business. ''Our big customers aren't going to wait much longer,'' he frets.

Golden Plains and thousands of other small businesses are getting a dire ultimatum from the big corporations they sell to: Get ready for Y2K, or get lost. Multinationals such as General Motors, McDonald's, Nike, and Deere are making the first quarter—or the second at the latest—the deadline for partners and vendors to prove they're bug-free. A recent survey by consultants Cap Gemini America says 69% of the 2,000 largest companies will stop doing business with companies that can't pass muster. The National Federation of Independent Business figures more than 1 million companies with 100 workers or less won't make the cut and as many as half could lose big chunks of business or even fail.

Weak Links. Cutting thousands of companies out of the supply chain might strain supply lines and could even crimp output. But most CEOs figure it'll be cheaper in the long run to avoid bugs in the first place.

Some small outfits are already losing key customers. In the past year, Prudential Insurance Co. has cut nine suppliers from its ''critical'' list of more than 3,000 core vendors, and it continues to look for weak links, says Irene Dec, vice-president for information systems at the company. At Citibank, says Vice-President Ravi Apte, ''cuts have already been made.''

Suppliers around the world are feeling the pinch. Nike Inc. has warned its Hong Kong vendors that they must prove they're Y2K ready by Apr. 1. In India, Kishore Padmanabhan, vice-president of Bombay's Tata Consultancy Services, says repairs are runing 6 to 12 months behind. In Japan, ''small firms are having a tough time making fixes and are likely to be the main source of any Y2K problems,'' says Akira Ogata, general research manager for Japan Information Service Users Assn. Foreign companies operating in emerging economies such as China, Malaysia, and Russia are particularly hard-pressed to make Y2K fixes. In Indonesia, where the currency has plummeted to 27% of its 1977 value, many companies still don't consider Y2K a priority.

A December, 1998 World Bank survey shows that only 54 of 139 developing countries have begun planning for Y2K. Of those, 21 are taking steps to fix problems, but 33 have yet to take action. Indeed, the Global 2000 Coordinating Group, an international group of more than 230 institutions in 46 countries, has reconsidered its December, 1998 promise to the U.N. to publish its country-by-country Y2K-readiness ratings. The problem: A peek at the preliminary list has convinced some group members that its release could cause massive capital flight from some developing countries.

Big U.S. companies are not sugar-coating the problem. According to Sun Microsystems CEO Scott G. McNealy, Asia is ''anywhere from 6 to 24 months behind'' in fixing the Y2K problem—one he says could lead to shortages of core computers and disk drives early next year. Unresolved, says Guy Rabbat, corporate vice-president for Y2K at Solectron Corp. in San Jose, Calif., the problem could lead to price hikes and costly delivery delays.

Thanks to federal legislation passed last fall allowing companies to share Y2K data to speed fixes, Sun and other tech companies, including Cisco Systems, Dell Computer, Hewlett-Packard, IBM, Intel, and Motorola, are teaming up to put pressure on the suppliers they judge to be least Y2K-ready. Their new High-Technology Consortium on Year 2000 and Beyond is building a private database of suppliers of everything from disk drives to computer-mouse housings. He says the group will offer technical help to laggard firms—partly to show good faith if the industry is challenged later in court. But ''if a vendor's not up to speed by April or May,'' Rabbat says ''it's serious crunch time.''

Warnings. Other industries are following suit. Through the Automotive Industry Action Group, GM and other carmakers have set Mar. 31 deadlines for vendors to become Y2K-compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts. Other companies are sending a warning to laggards—and shifting business to the techsavvy. ''Y2K can be a great opportunity to clean up and modernize the supply chain,'' says Roland S. Boreham, Jr., chairman of the board of Baldor Electric Co, in Fort Smith, Ark.

In Washington, Senators Christopher S. Bond (R-Mo.) and Robert F. Bennett (R-Utah) have introduced separate bills to make it easier for small companies like Davis' to get loans and stay in business. And the World Bank has shelled out $72 million in loans and grants to Y2K-stressed nations, including Argentina and Sri Lanka. But it may be too little too late: AT&T alone has spent $900 million fixing its systems.

Davis, for one, is not ready to quit. ''I've survived tornadoes, windstorms, and drought,'' he says. ''We'll be damaged, yes, but we'll survive.'' Sadly, not everyone will be able to make that claim.

Mr. HOLLINGS. Through the Automotive Industry Action Group, GM and other carmakers have set a March 31 deadline for vendors to become Y2K compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts. Other companies are sending warnings to laggards and shifting business, so the text-savvy Y2K can be a great opportunity to clean up and modernize the supply system.

The market is working. We pointed that out. In a report by none other than Bill Gates at the World Economic Forum, they believe the millennium bug, aside from some possible glitches in delivery and supply, may pose only modest problems. Mr. Gates talked about it not being a real problem.

I ask unanimous consent to have printed in the RECORD an article from the New York Times, dated April 12, entitled ''Lawsuits Related to Y2K Problem Start Trickling Into the Courts.''

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

[From the New York Times, Apr. 12, 1999]

LAWSUITS RELATED TO Y2K PROBLEM START TRICKLING INTO THE COURTS

(By Barnaby J. Feder)

A trickle of new lawsuits in recent months is expanding the legal landscape of the Year 2000 computer problem. But so far, the cases offer little support for the dire predictions that courts will be choked by litigation over Y2K, as the problem is known.

Some major equipment vendors, including IBM, AT&T and Lucent Technologies Inc., for example, have joined the ranks of those being sued for not forewarning customers that equipment they sold in recent years cannot handle Year 2000 dates and for not supplying free upgrades.

A California suit claims that Circuit City Stores Inc., CompUSA Inc. and other mass-market retailers violated that state's unfair business practices law by not warning customers about Year 2000 problems in computers and other equipment they sold. And an Alabama lawyer sued the state of Alabama on behalf of two welfare recipients, asking that the state be ordered to set aside money to upgrade its computer systems to ensure that benefits will be delivered without interruption.

Despite such skirmishes, though, which lawyers say only offer hints of the wide variety of cases yet to come, there is no sign yet of the kind of high-stakes damage suits that some have projected could overwhelm courts with $1 trillion in claims.

In fact, while Congress and many state legislatures are suddenly awash in proposed laws meant to prevent such a tidal wave, many lawyers actively involved with Year 2000 issues now question just how big the litigation threat really is.

''There was more reason to be alarmed a year ago,'' said Wynne Carvill, a partner at Thelen, Reid & Priest in San Francisco, one of the first law firms to devote major resources to Year 2000. ''People are finding things to fix but not many that would shut them down.''

The work and the litigation stems from the practice in older computers and software programs of using two digits to denote the year in a date; some mistakenly read next year's ''00'' as meaning 1900, and others do not recognize it as a valid number.

Somewhere between 50 and 80 cases linked to the Year 2000 problem have been filed so far, according to various estimates. The vast majority focus on whether hardware and software vendors are obligated to pay for fixing or replacing equipment and programs that malfunction when they encounter Year 2000 dates.

When such cases involve consumer products, a key issue has been whether lawsuits could be filed before any malfunctions have actually occurred. Plaintiff's lawyers have likened the situation to a car known to have a safety hazard; Detroit would be expected to take the initiative, send out recall notices to car owners and pay for the fix before an accident occurred, they say.

But in the major rulings so far, courts in California and New York have concluded that the law in those states does not treat the fast-changing, low-cost world of consumer software like cars.

Actions against Intuit Inc., the manufacturer of Quicken, a popular financial package, have been dismissed because consumers were unable to demonstrate that they had already been damaged.

Intuit has promised to make free software patches available before next Jan. 1, but is fighting efforts by plaintiffs' lawyers in California to force the company to compensuate consumers who dealt with the problem by purchasing upgrades before learning of the free fix.

The case against mass retailers, filed in Contra Costa County, Calif., in January, argues that the stores violated a state consumer protection statute by selling a wide array of software, including Windows 98 and certain versions of Quicken, Microsoft Works, Peachtree Accounting and Norton Anti-Virus, without warning customers about potential Year 2000 problems or supplying free patches from the manufacturers.

In cases where consumers were told of software defects, the complaint contends, they were sometimes told that the least expensive solution was to buy an upgrade from the store, even though the manufacturers had a stated policy of providing free patches.

The complaint also cites hardware with Year 2000 defects that was sold in the stores without warning, including equipment from Compaq Computer, NEC and Toshiba from 1995 to 1997. it also contends that as recently as this year, the stores have been packaging a wide variety of new computers with software that contains Year 2000 defects.

The stores have moved to dismiss the suit, arguing among other things that failing to warn consumers about defects does not amount to misleading them under the California law.

Many other cases have involved business software, services and computer equipment, but lawyers describe them largely as ''plain vanilla'' contract disputes.

The first case to result in a settlement paying damages to a plaintiff involved Produce Palace International, a Warren, MI., grocery that had complained that its business had been repeatedly interrupted by the failure of a computerized checkout scanning system to read credit cards expiring in the Year 2000. In the settlement, reached last November, the vendor, TEC America Inc., an Atlanta-based unit of the TEC Corp. of Japan, paid Produce Palace $250,000.

Several software manufacturers have settled suits on terms that provide free upgrades and payments to the lawyers that sued them. Last month, for example, a magistrate for U.S. District Court in New Jersey approved a settlement that provided up to $46 million in upgrades and $600,000 in cash to doctors who had purchased billing management software from Medical Manager Corp.

That is not the end of Year 2000 problems for Medical Manager, which is based in Tampa, FL. It still has to contend with a shareholder lawsuit filed in U.S. District Court in Florida last fall after its stock tumbled on the news of the New Jersey class-action suit. Several other shareholder suits have been filed against other software companies based on claims linking Year 2000 problems to stock declines.

In general, defendants have fared well in Year 2000 business software cases. Courts have strictly interpreted contracts and licenses to prevent plaintiffs from collecting on claims for upgrades or services unless they were specifically called for in the contract.

In December, an Ohio court threw out a potential class-action claim against Macola Inc., a software company, contending that early versions of its accounting program with Year 2000 defects should be upgraded for free because the company advertised it as ''software you'll never outgrow.''

The court ruled that anyone actually licensing the software accepted the explicit and very limited terms of the warranty as all that Macola had legally promised. That decision has been appealed.

One closely watched case involves the Cincinnati Insurance Co.'s request that a U.S. District Court in Cedar Rapids, Iowa, declare that the company is not obligated to defend or reimburse a client that has been sued on an accusation that it failed to provide hospital management software free of Year 2000 defects.

It is the first case to raise the question of whether insurance companies may be ultimately liable for much of the hundreds of billions spent on Year 2000 repairs, if not damages from breakdowns in the future. But lawyers say the actual insurance policy at issue may not cover the crucial years in the underlying suit against Cincinnati Insurance's client. That wrinkle, they say, could let the insurer off the hook without the court's shedding light on the larger issues.

''The results in the initial cases have dampened the fervor somewhat,'' said Charles Kerr, a New York lawyer who heads the Year 2000 section of the Practicing Law Institute, a legal education group. ''Legislation could change the landscape dramatically.''

Many lawyers say the momentum for some kind of action in Congress looks unstoppable. Seven states have already barred Year 2000 damage suits against themselves and similar proposals were filed in 30 other legislatures this year. Some states have already passed bills limiting private lawsuits as well. A recent example, signed last Tuesday in Colorado, gives businesses that attempt to address their Year 2000 risks stronger defenses against lawsuits; it also bans punitive damages as a remedy in such litigation.

Mr. HOLLINGS. I ask unanimous consent to have printed in the RECORD an article entitled ''Liability for the Millennium Bug'' from the New York Times, dated April 26.

The being no objection, the article was ordered to be printed in the RECORD, as follows:

[The New York Times, Apr. 26, 1999]

LIABILITY FOR THE MILLENNIUM BUG

With 249 days to go until the year 2000, many experts are alarmed and others are only mildly concerned about the danger of computer chaos posed by the so-called millennium bug. One prediction seems safe, however. Whatever the damage, there will be lots of lawsuits. In anticipation, some in Congress, mainly Republicans, want legislation to limit the right of people and businesses to sue in the event of a Y2K disaster. Their reasoning is that the important thing is to get people to fix their computer problems now rather than wait and sue. But the legislation is misguided and potentially unfair. It could even lessen the incentive for corrective action.

As most people know by now, the millennium bug arises from the fact that chips and software have been coded to mark the years with only two digits, so that when the date on computers moves over to the year 2000, the computers may go haywire when they register 1900 instead. A recent survey by a Senate Special Committee on the Year 2000 found that while many Government agencies and larger companies have taken action to correct the bug, 50 percent of the country's small- and medium-size businesses have not. The failure is especially worrisome in the health sector, with many hospitals and 90 percent of doctors' offices unprepared.

If hospitals, supermarkets, utilities and small businesses are forced to shut down because of computer problems, lawsuits against computer and software manufacturers will certainly result. Some experts estimate that liability could reach $1 trillion. Legislation to protect potential defendants, sponsored by Senator John McCain of Arizona, is expected to be voted on in the Senate this week. The bill would impose caps on punitive damages and tighter standards of proof of liability, and provide for a 90-day waiting period in which the sued company would be allowed to cure the problem. The bills would also suspend ''joint and several liability,'' under which wealthy defendants, like chip or software companies, could have to pay the full cost of damages if other parties could not be sued because they were overseas or unable to pay.

These provisions would curtail or even suspend a basic protection, the right to sue, that consumers and businesses have long enjoyed. The White House and the Congressional Democratic leadership are right to view such a step as unnecessary. Existing liability laws offer plenty of protections for businesses that might be sued. Proponents of the legislation argue, for example, that companies that make good-faith efforts to alert customers of Y2K problems should not be punished if the customers ignore the warning, or if the companies bear only a small portion of the responsibility. But state liability laws already allow for these defenses. The larger worry is that the prospect of immunity could dissuade equipment and software makers from making the effort to correct the millennium-bug problem.

It might make sense to have a 90-day ''cooling off'' period for affected businesses to get help to fix as many problems as possible without being able to file lawsuits. But it would be catastrophic if stores, small businesses and vital organizations like hospitals and utilities were shut down for 90 days. They should have the same recourse to relief from the parties that supplied them with faulty goods that any other customer has.

Government can certainly help by providing loans, subsidies and expertise to computer users and, perhaps, by setting up special courts to adjudicate claims. Congress can also clarify the liability of companies once it becomes clear how widespread the problem really is. But before the new year, the Government should not use the millennium bug to overturn longstanding liability practices. A potential crisis is no time to abrogate legal rights.

Mr. HOLLINGS. This article says a potential crisis is no time to abrogate legal rights. They come out in opposition of this particular legislation.

My colleague from Oregon says that has all been cleaned up by his particular amendment. Not at all. I ask unanimous consent an article from the Oregonian, dated March 22, be printed in the RECORD.

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

Y2K ESCAPE CLAUSE

(By Paul Gillin)

Faced with an almost certain flood of year 2000-related litigation, industry groups are banding together to try to limit their liability. Users should oppose those efforts with all their power. This legal debate is tricky because the combatants are equally opportunistic and unpleasant. On one side is the Information Technology Association of America, in alliance with various other industrial groups. They have proposed a law that, among other things, would limit punitive damages in year 2000 cases to triple damages and give defendants 90 days to fix a problem before being named in a suit. On the other side are lawyers' associations that anticipate a bonanza of fees, even if the year 2000 problem doesn't turn out to be that serious.

Hard as it is to find a good guy, you have to give the lawyers their due. Year 2000 may be their opportunity, but it isn't their problem.

The problem belongs—hook, line and sinker—to the vendors that capriciously ignored warnings from as long ago as the late '70s and that now are trying to buy a free pass from Congress. It's appalling to look at the list of recent software products that have year 2000 problems. It has been five years since year 2000 awareness washed over the computer industry, which makes it difficult to believe that products such as Office 97 aren't fully compliant.

The industry players behind this legislation package are the same ones that helped push through the Trojan horse called the Year 2000 Information and Readiness Disclosure Act last October. That bill provides vendors with a cloak of legal protection based on past statements about efforts to correct the problem. The industry players have tried to color the bills as reasonable hedges against frivolous lawsuits that will sap the legal system post-new year. Yet defendants in personal injury and class-action suits enjoy no such protections.

Vendors have had plenty of time to prepare for 2000. The fact that some were more preoccupied with quarterly earnings and stock options than in protecting their customers is no excuse for giving them a get-out-of-jail-free card now.

Mr. HOLLINGS. One line in the article reads,

Sponsoring GOP Senators say this bill would provide incentives for solving technical issues before failures occur, but in fact it does just the opposite. It eliminates the threat of lawsuits as a negative incentive for companies that might otherwise neglect their responsibilities in addressing their Y2K problems or reimbursing consumers for their losses. Federal legislation that overrides

State courts is a serious infringement on States' rights that merits only rare application, while a massive computer meltdown meets that criteria. Congress passed the tightly-crafted bipartisan bill to help companies work through the problem.

As you can see from the Business Week article, they worked through that problem.

Mr. President, there was some interesting testimony that we received before our committee a few weeks back from a Dr. Robert Courtney. It is talking about the cases.

Incidentally, I ask unanimous consent to print in the RECORD a letter of yesterday from the Honorable Ronald N. Weikers.

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

PHILADELPHIA, PA, *April 26, 1999.*

Re Y2K Legislation Unnecessary.

Mr. MOSES BOYD,

Office of the Honorable Fritz Hollings, Washington, DC.

DEAR MR. BOYD: Thank you for speaking with me earlier. Thirteen (13) of the 44 Y2K lawsuits that have been filed to date have been dismissed entirely or almost entirely. Twelve (12) cases have been settled for moderate sums or for no money. The legal system is weeding out frivolous claims, and Y2K legislation is therefore unnecessary.

Thirty-five (35) cases have been filed on behalf of corporate entities, such as health care providers, retailers, manufacturers, service providers and more. Nine (9) cases have been filed on behalf of individuals. This trend will continue. Thus, the same corporations that are lobbying for Y2K legislation may be limiting their own rights to recover remediation costs or damages.

I have studied the Y2K problem carefully from the legal perspective, and have written a book entitled ''Litigating Year 2000 Cases'', which will be published by West Group in June. I frequently write and speak about this subject. I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation. Feel free to call me, should you have any questions. Thank you very much.

Very truly yours,

RONALD N. WEIKERS.

Mr. HOLLINGS. This letter is addressed to my staff, Mr. Moses Boyd. It says:

Dear Mr. Boyd: Thank you for speaking with me earlier. Thirteen (13) of the 44 Y2K lawsuits that have been filed to date have been dismissed entirely or almost entirely. Twelve (12) cases have been settled for moderate sums or for no money. The legal system is weeding out frivolous claims, and Y2K legislation is therefore unnecessary.

Thirty-five (35) cases have been filed on behalf of corporate entities, such as health care providers, retailers, manufacturers, service providers, and more. Nine (9) cases have been filed on behalf of individuals. This trend will continue. Thus, the same corporations that are lobbying for Y2K legislation may be limiting their own rights to recover remediation costs or damages.

I have studied the Y2K problem carefully from the legal perspective, and have written a book entitled ''Litigating Year 2000 Cases,'' which will be published by West Group in June. I frequently write and speak about the subject. I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation. Feel free to call me, should you have any questions. Thank you very much. Very truly yours, Ronald N. Weikers, Attorney at Law, Philadelphia, Pennsylvania.

Mr. President, there are things in here to emphasize. One is: ''I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation.'' And I emphasize that his book will be published by the West Group in June. The month after next, in about 5 or 6 weeks, this book will be coming out. I can tell you as a practicing attorney that the West Group is not going to publish any partisan political book or edition. It would not sell to the lawyers on both sides. We like to look up and find the authorities, not political arguments. The West Group is in that particular field professionally of documenting in a research fashion the matter of Y2K cases in this particular interest. I can tell you right now they have pretty good evidence about what has been occurring.

What has been occurring is best evidenced by the testimony of Dr. Robert Courtney before the Committee on Commerce, Science, and Transportation on February 9 on S. 96, the Y2K Act. I ask unanimous consent that his testimony be printed in the RECORD.

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

TESTIMONY OF DR. ROBERT COURTNEY AT THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION HEARING ON S. 96, THE Y2K ACT, FEBRUARY 9, 1999

Good morning, my name is Bob Courtney, and I am a doctor from Atlantic County, New Jersey. It is an honor for me to be here this morning, and I thank you for inviting me to offer testimony on the Y2K issue.

As a way of background, I am an ob/gyn and a solo practitioner. I do not have an office manager. It's just my Registered Nurse, Diane Hurff, and me, taking care of my 2000 patients.

These days, it is getting tougher and tougher for those of us who provide traditional, personalized medical services. The paperwork required by the government on one hand, and by insurance companies on the other is forcing me to spend fewer hours doing what I do best—taking care of patients and delivering their babies.

But it was a Y2K problem which recently posed a serious threat to my practice, and that is why I am here this morning.

As a matter of clarification, although I am a doctor, I am not here to speak on behalf of the American Medical Association. Although I am also a small businessman, I am not here to speak on behalf of the Chamber of Commerce. I cannot tell you who these organizations feel about the legislation before the Committee. But I can tell you how it would have affected my practice and my business.

I am one of the lucky ones. While a potential Y2K failure impacted my practice, the computer vendor that sold me the software system and I were able to reach an out-of-court settlement which was fair and expedient. From what my attorney, Harris Pogust, who is here with me today tells me, I doubt I would have been so lucky had this legislation been in effect.

In 1987, I purchased a computer system from Medical Manager, one of the leading medical systems providers in the country. I used the Medical Manager system for tracking surgery, scheduling due dates and billing. The system worked well for me for ten years, until the computer finally crashed from lack of sufficient memory.

In 1996, I replaced my old system with a new, state of the art pentium system from Medical Manager for $13,000. This was a huge investment for a practice of my size.

I remember joking with the computer salesman at the time that this was a big purchase for me, and that I was counting on this system to last as long as the last one did.

I remember the salesman telling me that he was sure that I would get at least ten years out of it. He showed me a list of how many of his local customers had used the Medical Manager for longer than ten years.

And, the salesman pointed me to this advertising brochure put out by Medical Manager. It states that their product would provide doctors with ''the ability to manage [their] future.''

In truth, I never asked the salesman about whether the new system that I was buying was Y2K compliant. I honestly did not know even to ask the question. After all, I deliver babies. I don't program computers. Based on the salesman's statements and the brochure, I assumed the system would work long into the future. After all, he had promised me over ten years' use, which would take me to 2006.

But just one year later, I received a form letter from Medical Manager telling me that the system I had just purchased had a Y2K problem. It was a problem that would make it impossible for me to schedule due dates or handle my administrative tasks—as early as 1999.

Medical Manager also offered to fix the problem that they had created—but for $25,000.

I was outraged, as I suspect anyone sitting around this table would be. The original system had cost me $15,000 when I purchased it in 1986. The upgraded system cost me $13,000 in 1996. Now, a year later, they wanted another $25,000. They knew when they sold me the $13,000 system that it would need this upgrade—but of course, they didn't tell me.

I wrote back to the company that I fully expected them to fix the problem for free, since I had just bought the system from them and I had been promised that it would work long into the future.

The company ignored my request, however, and several months later, sent me an estimate for fixing the problem—again, for over $25,000.

At this point, I was faced with a truly difficult dilemma. My practice depends on the use of a computer system to track my patients' due dates, surgeries and billings—but I did not have $25,000 to pay for an upgrade. Additionally, I was appalled at the thought of having to pay Medical Manager for a problem that they had created and should have anticipated. If I had to pay that $25,000, that would force me to drop many of my indigent patients that I now treat for free.

Since Medical Manager insisted upon charging me for the new system, and because my one year-old system was no longer dependable, I retained an attorney and sued Medical Manager to fix or replace my computer system at their cost.

Within two months of filing our action, Medical Manager offered to settle by providing all customers who bought a non-Y2K compliant system from them after 1990 with a free upgrade that makes their systems Y2K compliant by utilizing a software ''patch.''

This settlement gave me what I wanted from Medical Manager—the ability to use my computer system as it was meant to be used. To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought

my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

Additionally, even Medical Manager has stated that it was pleased with the settlement. According to the Medical Manager president who was quoted in the American Medical News, ''[f]or both our users and our shareholders, the best thing was to provide a Y2K solution. This is a win for our users and a win for us.'' [pick up article and display to Senators]

I simply do not see why the rights of doctors and other small businesses to recover from a company such as Medical Manager should be limited—which is what I understand this bill would do. Indeed, my attorney tells me that if this legislation had been in effect when I bought my system, Medical Manager would not have settled. I would still be in litigation, and might have lost my practice.

As an aside, at roughly the same time I bought the non-compliant system from Medical Manager, I purchased a sonogram machine from ADR. That equipment was Y2K compliant. The Salesman never told me it was compliant. It was simply built to last. Why should we be protecting the vendors or manufacturers of defective products rather than rewarding the responsible ones?

Also, as a doctor, I also hope the Committee will look into the implications of this legislation for both patient health and potential medical malpractice suits. This is an issue that many doctors have asked me about, and that generates considerable concern in the medical community.

In sum, I do appreciate this opportunity to share my experiences with the Committee. I guess the main message I would like to leave you with is that Y2K problems affect the lives of everyday people like myself, but the current legal system works. Changing the equation now could give companies like Medical Manager an incentive to undertake prolonged litigation strategies rather than agree to speedy and fair out-of-court settlements.

I became a doctor, and a sole practitioner, because I love delivering babies. I give each of my patients my home phone number. I am part of their lives. This Y2K problem could have forced me to give all that up. It is only because of my lawyer, and the court system, that I can continue to be the doctor that I have been. This bill, and others like it, would take that away from me. Please don't do that. Leave the system as it is. The court worked for me—and it will work for others.

Thank you.

Mr. HOLLINGS. Mr. President, he is a doctor from Atlantic County, NJ. I will not read it in its entirety, but he said:

. . . But it was a Y2K problem which recently posed a serious threat to my practice, and that is why I am here this morning.

. . . Although I am a doctor, I am not here to speak on behalf of the [AMA]. Although I am a small businessman, I am not here to speak on behalf of the Chamber of Commerce. I cannot tell you how these organizations feel. . . . But I can tell you how it would have affected my business.

I am one of the lucky ones. While a potential Y2K failure impacted my practice, the computer vendor that sold me the software system and I were able to reach an out-of-court settlement which was fair and expedient.

. . . In 1987, I purchased a computer system from Medical Manager, one of the leading medical systems providers in the country. I used the Medical Manager system for tracking surgery, scheduling due dates and billing.

Incidentally, that is very important for a doctor. If he gets sued for malpractice, it might be based on his computer and not on his professional treatment.

I go on to read:

. . . The system worked well for me for ten years, until the computer finally crashed from lack of sufficient memory.

In 1996, I replaced my old system with a new, state of the art pentium system from Medical Manager for $13,000. This was a huge investment for a practice my size.

I remember joking with the computer salesman at the time that this was a big purchase for me, and I was counting on this system to last as long as the last one did—

which was over 10 years—

I remember the salesman telling me that he was sure that I would get at least ten years out of it. He showed me a list of how many of his local customers had used the Medical Manager for longer than ten years.

Jumping down:

. . . one year later, I received a form letter from Medical Manager telling me the system I had just purchased had a Y2K problem. It was a problem that would make it impossible for me to schedule due dates or handle my administrative tasks—as early as 1999.

Medical Manager also offered to fix the problem that they had created—but for $25,000.

He only paid $13,000.

I was outraged, as I suspect anyone sitting around this table would be. The original system had cost me $15,000 when I purchased it in 1986. The upgraded system cost me $13,000 in 1996. Now, a year later, they wanted another $25,000. They knew when they sold me the $13,000 system that it would need this upgrade—but, of course, they didn't tell me.

The company ignored my request, however, and several months later, sent me an estimate for fixing the problem—again, for $25,000.

But he said he didn't have the $25,000.

. . . I was appalled at the thought of having to pay Medical Manager for a problem that they had created and should have anticipated.

. . . I had to pay that $25,000. . .[so] I retained an attorney and sued Medical Manager [under the present law].

. . . To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

I can go down the letter, Mr. President. The point is that he settled the case that was for some $1,455,000 for 17,000 doctors.

I ask unanimous consent to print in the RECORD a note from Jack Emery of the American Medical Association.

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

AMERICAN MEDICAL ASSOCIATION

Memo to: Washington Representatives, National Medical Specialty Societies
From: Jack Emery 202/789–7414
Date: March 4, 1999
Subject: Legislation Addressing Y2K Liability

Several specialties have called to ask about the American Medical Association's (AMA) position on H.R. 455 and S. 461. The AMA is opposed to this legislation which would limit Y2K liability. I've attached a copy of testimony the AMA presented to the Ways and Means Committee last week on Y2K. I call your attention to page nine of that testimony where we address our specific concerns with this type of legislation.

We understand that Barnes Kaufman, a PR firm, is attempting to schedule a meeting on this issue later this week to mount opposition to such legislation. Someone from this office will attend the meeting whenever it is scheduled.

Mr. HOLLINGS. Mr. President, this is dated March 4, 1999:

Several specialities have called to ask about the American Medical Association's (AMA) position on H.R. 455 and S. 461. The AMA is opposed to this legislation which would limit Y2K liability.

I've attached a copy of testimony the AMA presented to the Ways and Means Committee last week on Y2K. I call your attention to page nine of that testimony where we address our specific concerns with this type of legislation.

I ask unanimous consent to have printed in the RECORD that testimony which was prepared before the committee on the House side.

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

STATEMENT OF DONALD J. PALMISANO, M.D., J.D., MEMBER, BOARD OF DIRECTORS, AND CHAIR, DEVELOPMENT COMMITTEE, NATIONAL PATIENT SAFETY FOUNDATION, AND MEMBER, BOARD OF TRUSTEES, AMERICAN MEDICAL ASSOCIATION

(Testimony Before the House Committee on Ways and Means—Hearing on the Year 2000 Conversion Efforts and Implications for Beneficiaries and Taxpayers, February 24, 1999)

Mr. Chairman and members of the Committee, my name is Donald J. Palmisano, MD, JD. I am a member of the Board of Trustees of the American Medical Association (AMA), a Board of Directors member of the National Patient Safety Foundation (NPSF) and the Chair of the Development Committee for the same foundation. I also practice vascular and general surgery in New Orleans, Louisiana. On behalf of the three hundred thousands physician and medical student members of the AMA, I appreciate the chance to comment on the issue of year 2000 conversion efforts and the implications of the year 2000 problem for health care beneficiaries.

INTRODUCTION

The year 2000 problem has arisen because many computer systems, software and embedded microchips cannot properly process date information. These devices and software can only read the last two digits of the ''year'' field of data; the first two digits are presumer to be ''19.'' Consequently, when data requires the entry of a date in the year 2000 or later, these systems, devices and software will be incapable of correctly processing the data.

Currently, nearly all industries are in some manner dependent on information technology, and the medical industry is no exception. As technology advances and its contributions mount, our dependency and consequent vulnerability become more and more evident. The year 2000 problem is revealing to us that vulnerability.

By the nature of its work, the medical industry relies tremendously on technology, on computer sytems—both hardware and software, as well as medical devices that have embedded microchips. A survey conducted last year by the AMA found that almost 90% of the nation's physicians are

using computers in their practices, and 40% are using them to log patient histories.[1] These numbers appear to be growing as physicians seek to increase efficiency and effectiveness in their practices and when treating their patients.

Virtually every aspect of the medical profession depends in some way on these systems—for treating patients, handling administrative office functions, and conducting transactions. For some industries, software glitches or even system failures, can, at best, cause inconvenience, and at worst, cripple the business. In medicine, those same software or systems malfunctions can, much more seriously, cause patient injuries and deaths.

PATIENT CARE

Assessing the current level of risk attributable specifically to the year 2000 problem within the patient care setting remains problematic. We do know, however, that the risk is present and it is real. Consider for a minute what would occur if a monitor failed to sound an alarm when a patient's heart stopped beating. Or if a respirator delivered ''unscheduled breaths'' to a respirator-dependent patient. Or even if a digital display were to attribute the name of one patient to medical data from another patient. Are these scenarios hypothetical, based on conjecture? No. Software problems have caused each one of these medical devices to malfunction with potentially fatal consequences.[2] The potential danger is present.

The risk of patient injury is also real. Since 1986, the FDA has received more than 450 reports identifying software defects—not related to the year 2000—in medical devices. Consider one instance—when software error caused a radiation machine to deliver excessive doses to six cancer patients; for three of them the software error was fatal.[3] We can anticipate that, left unresolved, medical device software malfunctions due to the millennium bug would be prevalent and could be serious.

Medical device manufacturers must immediately disclose to the public whether their products are Y2K compliant. Physicians and other health care providers do not have the expertise or resources to determine reliably whether the medical equipment they possess will function properly in the year 2000. Only the manufacturers have the necessary in-depth knowledge of the devices they have sold.

Nevertheless, medical device manufacturers have not always been willing to assist end-users in determining whether their products are year 2000 compliant. Last year, the Acting Commissioner of the FDA, Dr. Michael A. Friedman, testified before the U.S. Senate Special Committee on the Year 2000 Problem that the FDA estimated that only approximately 500 of the 2,700 manufacturers of potentially problematic equipment had even responded to inquiries for information. Even when vendors did respond, their responses frequently were not helpful. The Department of Veterans Affairs reported last year that of more than 1,600 medical device manufacturers it had previously contacted, 233 manufacturers did not even reply and another 187 vendors said they were not responsible for alterations because they had merged, were purchased by another company, or were no longer in business. One hundred two companies reported a total of 673 models that were not compliant but should be repaired or updated this year.[4] Since July 1998, however, representatives of the manufacturers industry have met with the Department of Veterans Affairs, the FDA, the AMA and others to discuss obstacles to compliance and have promised to do more for the health care industry.

ADMINISTRATIVE

Many physicians and medical centers are also increasingly relying on information systems for conducting medical transactions, such as communicating referrals and electronically transmitting prescriptions, as well as maintaining medical records. Many physician and medical center networks have even begun creating large clinical data repositories and master person indices to maintain, consolidate and manipulate clinical information, to increase efficiency and ultimately to improve patient care. If these information systems malfunction, critical data may be lost, or worse—unintentionally and incorrectly modified. Even an inability to access critical data when needed can seriously jeopardize patient safety.

Other administrative aspects of the Y2K problem involve Medicare coding and billing transactions. In the middle of last year, HCFA issued instructions through its contractors informing physicians and other health care professionals that electronic and paper claims would have to meet Y2K compliance criteria by October 1, 1998. In September 1998, however, HCFA directed Medicare carriers and fiscal intermediaries not to reject or ''return as unprocessable'' any electronic media claims for non-Y2K compliance until further notice. That notice came last month. In January 1999, HCFA instructed both carriers and fiscal intermediaries to inform health care providers, including physicians, and suppliers that claims received on or after April 5, 1999, which are not Y2K compliant will be rejected and returned as unprocessable.

We understand why HCFA is taking this action at this time. We genuinely hope, however, that HCFA, to the extent possible, will assist physicians and other health care professionals who have been unable to achieve Y2K compliance by April 5. We have been informed that HCFA has decided to grant physicians additional time, if necessary, for reasonable good faith exceptions, and we strongly support that decision. Physicians are genuinely trying to comply with HCFA's Y2K directives. In fact, HCFA has already represented that 95% of the electronic bills being submitted by physicians and other Medicare Part B providers already meet HCFA's Y2K filing criteria. HCFA must not withhold reimbursement to, in any sense, punish those relatively few health care professionals who have lacked the necessary resources to meet HCFA's Y2K criteria. Instead, physicians and HCFA need to continue to work together to make sure that their respective data processing systems are functioning properly for the orderly and timely processing of Medicare claims data.

We also hope that HCFA's January 1999 instructions are not creating a double standard. According to the instructions. HCFA will reject non-Y2K compliant claims from physicians, other health care providers and suppliers. HCFA however has failed to state publicly whether Medicare contractors are under the same obligation to meet the April 5th deadline. Consequently, after April 5th non-compliant Medicare contractors will likely continue to receive reimbursement from HCFA while physicians, other health care providers, and suppliers that file claims not meeting HCFA's Y2K criteria will have their claims rejected. this inequity must be corrected.

Medicare administrative issues are of critical importance to patients, physicians, and other health care professionals. In one scenario that took place in my home state of Louisiana, Arkansas Blue Cross & Blue Shield, the Medicare claims processor for Louisiana, implemented a new computer system—intended to be Y2K compliant—to handle physicians' Medicare claims. Although physicians were warned in advance that the implementation might result in payment delays of a couple of weeks, implementation problems resulted in significantly longer delays. For many physicians, this became a real crisis. Physicians who were treating significant numbers of Medicare patients immediately felt significant financial pressure and had to scramble to cover payroll and purchase necessary supplies.[5]

We are encouraging physicians to address the myriad challenges the Y2K dilemma poses for their patients and their practices, which include claims submission requirements. The public remains concerned however that the federal government may not achieve Y2K compliance before critical deadlines. An Office of Management and Budget report issued on December 8, 1998, disclosed that the Department of Health and Human Services is only 49% Y2K compliant.[6] In a meeting last week, though, HCFA representatives stated that HCFA has made significant progress towards Y2K compliance, specifically on mission critical systems. In any case, we believe that HCFA should lead by example and have its systems in compliance as quickly as possible to allow for adequate parallel testing with physician claims submission software and other health care professionals. Such testing would also allow for further systems refinements, if necessary.

REIMBURSEMENT AND IMPLEMENTATION OF BBA

To shore up its operations, HCFA has stated that it will concentrate on fixing its internal computers and systems. As a result, it has decided not to implement some changes required under the Balanced Budget Act (BBA) of 1997, and it plans to postpone physicians' payment updates from January 1, 2000, to about April 1, 2000.

In the AMA's view, the Y2K problem is and has been an identifiable and solvable problem. Society has known for many years that the date problem was coming and that individuals and institutions needed to take remedial steps to address the problem. There is no justification for creating a situation where physicians, hospitals and other providers now are being asked to pay for government's mistakes by accepting a delay in their year 2000 payment updates.

HCFA has indicated to the AMA that the delay in making the payment updates is not being done to save money for the Medicare Trust Funds. In addition, the agency has said that the eventual payment updates will be conducted in such a way as to fairly reimburse physicians for the payment update they should have received. In other words, the updates will be adjusted so that total expenditures in the year 2000 on physician services are no different than if the updates had occurred on January 1.

We are pleased that HCFA has indicated a willingness to work with us on this issue. But we have grave concerns about the agency's ability to devise a solution that is equitable and acceptable to all physicians.

Also, as it turns out, the year 2000 is a critical year for physicians because several important BBA changes are scheduled to be made in the resource-based relative value scale (RMRVS) that Medicare uses to determine physician payments. This relative value scale is comprised of three components: work, practice expense, and malpractice expense. Two of the three—practice expense and malpractice—are due to undergo Congressionally-mandated modifications in the year 2000.

In general, the practice expense changes will have different effects on the various specialities. Malpractice changes, to some modest degree, would offset the practice expense

See footnotes end of article.

redistributions. To now delay one or both of these changes will have different consequences for different medical specialties and could put HCFA at the eye of storm that might have been avoided with proper preparation.

To make matters worse, we also are concerned that delays in Medicare's reimbursement updates could have consequences far beyond the Medicare program. Many private insurers and state Medicaid agencies base their fee-for-service payment systems on Medicare's RBRVS. Delays in reimbursement updates caused by HCFA may very well lead other non-Federal payers to follow Medicare's lead, resulting in a much broader than expected impact on physicians.

CURRENT LEVEL OF PREPAREDNESS

Assessing the status of the year 2000 problem is difficult not only because the inventory of the information systems and equipment that will be affected is far from complete, but also because the consequences of noncompliance for each system remain unclear. Nevertheless, if the studies are correct, malfunctions in noncompliant systems will occur and equipment failures can surely be anticipated. The analyses and surveys that have been conducted present a rather bleak picture for the health care industry in general, and physicians' practices in particular.

The Odin Group, a health care information technology research and advisory group, for instance, found from a survey of 250 health care managers that many health care companies by the second half of last year still had not developed Y2K contingency plans.[7] The GartnerGroup has similarly concluded, based on its surveys and studies, that the year 2000 problem's ''effect on health care will be particularly traumatic . . . [l]ives and health will be at increased risk. Medical devices may cease to function.''[8] In its report, it noted that most hospitals have a few thousand medical devices with microcontroller chips, and larger hospital networks and integrated delivery systems have tens of thousands of devices.

Based on early testing, the GartnerGroup also found that although only 0.5–2.5 percent of medical devices have a year 2000 problem, approximately 5 percent of health care organizations will not locate all the noncompliant devices in time.[9] It determined further that most of these organizations do not have the resources or the expertise to test these devices properly and will have to rely on the device manufacturers for assistance.[10]

As a general assessment, the GartnerGroup concluded that based on a survey of 15,000 companies in 87 countries, the health care industry remains far behind other industries in its exposure to the year 2000 problem.[11] Within the health care industry, the subgroups which are the furthest behind and therefore at the highest risk are ''medical practices'' and ''in-home service providers.''[12] The GartnerGroup extrapolated that the costs associated with addressing the year 2000 problem for each practice group will range up to $1.5 million per group.[13]

REMEDIATION EFFORTS—AMA'S EFFORTS

We believe that through a united effort, the medical profession in concert with federal and state governments can dramatically reduce the potential for any adverse effects with the medical community resulting from the Y2K problem. For its part, the AMA has been devoting considerable resources to assist physicians and other health care providers in learning about and correcting the problem.

For nearly a year, the AMA has been educating physicians through two of its publications, AMNews and the Journal of the American Medical Association (JAMA). AMNews, which is a national news magazine widely distributed to physicians and medical students, has regularly featured articles over the last twelve months discussing the Y2K problem, patient safety concerns, reimbursement issues, Y2K legislation, and other related concerns. JAMA, one of the world's leading medical journals, will feature an article written by the Administrator of HCFA, explaining the importance for physicians to become Y2K compliant. The AMA, through these publications, hopes to raise the level of consciousness among physicians of the potential risks associated with the year 2000 for their practices and patients, and identify avenues for resolving some of the anticipated problems.

The AMA has also developed a national campaign entitled ''Moving Medicine Into the New Millennium: Meeting the Year 2000 Challenge,'' which incorporates a variety of educational seminars, assessment surveys, promotional information, and ongoing communication activities designed to help physicians understand and address the numerous complex issues related to the Y2K problem. The AMA is currently conducting a series of surveys to measure the medical profession's state of readiness, assess where problems exist, and identify what resources would best reduce any risk. The AMA already has begun mailing the surveys, and we anticipate receiving responses in the near future. The information we obtain from this survey will enable us to identify which segments of the medical profession are most in need of assistance, and through additional timely surveys, to appropriately tailor our efforts to the specific needs of physicians and their patients. The information will also allow us to more effectively assist our constituent organizations in responding to the precise needs of other physicians across the country.

One of the many seminar series the AMA sponsors is the ''Advanced Regional Response Seminars'' program. We are holding these seminars in various regions of the country and providing specific, case-study information along with practical recommendations for the participants. The seminars also provide tips and recommendations for dealing with vendors and explain various methods for obtaining beneficial resource information. Seminar participants receive a Y2K solutions manual, entitled ''The Year 2000 Problem: Guidelines for Protecting Your Patients and Practice.'' This seventy-five page manual, which is also available to hundreds of thousands of physicians across the country, offers a host of different solutions to Y2K problems that physicians will likely face. It raises physicians' awareness of the problem, year 2000 operational implications for physicians' practices, and identifies numerous resources to address the issue.

In addition, the AMA has opened a web site (URL: www.ama-assn.org) to provide the physician community additional assistance to better address the Y2K problem. The site serves as a central communications clearinghouse, providing up-to-date information about the millennium bug, as well as a special interactive section that permits physicians to post questions and recommended solutions for their specific Y2K problems. The site also incorporates links to other sites that provide additional resource information on the year 2000 problem.

On a related note, the AMA in early 1996 began forming the National Patient Safety Foundation or ''NPSF.'' Our goal was to build a proactive initiative to prevent avoidable injuries to patient in the health care system. In developing the NPSF, the AMA realized that physicians, acting alone, cannot always assure complete patient safety. In fact, the entire community of providers is accountable to our patients, and we all have a responsibility to work together to fashion a systems approach to identifying and managing risk. It was this realization that prompted the AMA to launch the NPSF as a separate organization, which in turn partnered with other health care organizations, health care leaders, research experts and consumer groups from throughout the health care sector.

One of these partnerships is the National Patient Safety Partnership (NPSP), which is a voluntary public-private partnership dedicated to reducing preventable adverse medical events and convened by the Department of Veterans Affairs. Other NPSP members include the American Hospital Association, the Joint Commission on Accreditation of Healthcare Organizations, the American Nurses Association, the Association of America Medical Colleges, the Institute for Healthcare Improvement, and the National Patient Safety Foundation at the AMA. The NPSP has made a concerted effort to increase awareness of the year 2000 hazards that patients relying on certain medical devices could face at the turn of the century.

RECOMMENDATIONS

As an initial step, we recommend that the Administration or Congress work closely with the AMA and other health care leaders to develop a uniform definition of ''compliant'' with regard to medical equipment. There needs to be clear and specific requirements that must be met before vendors are allowed to use the word ''compliant'' in association with their products. Because there is no current standard definition, it may mean different things to different vendors, leaving physicians with confusing, incorrect, or no data at all. Physicians should be able to spend their time caring for patients and not be required to spend their time trying to determine the year 2000 status of the numerous medical equipment vendors with whom they work.

We further suggest that both the public and private sectors encourage and facilitate health care practitioners in becoming more familiar with year 2000 issues and taking action to mitigate their risks. Greater efforts must be made in educating health care consumers about the issues concerning the year 2000, and how they can develop Y2K remediation plans, properly test their systems and devices, and accurately assess their exposure. We recognize and applaud the efforts of this Committee, the Congress, and the Administration in all of your efforts to draw attention to the Y2K problem and the medical community's concerns.

We also recommend that communities and institutions learn from other communities and institutions that have successfully and at least partially solved the problem. Federal, state and local agencies as well as accrediting bodies that routinely address public health issues and disaster preparedness are likely leaders in this area. At the physician level, this means that public health physicians, including those in the military, organized medical staff, and medical directors, will need to be actively involved for a number of reasons. State medical societies can help take a leadership role in coordinating such assessments.

We also must stress that medical device and software manufacturers need to publicly disclose year 2000 compliance information regarding products that are currently in use. Any delay in communicating this information may further jeopardize practitioners' efforts at ensuring compliance. A strategy needs to be developed to more effectively motivate all manufacturers to promptly provide compliance status reports. Additionally, all compliance information should be accurate, complete, sufficiently detailed and readily understandable to physicians. We

suggest that the Congress and the federal government enlist the active participation of the FDA or other government agencies in mandating appropriate reporting procedures for vendors. We highly praise the Department of Veterans Affairs, the FDA, and others who maintain Y2K web sites on medical devices and offer other resources, which have already helped physicians to make initial assessments about their own equipment.

We are aware that the ''Year 2000 Information and Readiness Disclosure Act'' was passed and enacted into law last year, and is intended to provide protection against liability for certain communications regarding Y2K compliance. Although the AMA strongly believes that information must be freely shared between manufacturers and consumers, we continue to caution against providing liability caps to manufacturers in exchange for the Y2K information they may provide, for several reasons. First, as we have stated, generally vendors alone have the information about whether their products were manufactured to comply with year 2000 data. These manufacturers should disclose that information to their consumers without receiving an undue benefit from a liability cap.

Second, manufacturers are not the only entities involved in providing medical device services, nor are they alone at risk if an untoward event occurs. When a product goes through the stream of commerce, several other parties may incur some responsibility for the proper functioning of that product, from equipment retailers to equipment maintenance companies. Each of these parties, including the end-user—the physician—will likely retain significant liability exposure if the device malfunctions because of a Y2K error. However, none of these parties will typically have had sufficient knowledge about the product to have prevented the Y2K error, except the device manufacturer. To limit the manufacturer's liability exposure under these circumstances flies in the face of sound public policy.

We also have to build redundancies and contingencies into the remediation efforts as part of the risk management process. Much attention has been focused on the vulnerability of medical devices to the Y2K bug, but the problem does not end there. Patient injuries can be caused as well by a hospital elevator that stops functioning properly. Or the failure of a heating/ventilation/air conditioning system. Or a power outage. The full panoply of systems that may break down as our perception of the scope of risk expands may not be as easily delineated as the potential problems with medical devices. Building in back-up systems as a fail-safe for these unknown or more diffuse risks is, therefore, absolutely crucial.

As a final point, we need to determine a strategy to notify patients in a responsible and professional way. If it is determined that certain medical devices may have a problem about which patients need to be notified, this needs to be anticipated and planned. Conversely, to the extent we can reassure patients that devices are compliant, this should be done. Registries for implantable devices or diagnosis- or procedure-coding databases may exist, for example, which could help identify patients who have received certain kinds of technologies that need to be upgraded and/or replaced or that are compliant. This information should be utilized as much as possible to help physicians identify patients and communicate with them.

As we approach the year 2000 and determine those segments of the medical industry which we are confident will weather the Y2K problem well, we will all need to reassure the public. We need to recognize that a significant remaining concern is the possibility that the public will overreact to potential Y2K-related problems. The pharmaceutical industry, for instance, is already anticipating extensive stockpiling of medications by individuals and health care facilities. In addition to continuing the remediation efforts, part of our challenge remains to reassure patients that medical treatment can be effectively and safely provided through the transition into the next millennium.

CONCLUSION

We appreciate the Committee's interest in addressing the problems posed by the year 2000, and particularly, those problems that relate to physicians. Because of the broad scope of the millennium problem and physicians' reliance on information technology, we realize that the medical community has significant exposure. The Y2K problem will affect patient care, practice administration, and Medicare/Medicaid reimbursement. The AMA, along with the Congress and other organizations, seeks to better educate the health care community about Y2K issues, and assist health care practitioners in remedying, or at least reducing the impact of, the problem. The public and private sectors must cooperate in these endeavors, while encouraging the dissemination of compliance information.

FOOTNOTES

[1] ''Doctors Fear Patients Will Suffer Ills of the Millennium Bug; Many Are Concerned That Y2K Problem Could Erroneously Mix Medical Data—Botching Prescriptions and Test Results,'' Los Angeles Times, Jan. 5, 1999, p. A5.

[2] Anthes, Gary H., ''Killer Apps; People are Being Killed and Injured by Software and Embedded Systems,'' Computerworld, July 7, 1997.

[3] *Id.*

[4] Morrissey, John, and Weissenstein, Eric, ''What's Bugging Providers,'' Modern Healthcare, July 13, 1998, p. 14. Also, July 23, 1998 Hearing Statement of Dr. Kenneth W. Kizer, Undersecretary for Health Department of Veterans Affairs, before the U.S. Senate Special Committee on the Year 2000 Technology Problem.

[5] ''Year 2000 Bug Bites Doctors; Glitch Stymies Payments for Medicare Work,'' The Times-Picayune, June 6, 1998, page C1.

[6] ''Clinton Says Social Security is Y2K Ready,'' Los Angeles Times, December 29, 1998, p. A1. See ''Government Agencies Behind the Curve on Y2K Issue,'' Business Wire, January 28, 1999 (stating that Computer Week on November 26, 1998 reported only a 34% Y2K compliance level for the Department of Health and Human Services).

[7] ''Health Care Not Y2K-Ready—Survey Says Companies Underestimate Need For Planning; Big Players Join Forces,'' Information Week, January 11, 1999.

[8] GartnerGroup, Kenneth A. Kleinberg, ''Healthcare Worldwide Year 2000 Status,'' July 1998 Conference Presentation, p. 2 (hereinafter, GartnerGroup).

[9] *Id.* at p. 8.

[10] *Id.*

[11] *Id.* at p. 10.

[12] *Id.* at p. 13.

[13] *Id*

Mr. HOLLINGS. I do not want to mislead. As I understand, as of this morning my staff contacted Mr. Emery. And they said that the AMA is not openly opposing the legislation, but if there is going to be legislation, they want to be taken care of. They want all the tort things to take care of them, too.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. I ask unanimous consent to speak for 3 minutes just to briefly respond to several of the points made by the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WYDEN. Thank you, Mr. President. I will be very brief.

I specifically want to talk on this matter with respect to the evidence which would be considered in these suits. The sponsors of the substitute have made it very clear in the Senate that we will strike the clear and convincing evidence standard. It is an important point that the Senator from South Carolina has made.

What we have indicated is that we think it is in the public interest to essentially use the standard the Senate adopted in the Year 2000 Information and Readiness Disclosure Act which passed overwhelmingly in the Senate. So we have something already with a strong level of bipartisan support, and it is an indication again that the sponsors of the substitute want to be sympathetic and address the points being made by the Senator from South Carolina.

But at the end of the day, this is not legislation about trial lawyers or campaign finance. And I have not mentioned either of those subjects on the floor of the Senate. But this is about whether or not the Senate is going to act now, when we have a chance to address this, in a deliberative way, and produce good Government—something which will make sense for consumers and plaintiffs who are wronged and at the same time ensure that we do not have tumult in the marketplace early next year.

I am very hopeful we can go forward with this legislation.

I thank the Presiding Officer for the opportunity to respond. I yield the floor.

Mr. HOLLINGS. Mr. President, I ask unanimous consent I may address the Senate for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I am reading page 30. The language there—the last 3 lines; 23, 24, and 25—''The defendant is not liable unless the plaintiff establishes that element of the claim in accordance with the evidentiary standard required,'' which is the greater weight by the preponderance of the evidence. That is lined out. And written—and I understand in Chairman MCCAIN's handwriting—here, ''by clear and convincing evidence.''

Again on page 31 of the particular bill under consideration, on lines 19 and 20, ''in accordance with the evidentiary standard required'' is lined out; and inserted in lieu thereof ''by clear and convincing evidence.''

That is why I addressed it that way. That is what we have before us.

I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 12:43 p.m., the Senate recessed until 2:18 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

IN REMEMBRANCE OF THE TRAGEDY IN LITTLETON, COLORADO

The PRESIDING OFFICER. Pursuant to a unanimous-consent request, the Chaplain is recognized for a special prayer.

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

Let us pray together.

O Gracious God, our hearts break over what breaks Your heart, and we join our hearts with the broken hearts of the families and friends of the teenagers and the teacher who were killed in the tragic shooting by two students at the Columbine High School in Littleton, CO.

We have been shocked by this senseless expression of rage and hatred in the twisted and tormented minds of these young men. Comfort the parents who lost their children, both as victims and perpetrators. Help us all to deal with the deeper issues of the need for moral renewal in our culture.

O God, bless the children of our land. May we communicate to them Your love and Your righteousness so that they have a rudder for the turbulent waters of our time and are able to present them with the charts to make it through these difficult waters.

O Gracious God, help us to communicate Your commandments and help them to know the joy of living in faithfulness with You. In our quest to separate church and State, there are times when we have divided God from our culture. Now when there is nowhere else to turn, we return to You.

O dear God, heal our land. In Your holy name. Amen.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I understand the leadership accommodated Senator CAMPBELL's and my request to observe a moment of silence out of respect for the victims of the tragic shooting at Columbine High School in Littleton, CO.

I also understand that later today the Senate will consider a resolution expressing sorrow and offering condolences to the families and friends and students, all of Littleton, CO. I will address the Senate in greater detail at that time.

In the meantime, I yield the floor to my senior colleague in order for him to request a moment of silence.

Mr. CAMPBELL. Mr. President, I thank my colleague. I, too, thank the leadership for affording the Senate an opportunity to express our profound sorrow and to offer condolences to the families and friends of the fallen people of Littleton, CO.

I understand that a resolution addressing this issue will arrive from the House of Representatives at about 4:30 today. I expect that many Members may want to make comments at that time.

The tragic truth is that the angels are now carrying the souls of 13 innocent people to the everlasting glory of heaven. A resolution alone would never express the degree of sorrow we feel. Certainly all of America has much to do to heal our Nation and to rid ourselves of hate and vengeance.

Until that resolution is pending, and in order to observe, acknowledge, and honor a moment of silence called for throughout the State of Colorado, I now ask that the Senate observe a moment of silent prayer for 2 minutes.

The PRESIDING OFFICER. The Senate will now observe a moment of silence.

[Period of silence.]

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I know that a number of Senators do wish to express their concern, sympathy, and great regret with regard to the incident for which we are all so very sorry, and suffering. As Senators ALLARD and CAMPBELL said, I think we can save that until we have the resolution up later this afternoon when Senators will have the opportunity to speak on this matter. I will be speaking with Senator DASCHLE and we will be talking about an appropriate way for the Senate to consider this matter for a reasonable period of time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Y2K ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, I ask unanimous consent that all remaining amendments in order to S. 96 be relevant to the pending MCCAIN amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. LOTT. Mr. President, I regret having to file a cloture motion. I hoped we would not have to do that, that we could get an agreement on how to proceed, and that the amendments would be relevant. But since we have not been able to, with the objection just heard, I have no alternative. Therefore, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment to Calendar No. 34, S.96, the Y2K legislation:

Senators Trent Lott, John McCain, Rick Santorum, Spence Abraham, Judd Gregg, Pat Roberts, Wayne Allard, Rod Grams, Jon Kyl, Larry Craig, Bob Smith, Craig Thomas, Paul Coverdell, Pete Domenici, Don Nickles, and Phil Gramm.

Mr. LOTT. Mr. President, I know there is a sincere effort underway on both sides of the aisle to work out an agreement on this Y2K legislation. I know that will continue. But we need to make progress, or have the opportunity for a cloture vote in the meantime, or, in case that doesn't work out, you always have the option, if we get everything worked out, to vitiate the cloture vote, or we could move to a conclusion earlier. If we can get an agreement worked out and conclusion on Wednesday, that would be ideal.

But, barring that, a cloture vote will occur on Thursday. As soon as the time for the vote has been determined, after consultation with the Democratic leader, all Senators will be notified.

CALL OF THE ROLL

In the meantime, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

AMENDMENT NO. 268 TO AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. I send a first-degree amendment to the pending amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 268 to amendment No. 267.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 269 TO AMENDMENT NO. 268

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. Mr. President, I send a second-degree amendment to the pending first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 269 to amendment No. 268.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

AMENDMENT NO. 270 TO AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. Mr. President, I send a first-degree amendment to the language proposed to be stricken.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 270 to amendment No. 267.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 271 TO AMENDMENT NO. 270

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. I send a second-degree amendment to the language proposed to be stricken.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 271 to Amendment No. 270.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. LOTT. Mr. President, if I could make a couple of observations with regard to the schedule, I know Members are interested in a variety of very important issues they wish to be heard on. I have to be sympathetic to those requests. We don't have it worked out yet.

But I am discussing with Senator DASCHLE the possibility of having some measure on the floor of the Senate later on this week which would be an opportunity for further discussion and perhaps votes with regard to the Kosovo matter. We wish it to be a bipartisan resolution that allows Senators to state their position and to allow the Senate to take a vote on exactly how they wish to proceed at this point with regard to Kosovo. We will have to work through that. Hopefully, we can take it up Thursday and complete it Thursday night, or Friday, or later, if the Senators so desire.

On another matter, I know there are Senators who have a real desire to say something and have a policy discussion about what has happened in Colorado. I ask my colleagues, let's give this a moment. Let's allow a period of mourning and grief. Let's allow these families to bury their children. Let's all wait to see more about what happened and ask not only what but why.

Then 2 weeks from today, if the Senate thinks well of it, we will look for a vehicle—and we have one in mind, perhaps a juvenile justice bill—that we could take up, and the Senate would then have an opportunity for debate, have amendments, and have votes.

I think we need a period of time to think this through and allow our country, collectively, to have a period of mourning and then see if there is something we can do. I don't think the answer is here. I think the answer is out across America.

I wanted the Senators to know I recognize their desires and I am trying to find a way to accommodate those desires. I ask, also, that we must continue to work on Y2K and find a way to complete it without getting into a myriad of subsidiary issues and complete our work by Wednesday.

Mr. KENNEDY. Will the Senator yield?

Mr. LOTT. Mr. President, I am happy to yield to the Senator.

Mr. KENNEDY. Mr. President, I heard the majority leader. There are many Members who, obviously, agree with the majority leader and share the sentiments expressed here on the floor of the Senate a few moments ago in the moments of silence, and the very superb prayer of the chaplain in reaching out to those families. However, there are Members who want to at least consider some legislation dealing with responsibility in the area of firearms.

Is the leader now indicating to Members he will give us the opportunity to have some debate on those measures, and other measures, as well, within a period of 2 weeks? Measures that could help and assist parents, families and schools. Measures that are balanced and permit Members to reach across the aisle to try and work out bipartisan approaches? Could the majority leader indicate now whether we will have that opportunity and give assurance to the American people that the subject matter which is No. 1 in the minds of all families and children across this country—at least we will have the opportunity in the U.S. Senate to debate some proposals and to reach resolutions of those.

Mr. LOTT. Mr. President, in response to the Senator's question, I think it is always incumbent upon the leadership to make sure we proceed in an appropriate way and that Senators have an opportunity to express their views and offer amendments on issues of policy. I think we are doing that. We have appropriately had a moment of silence and a prayer for the children and the families, and for our country. We are going to have a resolution this afternoon officially expressing our regret and sympathy.

I have asked that we have a brief period of mourning where we don't rush to judgment before we start flinging amendments at each other. I mentioned the idea to Senator DASCHLE moments ago in which I said that 2 weeks from today we will look at bringing up a particular piece of legislation. I don't want to say it will be exactly that day or exactly that piece of legislation because Senator DASCHLE needs to confer with a lot of Members on that side.

However, it is my intent, that 2 weeks from today we give Senators an opportunity to offer amendments, thoughts and policy issues they wish to have addressed. I think the timing would be appropriate and I think that the issue or the issues are appropriate for Members to debate and vote on.

Mr. KENNEDY. If the Senator will yield for a moment, with those assurances, I have worked with a number of our colleagues—they may have differing views—and I think the assurances of the majority leader that the Senate would have an opportunity to debate legislation with regard to the limitations on weapons and also support and assistance for families and schools, and that we will have debate and resolution of some of those measures, then, I think at least I will look forward to that opportunity.

I think with the assurance of the majority leader—I know the Senate Democratic leader wanted to talk to colleagues—it is my certain belief the Democratic leader would support the majority leader in that undertaking. I think the message will go out this afternoon to families across the country that the Senate of the United States—hopefully, in a bipartisan way—will give focus and attention to different ideas, recommendations and suggestions of Members of this body,

and hopefully from others, to try to see what we can do not only about the problems of the schools but the inner cities and other communities affected by guns, as well.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the distinguished chair.

First, I thank Senator LOTT and Senator DASCHLE for their commitment to try to work out a resolution, a LOTT-DASCHLE amendment on the Kosovo issue. I have been saying, as have many others, that we as U.S. Senators, individually and as a body, have a duty to be on record on this issue. Those who oppose our involvement, I believe, should be on record in that fashion as well as those who are in favor.

I think it is well-known by most observers of the U.S. Senate that the 1991 debate that took place in this Chamber on the Persian Gulf war resolution was one of the more enlightened and, frankly, sterling moments of this Senate. It was a very close vote, 53–47. I remember it very well. At that time, Senators on both sides of the aisle and both sides of this United States were heard. They were on record and the U.S. Senate was on record, as well.

I point out that immediately following that very close vote there was a unanimous vote in support of the men and women in the military who were conducting that conflict.

I thank Senator LOTT and Senator DASCHLE. I am pleased to work out the details of this resolution. I know it is a very, very contentious and difficult issue that we will be debating. I have heard allegations that some Senators don't wish to risk a vote on this issue. I don't believe that is the case. If it were the case, we have young men and women right now who are risking their lives. It is incumbent upon us as a body to act.

Second, I say to my friend from South Carolina, I am sorry that we have to go through the filling up of the tree and filing a cloture motion on this bill. I prefer the normal amending process.

I believe the pending legislation is the Y2K substitute. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is amendment No. 271, a second-degree amendment offered by the majority leader.

Mr. MCCAIN. Mr. President, if there is an amendment that is germane that the Senator from South Carolina or anyone else would like to bring up, I believe we could by unanimous consent vacate the final amendment of the majority leader so that we can debate and vote on that amendment.

The purpose of filling up the tree was, clearly, to prevent nongermane amendments from clogging up this process.

I say to my friend from South Carolina, I think we should debate amendments. We should move forward as quickly as possible and get this issue resolved as quickly as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I was compelled momentarily to object to the request of our distinguished leader that the amendments be germane. I think a word is in order to understand my objection.

What happens is, No. 1, we have tried our dead-level best to compromise and move this particular piece of legislation along. My Intel friends wrote us a letter to the effect that there were four demands. I contacted Mr. Grove by phone and told him that of the four, I could agree to the waiting time period, to the materiality and the specificity, but the joint and several went to the heart of tort law and trials and I could not agree to that.

My understanding is and I am willing to fill out the record on this, our Chamber of Commerce friend, Tom Donohue and NAM downtown, Victor Schwartz, have been working this thing for years. When we are asked about germane amendments, I think of the opportunity that I have in this perilous position, so to speak, with respect to the legislation.

Realizing that they are willing to amend the Constitution, article VII, taking away a trial by jury, and they are willing to amend article X of the rights of the States with respect to tort law, then I thought maybe at the moment it would be good to amend article II with respect to the bearing of arms.

Yes, Mr. President, I do have an amendment, and it is at the desk. It is very germane to our interest in real things. We are not really concerned at this minute, because the system is working. According to Business Week, according to the testimony, according to the evidence, according to the editorials, our tort system is working to protect doctors, small business folks and everyone else. What is not working in Colorado is this inordinate number of pistols and firearms in our society.

I came to the Senate as a strong-headed States righter and still try my best to follow that principle because I believe in it very, very strongly. However, I have had to yield with respect to that particular position when it came to the Saturday night specials. We had the FBI come with that. The States could not control that. We had the matter of assault weapons, and the States could not control that.

Then watching over the years, the States' response, instead of going in the direction of control, they actually are in the direction of running around with concealed weapons. All the States now are going in that direction. That is why the NRA, the National Rifle Association, was ready to meet in Denver last week. I figured we ought to bring this up for immediate discussion.

Rush to judgment? No; no. I have been there 33 years. I have watched this debate, I have listened, and I watched our society. It is not a rush to judgment. It is a judgment that I had a misgiving about over many years waiting on the States to respond.

I put at the desk the Chafee amendment relative to handgun control. I will be prepared later on, if we are allowed and we get into the debate, to bring that up, because I think it is very timely. It is not a rush to judgment. It is far more important to our society. According to Computerworld, according to the Oregonian, according to the New York Times, according to the witnesses, it is far more important than Y2K which may occur 7 or 8 months from now. Come; come.

We know good and well that everybody is getting ready. We have, in a bipartisan fashion, set aside the antitrust restrictions so that they could collaborate.

We have positive evidence of a young doctor in New Jersey who in 1996 bought a computer, and the salesman bragged how it can last for more than 10 years, that it was Y2K compliant. He gave references. By happenstance, they did go to one of the references and found out it was not Y2K compliant.

The young doctor then said: I need to get this thing modified and made compliant. The company that sold it to him said: Gladly, for $25,000. The main instrument itself was only $13,000.

What did he do? He wrote a letter and asked, and then he asked the second time. Months passed. He finally went to a lawyer. People do not like to go to lawyers and get involved in court. I hear all about frivolous lawsuits, frivolous, frivolous. Nobody has time for frivolous lawsuits. The real lawyer does not get paid unless he gets a result.

Finally, he did get a lawyer, and the lawyer was smart enough to put it on the Internet. The next thing you know, there were 17,000 doctors in a similar situation with the same company, and they finally reached a settlement and got it replaced and made compliant—free. That was all that was necessary.

The system is working now. There have been 44 cases. Over half of them have been thrown out as frivolous; half of the remaining cases have been settled. There are only eight or nine pending Y2K cases. The problem is real. You do not have to wait if you are going to have those supplies. It is like an automobile dealer faced every year with a new model and has to get rid of the old.

You will find some of the various entities will come around and offload and misrepresent. That is why we have the tort system at the State level, and that is why it works, and that is why we have this wonderful economic boom.

There is a conspiracy. They call it a bunch of associations that have endorsed the legislation. They have come around now and said this is a wonderful opportunity, we can just ask them for tort reform, and here it is going to save them from lawyers and frivolous lawsuits.

If I was an innocent doctor in regular practice with no time to study and pay attention to these matters, I would say, ''Sure, put me on, that sounds good to me. I am having troubles enough now with Medicare and HCFA and all of these rules and regulations made ex post facto about charges for my particular treatments.''

That is why it all builds and it mushrooms on the floor of the Senate. The Senator from South Carolina has been in the vineyards now 20 years on this one issue relative to trial lawyers and tort reform. He can see it like pornography. You understand it and know it when you see it, and I see this.

I was constrained on yesterday to not only put up the Chafee amendment relative to gun control, but more particularly, Mr. President, with respect to the violence in the schools. I know one of the causes. I have been fighting in that vineyard all during the nineties. We have had hearings on TV violence, and we have had study after study after study. They put us off again and again with another study. So in the Congress before last, we reported it out of committee 19 to 1 on barring gratuitous violence in these shows, excessive gratuitous violence.

When you run a Civil War series, necessarily you are going to have to have violent films and shots made and scenes that will appeal. But we got into the excessive gratuitous violence that they control in Europe, down in New Zealand and Australia. They use the one example, of course, in Scotland where they had the poor fellow who was estranged and insane come in and shoot up the little children. But they don't have this happening in Arkansas like it did or happening in Kentucky like it did.

You can see this occurring over the years. Monkey see, monkey do—youngsters emulate and they see more than anything else, not excessive gratuitous violence, but no cost, no result, no injury to the violence. Seemingly, it happens and you move right on. They become hardened. Then they go to the computer games shooting each other.

I called that bill up the Congress before last. We got it reported to the floor. I went to my friend, Senator Dole, who was running for President. He just returned from the west coast, and he had given the producers a fit. He said, ''You have to act more responsibly.''

I said, ''Bob, why don't I step aside and you offer the bill and let it just be the Dole-Hollings bill? It is out here and reported. You put up one. You are the leader, and we can get a vote on that right quick.''

We got a 19-to-1 vote in the committee. I never did get a response. So I put it in again, and in the last Congress it was reported out 20 to 1. But I cannot get the distinguished leader who wants to be oh so reasonable and everybody working together, and let's don't rush to judgment on TV violence—I have a judgment, and it is not a rush to it. It has been learned over the many, many years, looking at the experience of other countries, looking at the need in our society, having listened to the witnesses, the Attorney General saying this would pass constitutional muster with respect to the freedom of speech. I wanted to bring that up. That amendment sat at the desk. That is important, far more important than Y2K.

And otherwise we have hard experiences. We Senators do get home from time to time, and we do politic. And it was about 4 years ago when I got back to Richland County where I met my friend, the sheriff, Senator Leon Lott. And he said, I want to show you a school out here that was the most violent, was infested with drugs and trouble and everything else of that kind.

He said, Senator, I took one of your cops on the beat. I put him in the classroom, in uniform, teaching classes, law, respect for the law, the penalties in driving for young folks coming along, the penalties, and why the controls in relation to respect and the severe penalties relative to drugs, so they would understand.

Now, that was in the classroom. He was not in the parking lot waiting for somebody to steal a car. Rather, he was teaching respect for the law. And then, in the afternoon, this particular officer was associated with the athletic activities, and in the evening with the civic activities. He became a role model.

I say this advisedly because I think about that poor security officer who did not know from ''sic em'' out there in the Columbine school in Colorado. Here they could unload pipe bombs, all kinds of pistols, all kinds of this, that, and everything else, like that going on the Internet, running down the halls in trench coats, butt everybody out of the way, and everything else. They were surprised by what happened.

So, yes, I have an amendment at the desk relative to our safe schools safety initiative because Senator GREGG, the chairman of our Subcommittee on State, Justice and Commerce—we put $160 million in the appropriations bill last year, and it is being used and employed with tremendous success all over the country.

The emphasis should be not as I heard on TV last night, where they said this law enforcement officer would be directly connected with law enforcement; I want him connected with the students. I want him to become a role model. I want him to understand and know the students and know the teachers. And the teachers know when they have a troublemaker, or whatever it is—a poor lad maybe does not have a mama or does not have a daddy, he is totally lost, so he brings about all kinds of extreme activity to get recognition.

But that officer can work. And we also added in counseling. I cannot have him do all the counseling and all the role modeling and everything else at once, as well as law enforcement, as well as instruction. So we included, after the advice from hearings, that we put in counseling; and we got a measure. It is on the statute books. It ought to be embellished and enlarged.

These are the kinds of things we ought to be talking about this afternoon rather than this bum's rush about a crisis that is going to happen 7 months from now. Come on. Here it is happening right underneath us and all we do is pray. We are the board of directors of corporate United States of America, and we are flunking our particular duties; we cannot pay any bills.

We talked all last week—and it is still on the calendar right now, and regular order—of saving 100 percent of Social Security, a lockbox. Then I heard instead the distinguished leader say, oh, no. He said, this money we are going to add on to the President's request for Kosovo—another $6 billion. When asked, where is it going to come from, he said, from Social Security.

The truth of the matter is, they say that is the only surplus, but it is not. Social Security is $720 billion shy. And with the estimation—and I have it by the Congressional Budget Office—at the end of September this year we will owe—not surplus—Social Security $837 billion, because what we have been doing is we have been paying down the debt.

It is like taking two credit cards, having a Visa card and MasterCard, and saying, ''I'll pay off my MasterCard with the Visa card. It looks pretty good for the MasterCard debt—the public debt—but it increases the Visa debt over here—it increases the Social Security debt. So it has. And we owe Social Security $837 billion. The $137 billion in excess of what is required to be paid out this particular year is not surplus.

Under the law, 13301 of the Budget Act, it should go in reserve for Social Security for the baby boomers, but we are all talking about; oh, the President; oh, the Congress; no, the Congress; no, the President. Nobody wants to get a plan to save Social Security; and all the time we are stealing, we are looting the fund. It is a shame. It is a show. It is a spin. It is the message nonsense that you have up here in the Senate.

So let's get real now and let's get these issues out. Let's talk about handguns. Let's talk about Kosovo. Let's talk about TV violence. We have some real problems. Let's talk about paying the bill, and not any ''Mickey Mouse'' of one day it is going to be a lockbox and no one can get to it and 48 hours later saying, no, no, I'm going to use that lockbox for a $12 billion payment on Kosovo. We have to get honest with the American people.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Oregon.

Mr. WYDEN. I thank the Chair.

I have been here many fewer years than the Senator from South Carolina,

but I can tell you, just listening to him over the last few minutes, I sure agree with what he has to say about Social Security, I sure agree with what he has to say about school violence and the connections that are so important in the community between law enforcement, counselors, and the students. I could go on and on. I have supported him on many of those issues in the past and am planning to do so in the future.

But I did want to take the floor for just a moment and address a couple of the points that were made with respect to the Y2K issue specifically.

I am very hopeful that we can still see the Senate come together on a bipartisan basis to deal with this issue. The fact of the matter is that the year 2000 problem is essentially not even a design flaw. It is a problem because a number of years ago, to get more space on a disc and in memory, the precision of century indicators was abandoned. And it is hard for all of us today to believe that disc and memory space used to be at a premium, but it was back then, and that is why we have this problem today.

So what a number of us in the Senate want is to do everything we possibly can to ensure companies comply with the standards that are necessary to be fair in the marketplace, but also to provide a safety net if we see problems develop and particularly frivolous, nonmeritorious suits.

Now, with respect to a couple of the points that have been made on the record, this notion that the sponsors, particularly Senator MCCAIN and I, are trying to rewrite tort law for all time is simply not borne out by the language of this bill. This is a bill which is going to sunset in 2003. It is not a set of legal changes for all time. It is an effort to deal in a short period of time with what we think are potentially very serious problems.

In fact, the American Bar Association—this is not a group of people who are against lawyers, but the American Bar Association itself has said this could affect billions and billions of dollars in our economy. So this bill will last for a short period of time. It doesn't apply to personal injuries, whatever. If a person, for example, is injured as a result of an elevator falling because the computer system broke down and is tragically injured or killed, all of the legal remedies in tort law remain.

This is a bill that essentially involves contractual rights of businesses. We respect those rights first, and only when the marketplace breaks down would this law apply.

We have heard a number of comments in the last few hours that this legislation throws out the window the principle of joint and several liability, a legal doctrine that I, following the lead of the Senator from South Carolina, have supported in many instances, particularly when it relates to vulnerable individuals who might be the victim of personal injuries. But this legislation specifically says that joint and several liability will, in fact, apply if you have egregious or fraudulent conduct on the part of the defendant. And, second, it will apply if you have an insolvent defendant so there will be an opportunity for the plaintiff to be made whole. We also make changes relating to directors and officers to ensure that they have to be held accountable.

As to the evidentiary standard, the sponsors of this legislation have made it clear that they want to work with Senator HOLLINGS and others who have questions about this standard to change it. What we wish to do is make it comply with the earlier legislation we overwhelmingly passed on Y2K.

There have been a number of comments made today about the Intel Corporation and their views. I ask unanimous consent that a letter from the CEO of the Intel Corporation be printed in the RECORD.

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

INTEL CORPORATION,
Santa Clara, CA, April 19, 1999.

Re Y2000 legislation.

Hon. RON WYDEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR WYDEN: I write to ask for your help in enacting legislation designed to provide guidance to our state and federal courts in managing litigation that may arise out of the transition to Year 2000-compliant computer hardware and software systems. This week, the Senate is expected to vote upon a bipartisan substitute text for S. 96, the ''Y2K Act'', which we strongly support.

Parties who are economically damaged by a Year 2000 failure must have the ability to seek redress where traditional legal principles would provide a remedy for such injury. At the same time, it is vital that limited resources be devoted as much as possible to fixing the problems, not litigating. Our legal system must encourage parties to engage in cooperative remediation efforts before taking complaints to the courts, which could be overwhelmed by Year 2000 lawsuits.

The consensus text that has evolved from continuing, bipartisan discussions would substantially encourage cooperative action and discourage frivolous lawsuits. Included in its provisions are several key measures that are essential to ensure fair treatment of all parties under the law:

Procedural incentives—such as a requirement of notice and an opportunity to cure defects before suit is filed, and encouragement for engaging in alternative dispute resolution—that will lead parties to identify solutions before pursuing grievances in court;

A requirement that courts respect the provisions of contracts—particularly important in preserving agreements of the parties on such matters as warranty obligations and definition of recoverable damages;

Threshold pleading provisions requiring particularity as to the nature, amount, and factual basis for damages and materiality of defects, that will help constrain class action suits brought on behalf of parties that have suffered no significant injury;

Apportionment of liability according to fault, on principles approved by the Senate in two previous measures enacted in the area of securities reform.

This legislation—which will apply only to Y2K suits, and only for a limited period of time—will allow plaintiffs with real grievances to obtain relief under the law, while protecting the judicial system from a flood of suits that have no objective other than the obtainment of high-dollar settlements for speculative or de minimus injuries. Importantly, it does not apply to cases that arise out of personal injury.

At Intel, we are devoting considerable resources to Y2K remediation. Our efforts are focused not only on our internal systems, but also those of our suppliers, both domestic and foreign. Moreover, we have taken advantage of the important protections for disclosure of product information that Congress enacted last year to ensure that our customers are fully informed as to issues that may be present with legacy products. What is true for Intel is true for all companies: time and resources must be devoted as much as possible to fixing the Y2K problem and not pointing fingers of blame.

For these reasons, we urge you to vote in favor of responsible legislation that will protect legitimately aggrieved parties while providing a stable, uniform legal playing field within which these matters can be handled by state and federal courts with fairness and efficiency.

Sincerely,

CRAIG R. BARRETT,
CEO, Intel Corporation.

Mr. WYDEN. I thank the Chair.

The key sentence is, the Senate is expected to vote upon a bipartisan text for S. 96, the Y2K Act, which we will strongly support. There is no question about the position of the company on this legislation.

Finally, we have made nine major changes in this legislation since it passed the committee. I voted against it in the committee because I thought Senator HOLLINGS was absolutely right—that the legislation at that time was not fair to consumers and to plaintiffs. But as a result of the changes that were made, I believed it was appropriate to try to come up with an approach that was fair to consumers and to plaintiffs as well as the small companies involved.

There are other negotiations that are still going forward. Senator DODD, for example, who is the leader on our side on the Y2K issue, has a number of good and practical suggestions. Senator KERRY has some thoughtful ideas on this as well.

I am very hopeful that we can resolve the procedural quagmire on this issue and quickly get to a vote, up or down. Then as a result of the very useful discussion that we had between the majority leader, Mr. LOTT, and Senator KENNEDY and others, we can move on to the juvenile justice issue. Because I can assure you, as a result of what we saw in Springfield, OR, last year, we wish to have some positive contributions on that.

Senator GORDON SMITH and I have a bipartisan bill which has already passed the Senate once. I am hopeful we can deal with this Y2K issue expeditiously and then go on to the topic that millions of Americans, just as Senator HOLLINGS has said this afternoon, are talking about and want to see the Senate respond to.

Mr. President, I yield the floor.

Mr. SESSIONS. Mr. President, I am pleased to rise and make some comments about the Y2K legislation designed to make sure that we spend our time and effort fixing this problem and not suing one another.

I really believe in the legal system. I had served as a lawyer my entire adult life, until 2 years ago, when I joined this Senate. I served as attorney general of Alabama. I was in private practice 12 years as U.S. attorney for the southern district of Alabama. During that time, I was involved in a lot of important legal issues.

I respect the law. I believe in our Constitution and our legal system. I have been to China, and I have heard the people in China say that what they need most of all right now for a modern economy is a good legal system.

I have been to Russia. I have heard the people in Russia talk about their need for an honest, fair, and efficient legal system.

We have a great legal system. We certainly ought not, as the Senator from South Carolina suggests, have a rush to judgment. But the problems that have occurred over a period of years involving excess litigation are not new. It has been occurring for a number of years, and it calls on us to think objectively and fairly as to how we are going to handle disputes.

This piece of legislation involves, as the Senator from Oregon just noted, one problem, a Y2K computer problem. It will terminate itself when that problem is over. But most of all, it is a commonsense and reasonable way for us to get through this problem without damaging our economy.

Let me share this story. These numbers that I am about to give were produced during a hearing at the Judiciary Committee not too long ago. We had some inquiry about the litigation involving asbestos and people at shipyards, and so forth, who breathe asbestos and had their health adversely affected.

What we learned was that over 200,000 cases had been filed, many of them taking years to reach conclusion. Two hundred thousand more were pending, and it was expected that another 200,000 would be filed out of that tragic problem.

What we also found was, when we made inquiry, we asked how much of the money actually paid by those defendant corporations got to the victims of asbestos. I am a person who believes in the legal system. I respect it. I was shocked and embarrassed to find out that the expert testimony was that only 40 percent of the money paid out by the asbestos companies actually got to the people who needed it, who were sick because of it. The legal fees are 30 and 40 percent. Court fees and costs all added to it take up 60 percent.

This is not acceptable. It is not acceptable if we care about a problem and how to fix it. That figure did not count the court systems that were clogged and remain clogged to this day by hundreds, even thousands of asbestos lawsuits.

I say to the Senate, we are facing a crisis.

These are some of the comments at the recent ABA, American Bar Association, convention in Toronto last August. A panel of experts predicted that the legal costs associated with the Y2K would exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined. By the way, with regard to these asbestos companies, even with regard to big companies, there are limits to how much they can pay. Every single asbestos company in America that is still in business is in bankruptcy. Every asbestos company still in business is in bankruptcy. These are tremendous costs.

What this American Bar Association study showed was that the cost of this litigation would exceed asbestos, breast implants, a huge amount of litigation, tobacco, and Superfund combined. They note that this is more than three times the total annual estimated cost of all civil litigation in the United States.

We have too much litigation now. Seminars on how to try a Y2K case—these are lawyers' seminars, trying to teach each other how to file them—are well underway. Approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on the event. They can't wait. Also, several lawsuits have already been filed, making trial attorneys confident that a large number of businesses, big and small, will end up in court as both plaintiffs and defendants. They are going to be suing because something went wrong with their computer, and the people they sold the computer to, or are doing business with, are going to be suing them for problems arising from the computers. We are going to be spending more money on litigation than on fixing the problem. This report indicates this litigation problem ''would reduce investment and slow income growth for American workers. Indeed, innovation and economic growth would be stifled by the rapacity of strident litigators.''

Well, I would say it is not a matter of whether there is a problem. There have been estimates of $1 trillion in legal costs for this thing. I think we do have a problem.

What is needed? I think this legislation goes a long way in meeting what is needed. What is needed is to spend our time and effort fixing the problem promptly. If we have all of our computer companies spending time hiring $500-per-hour lawyers to defend them in court, draining their resources from which to actually fix the problem, that is not the right direction to go in, I submit. In addition to that, when you are in litigation, you are not as open and willing to discuss the problem honestly with somebody because you are afraid anything you say and do will be used against you in a lawsuit. Lawyers are always saying, ''Don't talk about it.''

What we really want is the computer companies to get in there with the businesses that are relying on the computers and try to fix the problem at the lowest possible cost.

Now, we had one witness who didn't favor this in the Judiciary Committee. The Judiciary Committee voted out a bill very similar to Senator MCCAIN's bill. I am pleased to support his bill, as well as the one in the Judiciary Committee. But this company that filed a lawsuit and received a substantial verdict was not in favor of the legislation, he said. I asked him how long it took to get his case over. He said 2 years. It took him 2 years to get the case to a conclusion.

Now, we are going to have hundreds of thousands of lawsuits in every county in America, every Federal court, clogged up with these kinds of cases, and it will take years to get to a conclusion, and that is not a healthy circumstance for America. I really mean that. That is not good for us, if we care about the American economy. So we need to do that. We need to get compensation to people who suffer losses promptly, with the least possible overhead, the least possible need to pay attorney fees, the least possible need to have expert witnesses and prolonged times to get to it. We need to get it promptly and effectively, and we need to make sure that people who have been fraudulent and irresponsible can be sued and can be taken to court and taken to trial. That will happen in this case.

Now, some have suggested that we are violating the Constitution if we do that. Well, that is not so. We believe in litigation and in being able to get redress in court. This law would provide for that. Historically, the U.S. Senate and the State legislatures, every day, set standards for lawsuits. They set the bases of liability. They say how long it takes before you can file a lawsuit. Sometimes the statute of limitations is 2 years, sometimes it is 1 year, sometimes it is 6 years. Legislatures set standards for litigation. That is what they do. We are a legislative body and we have a right and an obligation to consider what is best for America in the face of this unique crisis and to deal with it effectively.

Let me ask, if we don't have such a law as this, what will happen? Well, I submit that there will be thousands of lawsuits filed. You may file it in one court and maybe they don't have many cases; maybe you have an expeditious judge and you get to trial within a matter of 6 months. Maybe in another court, it takes 2 years because they have a backlog. But you get to trial within 6 months. And say two people in that court get to trial within 6 months. One of them goes to a jury and the jury says, wait a minute, computer companies can't be responsible for all this; we don't think they are liable. No verdict. Down the hall, where another trial is going on, they come forward with a verdict of $10 million, or whatever, for this lawsuit.

Lawsuits are wonderful things for redressing wrongs, but in mass difficulties like this, they tend to promote aberrational distributions of limited amounts of resources. So we have a limited amount of resources and, as far as possible, we ought to create a legal system that gets prompt payment, consistently evaluating the kind of people who ought to get it. In some States, you will be able to recover huge verdicts because the State law would be very favorable. In other States, it would not be.

Some have suggested that it would be a horrendous retreat to eliminate joint and several liability. That is, if six people are involved in producing and distributing this computer system—six different defendants—and one is 5 percent at fault, one of them is 60 percent at fault and the others are somewhere in between, and the ones most at fault are bankrupt, they want the one least at fault to pay it all if they have the money to do so.

Now, people argue about that. That is a major legal policy debate throughout America today. Many States limit joint and several liability. Others have it in its entirety, and many are in between. So for us to make a decision on that with regard to this unique problem of computer Y2K is certainly not irrational. It is important for us.

Now, I say to you that the more lawsuits are filed, the longer the delays will be in actually getting compensation to the people who need it. Literally, when you talk to people in your hometown and they are involved in litigation, ask them about major litigation and they will tell you it would be unusual, in most circumstances, to get a case disposed of and tried within 1 year. Sometimes it is 3, 4, and 5 years before they are brought to a conclusion.

So I say that a system that promotes prompt payment of damages and prompt resolution of the matter is good for everyone. Allocating funds to fix this problem is a difficult thing. But the way you do it through the lawsuit system is not good in a situation where we have a massive nationwide problem. It is not a good way to do it. We are, again, talking about extraordinary costs and the clogging of courts. So the focus is taken away from actually fixing the problem and more to assigning blame, trying to encourage a jury to render the largest possible verdict.

Now, some would say, why do you have to limit the amount of punitive damages? Well, three times the amount of damages under this bill—damages are limited to three times the actual damages incurred for punitive, or $250,000, whichever is greater. They say, why do you want to do that? As long as there is a possibility that a jury might render a verdict for $10 million, lawyers have an incentive not to settle and take that case to a jury.

I have talked to lawyers. I know how they think. They say, well, we can settle this case for $200,000. They have offered that. I don't think we are likely to get much more than that, but there is a chance that we can get $1 million or $2 million. I believe we have a couple of jurors there who are sympathetic with us, and I am inclined to say, let's roll the dice and see. We are not likely to get a whole lot less, but we can get 5 or 10 times as much. That is what I advise you, Mr. Client; let's go for it. So what happens is this possibility of unlimited verdicts makes it more and more difficult in a practical setting for cases to be settled.

You will have more realistic settlements if you have this kind of limitation on the top end of punitive damages.

This bill will encourage remediation. It actually encourages prompt negotiation, consolidation, and problem solving. That is the focus of it. That is why I favor it.

I would just say this. Mr. President, the Y2K problem is a unique problem. It has the potential of hurting our economy. One of the greatest assets this Nation has—I can't stress this too much—is the strength and viability of our computer industry. We are world leaders. There is not a State in this Nation that doesn't have some computer manufacturing going on, and certainly not a community in America that does not depend on the innovation and creativity of the computer industry. They benefit from that creativity.

As a matter of fact, I heard one expert say that his belief is, the reason our economy is so strong, the reason inflation is not going up, even though salaries of our workers are going up faster than inflation, is because computers have made our workers more productive and that they can afford to pay them more, because using the high-tech computers, that are really just now in America coming on line fully and effectively and wisely utilized by American business, is really helping us increase productivity.

This is a marvelous asset for us. Some years ago many of these companies focusing on innovation and creativity apparently did not fully focus on the problem that is going to happen at the year 2000.

I mentioned earlier in my remarks how every asbestos company in America is now in bankruptcy. Many of those had a lot more business than just bankruptcy. They made asbestos. They made a lot more things than just asbestos. Yet their whole company was pulled down by this.

If we don't get a handle on this, think about it. We have the capacity to severely damage, by placing in bankruptcy, the most innovative, creative, beneficial industry perhaps this Nation has today, the thing that is leading us into the 21st century. I think this is a matter of critical importance. It is quite appropriate for the Congress to legislate on it. It is clearly a matter of interstate commerce. These computers are produced in one State and sold in all 50 States.

I really believe it is a situation that is appropriate for the Congress to respond to. It is appropriate for us to bring some rationality to the damages that will be paid out by these companies, to limit the amount of money they spend on litigation, to make sure the money gets promptly to those who need it, and otherwise to allow them to continue as viable entities producing every year more, better, and more creative products that make us more competitive in the marketplace.

Mr. President, I don't have any Microsoft business in my State. But I know the Department of Justice sued them for antitrust. I think that is fine. We will just see how that chase comes out.

In a way, it is sort of odd. I remember saying at the time that most countries which have a strong industry in their nation that is exporting and selling all over the world and improving the lives of millions of people do not sue them; they support them. But in America we tend to sue them when they get big. This idea that you are big, you have a deep pocket, and we ought to sue, I think, is not a healthy thing at this time.

Again, I think, as the Senator from Oregon mentioned, this is a one-time piece of legislation. For those who are troubled about any changes in our tort system, I really think that is not a wise approach. We need to make some changes. We have always changed our legal system. When there is a problem, we ought not hesitate to improve it. But if you are, remember, this is just a one-time problem.

Looking at a report from the Progressive Policy Institute, they concluded with these remarks:

> Perhaps the most important big winner from liability limitation [that is, this bill] will be the United States economy and by extension U.S. consumers who will not have to indirectly bear up to $1 trillion in cost with a healthy share going to lawyers.

I like lawyers. I respect them. But they are not producers. They are not making computers. They are not fixing computers. What they are doing is filing lawsuits and taking big fees for it. And they will have at least a one-third contingent fee and usually maybe more than 40 percent.

> By promoting attempts to Y2K remediation and lowering the likelihood of litigation, the rules instituted by this legislation will benefit everyone, not just a few. In the last State of the Union address, President Clinton urged Congress to find solutions that would make the Y2K problem the last headache of the 20th century rather than the first crisis of the 21st.

I think that is a good policy. The President has recognized the need for that. It has had bipartisan support in our committee, bipartisan support in this Senate—Republicans and Democrats. But there do remain a few who, through any way possible, are really frustrated by this legislation and are attempting to undo it. In light of the crisis we are facing, the threat it poses to small businesses that need their systems fixed, and through our creative

and imaginative computer industry which leads the world, I believe we must act.

I very much appreciate the leadership of Senator JOHN MCCAIN. He is a true leader in every sense of the word. He is a man of courage; he understands technology. He has done a great job on it.

I also express my appreciation to Senator ORRIN HATCH and the Members of the Judiciary Committee who have likewise worked on this legislation.

There are two separate bills. But they are very similar, and in conclusion they are very similar.

Mr. President, I thank the Members of this body for their attention.

I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I listened to the debate on this bill, S. 96. It is an important bill. It is an important bill because it protects American business.

There are elements of this bill which I think are wise policy. I am certain that at the end of the debate, if the amendment process is a reasonable one, we will pass legislation along these lines protecting business.

Mr. HATCH. Mr. President, I rise to state unequivocally my strong support for a Y2K bill.

Let me begin by stating how important Y2K remediation is to consumers, business, and the economy. This problem is of particular interest in my State of Utah which has quickly become one of the Nation's leading high tech States.

Working together, Senator DIANNE FEINSTEIN and I have produced a bill—S. 461, the Year 2000 Fairness and Responsibility Act—that encourages Y2K problem-solving rather than a rush to the courthouse. It was not our goal to prevent any and all Y2K litigation. It was to simply make Y2K problem-solving a more attractive alternative to litigation. This benefits consumers, businesses, and the economy. The bill was voted out of the Judiciary Committee.

But, Senator MCCAIN's bill is the focus of the present debate. With some distinctions—this bill accomplishes the same ends as Senator FEINSTEIN's and my bill. Let me say that I support a strong bill. I do not care who gets the credit. This is of no importance to me. What is important is that the Nation needs Y2K legislation. I thus will support any mechanism that is able to pass Congress. Let me explain why.

The main problem that confronts us as legislators and policymakers in Washington is one of uniquely national scope. More specifically, what we face is the threat that an avalanche of Y2K-related lawsuits will be simultaneously filed on or about January 3, 2000, and that this unprecedented wave of litigation will overwhelm the computer industry's ability to correct the problem. Make no mistake about it, this super-litigation threat is real; and, if it substantially interferes with the computer industry's ongoing Y2K repair efforts, the consequences for America could be disastrous.

Most computer users were not looking into the future while, those who did, assumed that existing computer programs would be entirely replaced, not continuously modified, as actually happened. What this demonstrates is that the two-digit date was the industry standard for years and reflected sound business judgment. The two-digit date was not even considered a problem until we got to within a decade of the end of the century.

As the Legal Times recently pointed out, ''the conventional wisdom [in the computer business was] that most in the industry did not become fully aware of the Y2K problem until 1995 or later.'' The Legal Times cited a LEXIS search for year 2000 articles in Computerworld magazine that turned up only four pieces written between 1982 and 1994 but 786 pieces between 1995 and January 1999. Contrary to what the programmers of the 1950s assumed, their programs were not replaced; rather, new programmers built upon the old routines, tweaking and changing them but leaving the original two-digit date functions intact.

As the experts have told us, the logic bomb inherent in a computer interpreting the year ''00'' in a programming environment where the first two digits are assumed to be ''19'' will cause two kinds of problems. Many computers will either produce erroneous calculations—what is known as a soft crash—or to shut down completely—what is known as a hard crash.

What does all this mean for litigation? As the British magazine The Economist so aptly remarked, ''many lawyers have already spotted that they may lunch off the millennium bug for the rest of their days.'' Others have described this impending wave of litigation as a feeding frenzy. Some lawyers themselves see in Y2K the next great opportunity for class action litigation after asbestos, tobacco, and breast implants. There is no doubt that the issue of who should pay for all the damage that Y2K is likely to create will ultimately have to be sorted out, often in court.

But we face the more immediate problem of frivolous litigation that seeks recovery even where there is little or no actual harm done. In that regard, I am aware of at least 20 Y2K-related class actions that are currently pending in courts across the country, with the threat of hundreds more to come.

It is precisely these types of Y2K-related lawsuits that pose the greatest danger to industry's efforts to fix the problem. All of us are aware that the computer industry is feverishly working to correct—or remediate, in industry language—Y2K so as to minimize any disruptions that occur early next year.

What we also know is that every dollar that industry has to spend to defend against especially frivolous lawsuits is a dollar that will not get spent on fixing the problem and delivering solutions to technology consumers. Also, how industry spends its precious time and money between now and the end of the year—either litigating or mitigating—will largely determine how severe Y2K-related damage, disruption, and hardship will be.

To better understand the potential financial magnitude of the Y2K litigation problem, we should consider the estimate of Capers Jones, chairman of Software Productivity Research, a provider of software measurement, assessment and estimation products and services. Mr. Jones suggests that ''for every dollar not spent on repairing the Year 2000 problem, the anticipated costs of litigation and potential damages will probably amount to in excess of ten dollars.''

The Gartner Group estimates that worldwide remediation costs will range between $300 billion to $600 billion. Assuming Mr. Jones is only partially accurate in his prediction—the litigation costs to society will prove staggering. Even if we accept The Giga Information Group's more conservative estimate that litigation will cost just $2 to $3 for every dollar spent fixing Y2K problems, overall litigation costs may total $1 trillion.

Even then, according to Y2K legal expert Jeff Jinnett, ''this cost would greatly exceed the combined estimated legal costs associated with Superfund environmental litigation . . . U.S. tort litigation . . . and asbestos litigation.''

Perhaps the best illustration of the sheer dimension of the litigation monster that Y2K may create is Mr. Jinnett's suggestion that a $1 trillion estimate for Y2K-related litigation costs ''would exceed even the estimated total annual direct and indirect costs of—get this—all civil litigation in the United States,'' which he says is $300 billion per year.

These figures should give all of us some pause. At this level of cost, Y2K-related litigation may well overwhelm the capacity of the already crowded court system to deal with it.

Looking at a rash of lawsuits, we must ask ourselves, what kind of signals are we sending to computer companies currently engaged in or contemplating massive Y2K remediation? What I fear industry will conclude is that remediation is a losing proposition and that doing nothing is no worse an option for them than correcting the problem. This is exactly the wrong message we want to be sending to the computer industry at this critical time.

I believe Congress should give companies an incentive to fix Y2K problems right away, knowing that if they don't make a good-faith effort to do so, they will shortly face costly litigation. The natural economic incentive of industry is to satisfy their customers and, thus,

prosper in the competitive environment of the free market. This acts as a strong motivation for industry to fix a Y2K problem before any dispute becomes a legal one.

This will be true, however, only as long as businesses are given an opportunity to do so and are not forced, at the outset, to divert precious resources from the urgent tasks of the repair shop to the often unnecessary distractions of the court room. A business and legal environment which encourages problem-solving while preserving the eventual opportunity to litigate may best insure that consumers and other innocent users of Y2K defective products are protected.

There are not at least 117 bills pending in State legislatures. Each bill has differing theories of recovery, limitations on liability, and changes in judicial procedures, such as class actions. This creates a whole slew of new problems. They include forum shopping. States with greater pro-plaintiff laws will attract the bulk of lawsuits and class action lawsuits. A patchwork of statutory and case law will also result in uneven verdicts and a probable loss of industry productivity, as businesses are forced to defend or settle ever-increasing onerous and frivolous lawsuits. Small States most likely will set the liability standard for larger States. This tail wagging the dog scenario undoubtedly will distort our civil justice system.

Some States are attempting to make it more difficult for plaintiffs to recover. Proposals exist to provide qualified immunity while others completely bar punitive damages. These proposals go far beyond the approach taken in the Judiciary and Commerce Committees' bills of setting reasonable limits on punitive damages. Other States may spur the growth Y2K litigation by providing for recovery without any showing of fault. A variety of different and sometimes conflicting liability and damage rules create tremendous uncertainty for consumers and businesses. If we want to encourage responsible behavior and expeditious correction of a problem that is so nationally pervasive, we should impose a reasonable, uniform Federal solution that substantially restates tried and true principles of contract and tort law. If there is an example for the need for national uniformity in rules, this has to be it.

The most appropriate role we in Washington can play in this crisis is to craft and pass legislation that both provides an incentive for industry to continue its remediation efforts and that preserves industry's accountability for such real harm as it is legally responsible for causing.

This will involve a delicate balancing of two equally legitimate public interests: the individual interest in litigating meritorious Y2K-related claims and society's collective interest in remediating Y2K as quickly and efficiently as possible. We need to provide an incentive for technology providers and technology consumers to resolve their disputes out of court so that precious resources are not diverted from the repair shop to the court room.

Let's face it, the only way a bill will pass is if it has significant bipartisan support. I think Congress can pass a bipartisan bill that is both fair and effective. Whatever bill is voted upon by this Chamber, it should at a minimum contain the following provisions that:

Preserves the right to bring a cause of action;

Requires a ''problem-solving'' period before suits can go forward. This delay must be reasonable and if so will spur technology providers to spend resources in the repair room instead of diverting needed capital;

Provides that the liability of a defendant would be limited to some percentage of the company's fault in causing the harm. This will assure fairness and lessen the push to go after deep pockets;

Allows the parties to a dispute to request alternative dispute resolution, or ADR during the problem-solving period;

Limits onerous punitive damages;

Contains a duty to mitigate. Plaintiffs should not be able to recover for losses they could have prevented;

Contains a contract preservation provision. This preserves the parties' bargain and prevents States from retroactively instituting strict liability;

Codifies the economic loss doctrine. This preserves the restatement of torts rule that you cannot get economic loss for tort injuries;

Allows evidence of reasonable efforts in tort. This section is very important because it prevents States from retroactively imposing strict liability or negligence per se; and

Contains a class action provision. The class action provision must contain a section that common material defect must be demonstrated to certify claims. It should also contain a section that allows for removal of State class actions to Federal courts based on minimal diversity.

Let me end by emphasizing that the Y2K problem presents a special case. Because of the great dependence of our economy, indeed of our whole society, on computerization, Y2K will impact almost every American in the same way.

But the problem and its associated harms will occur only once, all at approximately the same time, and will affect virtually every aspect of the economy, society, and Government. What we must avoid is creating a litigious environment so severe that the computer industry's remediation efforts will slacken and retreat at the very moment when users and consumers need them to advance with all deliberate speed.

I recognize that if we are to enact worthwhile Y2K problem-solving legislation this year, we must all work together—Democrats and Republicans—in a cooperative manner which produces a fair and narrowly tailored bill. I think we can do this. We can produce a measure which has broad political support, can pass the Congress, and become law.

I appreciate the efforts of the distinguished Senator from Arizona and others to try and get this bill through and will do everything in our power to assist him and help him to do so.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, all I will say is that we had a couple of long meetings of negotiations on this issue. We have still not resolved a couple of outstanding problems. They are tough, very difficult. I am not sure we will be able to resolve them, but we will continue negotiating tonight and into tomorrow. It is my understanding that the majority leader will move back on the bill at noon tomorrow, and we will have the morning to continue those negotiations.

I hope we can reasonably sit down together and resolve these remaining problems. We have resolved almost all of them, but there are two or three very difficult issues remaining. All I can do is assure my colleagues, I will make every effort to get them resolved as quickly as possible.

JUVENILE GUN VIOLENCE PREVENTION ACT

Mr. DURBIN. Mr. President, there are many of us who believe that today's debate should have been focused on protection of another group, not the businesses of America but the children of America, because, try as we might to capture public attention about the necessity for Y2K legislation, American's attention is still riveted on Littleton, CO, and Columbine High School.

We have had meetings across my home State of Illinois, as my colleagues have had across their States, talking to leaders, schoolchildren, police, psychologists, virtually every group imaginable, about what happened in Littleton, CO.

Sadly, it is a repetition of events which have occurred too often in our recent history.

October 1, 1997, Pearl, MS, a 16-year-old boy killed his mother, went to high school, and shot nine students, two fatally.

December 1, 1997, West Paducah, KY, three students were killed, five were found wounded in the hallway of Heath High School by a 14-year-old.

March 24, 1998, Jonesboro, AR, 4 girls and a teacher shot to death, 10 people wounded, during a false fire alarm in middle school when two boys age 11 and 13 opened fire from the woods.

April 24, 1998, Edinboro, PA, a science teacher shot to death in front of students at an eighth-grade dance by a 14-year-old.

May 19, 1998, Fayetteville, TN, 3 days before graduation, an 18-year-old honor student, allegedly opened fire in a

parking lot of a high school, killing a classmate who was dating his ex-girlfriend.

May 21, 1998, Springfield, OR, 2 teenagers were killed and more than 20 people were hurt when a 15-year old boy allegedly opened fire on a high school; the boy's parents were killed at their home.

Then there is Littleton, CO, 13 victims and the 2 alleged perpetrators, dead, as a result of gunfire that killed so many. Time and again we have been told these are unusual circumstances and not likely to happen again.

Sadly, history has proven they have become all too common place. Can anyone believe that our hometown, the high school in our home city, is immune from this sort of violence? I don't believe so. Frankly, it is because there are many troubled children. That is a problem which needs to be addressed directly and seriously.

It is a responsibility that falls on the shoulders of parents first, classmates, teachers, principals, psychologists, counselors, those who see the warning signs, to bring these children to the attention of others. Troubled children are not new to society. They have been there for many, many years. Troubled children in my generation waited on the parking lot to punch you or they threw something at you; troubled children today find a gun. That troubled child moves from being a sad reality to a tragedy, a tragedy in multiple numbers, time and time again.

Today I come to the floor with several of my colleagues—Senator KENNEDY, Senator SCHUMER, Senator BOXER, and others—prepared to offer an amendment to this bill to say to my colleagues that protecting business is important; protecting children is more important. As important as the Y2K debate is to many business interests, families across America are not going to stay up tonight watching television and talk about Y2K; they may and they should talk about violence in schools and how it is becoming epidemic in America.

The legislation we were prepared to offer today, the Juvenile Gun Violence Prevention Act, has about eight or nine provisions. We had the amendment prepared and we had our cloture motion signed, by 16 Members of the Senate. We were going to make this a day for at least a debate, if not a political confrontation, as to why the Senate fails to consider that legislation at a time when America wonders if we have become impotent when it comes to dealing with violence in our schools.

I am happy to report a development occurred on the floor a short time ago which really has changed the face of this debate. Senator TRENT LOTT, the majority leader, the Republican majority leader, came to the floor. I understand he was apprised of our intentions and he made an announcement that within 2 weeks we will be able to debate these issues about school violence, guns, and related issues here on the floor of the Senate.

Some may say, Well, what else would you do in the U.S. Senate? My friends, for 2 years we have faced committees on Capitol Hill which basically will not report out any bills related to guns. We don't talk about that subject around here. It is as if it is somehow sacred and you can't bring it up and you can't debate it. That is why Senator LOTT's concession today that we will have this chance to vote on important legislation relative to our schools is so important across America.

I say to all those who follow the issue, my heart goes out to the victims and their families in Littleton, CO. It goes out, as well, to the other students whose lives will never ever be the same, having witnessed this horror and this violence. It goes out to students across America concerned about their schools.

How many more of our schools have to be desecrated by bullets and blood? How many more of our teachers and students have to be prepared to give up their lives at school to defend their classmates? How many more parents will have to search their memories to try to remember the last words they said to their child as he went off to his last day in school, his last day on Earth? How many more deaths? How many more funerals?

It is time now that America will come together and say to this Congress, as representative of the American people, Do something. We can't solve all these problems, we can't make every troubled kid normal again, but please, reduce the firepower of these children who have such twisted minds, these children who are bent on violence.

This legislation which we are proposing I hope will become bipartisan legislation. I am sorry to report that it will be almost historic if it is, but some Senators have stepped forward in the past from the Republican side to support this legislation. I hope some will show the courage to do that again.

This legislation addresses a number of points, some that are so obvious it is a shame we have to legislate. Should a gunowner be responsible for the safe storage of his or her gun? Should a gunowner who knows that children are in the house have to put the gun under lock and key or put a trigger lock on it? Sixteen States say yes, this is the law. If you don't, you, as a gunowner, will be held criminally responsible. We say this should be a national law. Mr. President, 13 or 14 children every day in America die by gun violence. Columbine High School focuses our attention on 1 day and 15 lives, but every single day there is a massacre spread across this country that doesn't capture our attention like Littleton, CO.

We also have a provision which some will find incredible. Did you know that currently under Federal law a child is prohibited, with few exceptions, from possessing and purchasing a handgun, but there is no prohibition against possessing and purchasing a semiautomatic weapon? That is currently the law. We hope to change it.

Did you know that if a firearm dealer willfully and knowingly sells a gun to a child in violation of the law, there is no automatic revocation of their license? I think there should be.

Did you know, as well, that at gun shows across America all of the provisions of the Brady law for background checks and waiting periods do not apply? We suspect—we are still waiting to hear—that one of the weapons used by these children in Littleton, CO, to kill the others was purchased through a straw purchaser at a gun show and given to the child. Is America unable to deal with this? I think we can, and we should.

Did you know you can buy firearms over the Internet? How in the world could you responsibly sell a firearm over the Internet, not knowing on the other side if the purchaser is 15, 16, 17 years old, or a former criminal, or someone with a history of violent mental illness? To me, these things seem so obvious.

I yield for a question from my colleague from California, who has been a supporter on this issue.

Mrs. BOXER. I thank my friend from Illinois for putting together this very important piece of legislation which has a number of fine ideas to protect our children. I associate myself with the Senator's remarks.

While we deal with the computer problem, we have essentially not been able to offer this bill today. It is hard for me to believe that. The majority leader said it would not be right to deal with this because we are still coping with the sorrow of Littleton, CO. The best thing we can do in the name of those children is to do something to stop this from happening again.

I had a question for my friend, because I want his reaction, his comment to this. In the 11 years of the Vietnam war, we lost 58,000 Americans, a tragedy that brought this country to its knees. Every institution was questioned. The country has never been the same. We are just getting over it.

In the last 11 years, I say to my friend, 400,000 people have been killed in this country by firearms. Let me repeat that: 58,000 killed in the 11 years of the Vietnam war; 400,000 killed in the streets of this country. That doesn't even count three times the number of people who wind up in hospitals, nursing wounds that will be with them for the rest of their life. That doesn't even put a dollar figure on a couple billion of dollars a year to pay for the wounds to those people. Does my friend think there has to be some outrage here?

The people in this country are looking for leadership. Our Chaplain led us in the most magnificent prayer I have ever heard him give, and he gives good prayers. I have to say to my friend, I have been praying for too many people who were gunned down, including one of my son's best friends who did nothing more than visit his wife in her law

firm, when a man walked in with a TEC–9 —the same gun that was used by these kids—and mowed him down as he threw himself over his wife to save her life, which he did. He died.

Prayers are very important right now. We turn to God at these moments, but we also have to turn to ourselves. What the Senator is saying is, it is time for this Senate to do something about this problem.

I would like to get his reaction to those numbers I put out here. Again, I thank him for this opportunity to comment on his legislation.

Mr. DURBIN. I thank my friend and colleague from California.

My reaction is this: I am concerned about two things. I am concerned that the American people have given up on us. I believe they have come to the conclusion that for political reasons we cannot do the obvious; we cannot pass the laws to keep guns out of the hands of kids. I think they are wrong. I hope we can prove them wrong.

Certainly the record of the last few decades suggests that we have been blind to this carnage in our streets, people living in fear of walking down the street in Los Angeles or Chicago, kids living in fear of walking on the playground. There is a school on the west side of Chicago called the Austin Career Academy. When that high school is about to adjourn for the day, let the children go home, the police come and close the streets around the schools so that the gang bangers cannot drive by and shoot the children as they come out of the schools.

That is daily life in too many places in America. We can argue about what we can do and why the people should give up on this Congress. I hope they do not. But we cannot give up on our children, because if we do, we have failed our most fundamental responsibility.

I know this is tough, because some of our colleagues, even on the Democratic side and on the Republican side, have great concerns about the gun lobby and what they might do if they vote for any legislation. It is a tough vote, a hard vote, but I hope they will step back for a second and say we cannot allow this violence and killing to continue in American schools.

Mrs. BOXER. Will the Senator yield one more moment?

Mr. DURBIN. Definitely.

Mrs. BOXER. I want to pick up on that point because there is a gun lobby. We all see it, we all know it, there are a lot of bucks behind it. But there is another lobby out there, the people, and the people want us to do sensible measures to protect our children.

I want to make one last point to my colleague, and that is, in my home State of California, the largest State in the Union by far—34 million people—the No. 1 cause of death among children from the minute they are born until they are 18, the No. 1 cause of death is gunshots—No. 1 cause of death.

If we had a disease that was the No. 1 cause of death, we would be working on this floor feverishly until we addressed that disease. This is a disease.

I have to say to my friend, I watched him take on the tobacco lobby and win. There is not a time I do not get on an airplane and realize I do not have to smell that smoke and have that in my lungs that I don't think of him and his courage in that matter. When he came over here, I just knew reinforcements were coming for some of these tough issues, and this is one of them.

This is a tough one, but that is what we are here for. It is very easy to vote for the easy bills. It is easy to vote for ''Children's Appreciation Day.'' It is easy to do that. It is a little tougher when you take on the gun lobby.

I hope we are judged by this. My experience is that people respect you, even if they might not agree with you, if you have the guts to do something about a problem.

I say to my colleagues on both sides of the aisle, please join with us. Some of these issues are so easy for you to vote for. For example, one of them you have in here says if a local district has a proposal in for more cops on the beat, waive the matching fund if the community police are assigned to the schools. That is one that does not even touch a gun. But today we are told by the majority leader that he believes it would be unseemly to act. That is his view. I respect it. I don't think it is unseemly to act in the wake of this tragedy. I think people want us to act in the wake of this tragedy.

Thank you. I yield back to my colleague.

Mr. DURBIN. Mr. President, I will close by saying I am happy that the majority leader, Senator LOTT, has made this commitment publicly on the floor of the Senate that within 2 weeks we will have debate on legislation such as I have described here. The important thing about that debate is not what is said on the floor of the Senate between Senators. What is important between now and that 2-week deadline is what is said by the American people to those who serve in the Senate.

For those who are watching the proceedings of the Senate or who read the RECORD, I hope you will understand that if you are not part of this debate, if you do not pick up your telephone, if you do not take a pen and write a letter, if you do not send an e-mail saying, ''For goodness sake, do something about violence in our schools and the proliferation of guns in the hands of children,'' I can guarantee you that the outcome of this debate is going to be a disappointment to families across America.

Do not give up on Congress. This is an institution which is serving this country and all of the American families in it. The families have to come forward now. They have to be heard from. It is not enough to say the school year is coming to an end, so that will be the end of school violence. There will always be another school year, history tells us, sadly, always an opportunity for another tragedy. Let us learn something valuable from the suffering of the families in Littleton, CO. Let us vow, Democrat and Republican alike, that we will do everything in our power to reduce school violence and make this a safer place for our children.

I yield back my time.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time?

UNANIMOUS-CONSENT AGREEMENT—H. CON. RES. 92

Mr. CAMPBELL. Mr. President, I ask unanimous consent that, notwithstanding receipt of the resolution, the Senate now begin an hour of debate equally divided in the usual form with respect to H. Con. Res. 92, a resolution relating to the tragedy in Littleton, CO. I further ask unanimous consent that no amendments be in order to the preamble or resolution, and that immediately following the debate time, the Senate proceed to a vote on the adoption of the resolution, with no intervening action or debate.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. CAMPBELL. Mr. President, I also ask unanimous consent to display three ceremonial Indian objects as I make my statement.

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

TRAGEDY IN LITTLETON, COLORADO

Mr. CAMPBELL. Mr. President, many of my colleagues in the Senate will speak on this resolution today. I know that the families and, indeed, all of Colorado appreciate their deep and heartfelt sorrow.

On my father's side, as you know, Mr. President, I am Cheyenne, so I would like to begin speaking in the manner of his people.

This fan comes from the eagle. The old people call the eagle the keeper of the Earth, the one that watches over the domain of the Grandfather Spirit.

This pipe carries the smoke with the words and the thoughts from the people who use it to the Creator.

This flute is used to carry songs of love, forgiveness, and brotherhood.

So, Mr. President, I hope that the voices of all the council fires and pipes send our pleas as Senators as we ask for guidance as we try to rid ourselves of violence in this Nation.

I would like the great winged brother that he has chosen as our national symbol of freedom and justice to oversee all of his children. Further, I would like the winds to carry the sweetness and harmony and tolerance of the flute to the Grandfather Spirit.

Mr. President, traditional Indian people do not believe that death is finite. Indeed, they believe that mortal remains return to Mother Earth from

which they came, but the soul, which is the part of you that is timeless, goes on to the next world to be forever in the presence of the Great Spirit in a place that is absent of avarice and greed, devoid of hunger and sickness, barren of anger, jealousy, and hate. It is a place of goodness where springtime is forever.

That is the place where Indian people believe the innocent victims of Columbine High School have journeyed. Although their time on Earth was far too short, the elders remind us that the grace of the Creator made our lives so much better by allowing them to be with us for a time, however short.

Columbine High School will go on because our departed friends would have it so, but it will never forget.

I have heard the debate thus far on this terrible tragedy, and I have to ask: Are more laws the answer? I frankly do not know, Mr. President. Seventeen Federal laws and I think over 6 State laws were broken during that terrible tragedy. Would 1 more or 100 more have helped? I do not know.

I suppose there will be a rush to judgment. And I expect a torrent of proposed legislation, and perhaps some of it will help, perhaps not. But certainly I, as one Senator, will consider any proposal to make things better.

Mr. President, none of us have all the answers. But we know we cannot legislate tolerance. We cannot mandate that you love your neighbor. We can pass no law requiring Americans to respect each other. Those qualities are learned, as is hate and intolerance.

Government has its place, Mr. President, but so do churches, families, clubs, schools, teams, and indeed complete communities. I hope that we do not confuse who should do what. And let our actions reflect the Good Book at least as much as it does the law book. But above all, let us keep the memory of these innocent children and a heroic teacher alive as we strive for a solution.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). Who yields time?

Mr. ALLARD addressed the Chair.

The PRESIDING OFFICER. The junior Senator from Colorado.

Mr. ALLARD. Mr. President, I compliment my colleague, the senior Senator from Colorado, Mr. CAMPBELL, for his fine floor statement. I was especially touched when he brought in the meaning of what was happening in Colorado in relation to his forefathers, the Cheyenne people. It means a lot to me personally to hear those words, because I consider us part of one big family.

I do have a perspective that I would like to share with the Members of the Senate.

Mr. President, House Concurrent Resolution No. 92 is sponsored by TOM TANCREDO. The House of Representatives approved this resolution earlier today, exactly 1 week after Columbine High School was tragically ravaged by two of its students. The school and a large majority of its students live in the Sixth Congressional District. Congressman TANCREDO represents this district and lives a short distance from Columbine High School.

This resolution is intended to express our feelings of sorrow about the tragedy in Littleton, CO. This resolution is also intended to express our appreciation for those in the community who responded with courage and compassion, including the students themselves.

Today, the State of Colorado observed a moment of silence at 11:21 a.m. mountain daylight time. This was approximately when the terrorism began 1 week ago at Columbine High School.

Earlier today, the Senate joined Senator CAMPBELL and me in a moment of silence and prayer led by the Senate Chaplain. On behalf of Colorado, and especially the citizens of Jefferson County, I thank you for sharing in this gesture of respect and mourning.

My wife Joan and I attended the memorial service this Sunday, April 25, for those who were killed: Cassie Bernall, Steven Curnow, Corey DePooter, Kelly Fleming, Matthew Kechter, Daniel Mauser, Daniel Rohrbough, Rachel Scott, Isaiah Shoels, John Tomlin, Lauren Townsend, Kyle Velasquez, and their teacher, William ''Dave'' Sanders.

At the memorial service, we shared our profound sense of loss with Vice President GORE, Colorado Governor Owens, Congressman TANCREDO, the students, teachers, and parents of Columbine High, and the people of Jefferson County and Colorado.

I have never experienced anything that compares to the collective feeling of loss, sadness, and disbelief in Colorado. I would estimate that approximately 75,000 people attended the memorial service. Among those gathered in sorrow, Joan and I witnessed a strong belief in God. We prayed together and searched for answers.

During the past week, many of my colleagues have come to the floor to share their condolences and concern for the students and teachers who have lost their lives or who have been injured in this senseless tragedy. I do hope that our thoughts and prayers have helped to comfort the students, parents, and teachers of the Columbine High School community. Again, I offer my deepest sympathy to those who are suffering.

Our Nation continues to grieve with the families and friends of the killed and injured students and teachers. We are still attempting to understand what happened and why. People are trying to cope with the terror that has crept into our lives. It has become obvious at this point that there are no easy answers. We need to examine the problems facing our youth, but it is critical that we take time to carefully consider the solutions being offered.

There are things that society can do, but those who are looking for easy solutions should take a step back. The families, teachers, and students of Columbine, and the people of Colorado, need time to mourn their losses. We need to wait for law enforcement to finish their investigation. We should study other instances of school violence throughout America and look for a common thread.

We need to carefully evaluate all of the evidence and consider the possible solutions. In addition, it has been estimated that 17 laws were broken by the two students, and we need to evaluate what the current law should have done.

Mr. President, I ask unanimous consent to have a list of those 17 laws printed in the RECORD.

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

VIOLATIONS OF FEDERAL AND STATE LAWS BY THE ALLEGED PERPETRATORS OF THE CRIME AT COLUMBINE HIGH SCHOOL, LITTLETON, COLORADO

Details of the explosives and firearms used by the alleged perpetrators have not been confirmed by law enforcement authorities. The crime scene is still being examined and cleared. It is unknown how the alleged perpetrators came into possession of the explosives and firearms they used.

The alleged perpetrators, obviously, committed multiple counts of murder and attempted murder, the most serious crimes of all. And they committed many violations of laws against destruction of property, such as in the school building and the cars in the parking lot outside. All told, the prison sentences possible for these multiple, serious violations amount to many hundreds of years.

Additionally, in the course of planning and committing these crimes, the alleged perpetrators committed numerous violations of very serious federal and state laws relating to explosives and firearms, and, depending on details not yet known, may have committed other such violations. Cumulatively, the prison sentences possible for these violations alone amount to many hundreds of years. A partial list of those violations follows:

1. Possession of a ''destructive device'' (i.e., bomb). (Multiple counts.) Prohibited under 26 U.S.C. Chapter 53. Each violation is punishable by 10 years in prison and a $10,000 fine. Other explosives violations are under 18 U.S.C. 842.

Colorado law [18–12–109(2)] prohibits the possession of an ''explosive or incendiary device.'' Each violation is a Class 4 felony. Colorado [18–12–109(6)] also prohibits possession of ''explosive or incendiary parts,'' defined to include, individually, a substantial variety of components used to make explosive or incendiary devices. Each violation is a Class 4 felony.

2. Manufacturing a ''destructive device'' (i.e., bomb). (Multiple counts.) Prohibited under 26 U.S.C. Chapter 53. Each violation is punishable by 10 years in prison and a $10,000 fine.

3. Use of an explosive or incendiary device in the commission of a felony. Prohibited under Colorado law [18–12–109(4)]. A class 2 felony.

4. Setting a device designed to cause an explosion upon being triggered. Violation of Colorado law. (Citation uncertain)

5. Use of a firearm or ''destructive device'' (i.e. bomb) to commit a murder that is prosecutable in a federal court. Enhanced penalty under 18 U.S.C. 924(i). Punishable by death or up to life in prison. A federal nexus is through 18 U.S.C. 922(q), prohibiting the

discharge of a firearm, on school property, with reckless disregard for the safety of another person.

6. Use of a firearm or ''destructive device'' (i.e., bomb) in a crime of violence that is prosecutable in a federal court. Enhanced penalty under 18 U.S.C. 924(c). Penalty is 5 years if a firearm; 10 years if a ''sawed-off'' shotgun, ''sawed-off'' rifle or ''assault weapon;'' and 30 years if the weapon is a ''destructive device'' (bomb, etc.). Convictions subsequent to the first receive 20 years or, if the weapon is a bomb, life imprisonment. Again, a federal nexus is through 18 U.S.C. 922(q), prohibiting the discharge of a firearm, on school property, with reckless disregard for the safety of another person.

7. Conspiracy to commit a crime of violence prosecutable in federal court. Enhanced penalty under 18 U.S.C. 924(n). Penalty is 20 years if the weapon is a firearm, life imprisonment if the weapon is a bomb. Again, a federal nexus is through 18 U.S.C. 922(q), prohibiting the discharge of a firearm, on school property, with reckless disregard for the safety of another person.

8. Possession of a short-barreled shotgun or rifle. Some news accounts have suggested that the alleged perpetrators may have possessed a ''sawed-off'' rifle. (A shotgun or rifle less than 26'' in overall length, or a shotgun was a barrel of less than 18'', or a rifle with a barrel of less than 16''.) A spokesman for the Jefferson County Sheriff's Office reported, possibly, at least one long gun with the stock cut off. Prohibited under 26 U.S.C. Chapter 53. A violation is punishable by 10 years in prison and a $10,000 fine.

Colorado law [18–12–102(3)] prohibits possession of a ''dangerous weapon'' (defined to include sawed-off guns). First violation is a Class 5 felony; subsequent violations are Class 4 felonies.

9. Manufacturing a ''sawed-off'' shotgun or ''sawed-off'' rifle. Prohibited under 26 U.S.C. Chapter 53. Each violation is punishable by 10 years in prison and a $10,000 fine.

10. Possession of a handgun or handgun ammunition by a person under age 18: Some news accounts report one alleged perpetrator as being 17 years of age. It is yet unclear what firearms were involved in the crime. A person under age 18 is prohibited from possessing a handgun or handgun ammunition, except for legitimate target shooting, hunting, and firearms training activities, and similar legitimate reasons.[18 U.S.C. 922(x), part of the 1994 crime bill.] A violation is punishable by one year in prison.

11. Providing a handgun or handgun or handgun ammunition to a person under age 18. Prohibited under the same provision noted in #4, above. Penalty of one year, unless the provider knew the gun would be used in a crime of violence, in which case the penalty is 10 years.

12. Age restrictions on purchasing firearms. Again, the age of the second suspect and how the alleged perpetrators came into possession of firearms are unclear. However, licensed dealers may sell rifles and shotguns only to persons age 18 or over, and handguns to persons age 21 or over. [18 U.S.C. 922(b)(1)]

13. Possession of a firearm on school property. Prohibited under 18 U.S.C. 922(q). Five year penalty. Colorado also prohibits a gun on school property. (Citation uncertain.)

14. Discharge of a firearm on school property, with a reckless disregard for another's safety. Prohibited under 18 U.S.C. 922q. Five year penalty.

15. Possession, interstate transportation, sale, etc., of a stolen firearm. Prohibited under 18 U.S.C. 922(i) and (j). A violation is punishable by 10 years.

16. Intentionally aiming a firearm at another person. Violation of Colorado law.

17. Displaying a firearm in a public place in a manner calculated to alarm, or discharging a firearm in a public place except on a lawful target practice or hunting place. Violation of Colorado law.

Mr. ALLARD. Whatever the solution, I am convinced that we will never alleviate the problem completely, but we certainly can reduce its occurrence.

It is hard to understand how two students can become so dysfunctional, but we need to continue to search for answers. There is no simple solution. We must pledge ourselves to do what we can. I ask that the Senate begin by approving this resolution.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I come to the floor this afternoon to join with my colleagues in an expression directed by House Concurrent Resolution 92, which deals with the situation that occurred in Columbine High School in Littleton, CO.

I come this afternoon with no answers, and I wish I had some. Like most of us, I have thought a great deal about the crisis from the moment we watched it unfolding on national television late last week. I guess in all of this, I have been struck by how quickly some people rush to explain what happened and offer solutions to prevent such a terrible crime from ever happening again. I wish I had a crystal ball and could do that. But that is not what has occurred; I don't have a crystal ball that can show all that clearly.

The investigation of the crime is not yet completed, and the community is still in shock. My guess is it is only natural to react by trying to make some sense out of all of this, to locate the exact point where something terribly, terribly wrong happened, to tell everyone to stay away from that point, and to pass a law that would keep everyone away from that point, so that it would shield us and our kids and our communities from harm. While it may be natural, my guess is that at this time it would be a mistake. It would be a mistake to designate the point and rush to judgment, because that judgment may be different tomorrow, based on the facts that are now unfolding.

I don't believe there is a Senator on this floor who has all of the answers. I am impatient to have more information, and I hope it will come out, because I would like to think that Columbine—the situation that happened in that high school is a point of time we will all stop and think about and deal with as an issue which we will never allow to happen again.

I just came off the Capitol steps a few moments ago from speaking to a marvelously beautiful group of students from Payette, and Parma, and Middleton, ID. They asked me, ''Senator, what can you do to make our schools safer?'' I said, ''You know, I am not sure I know what to do, because those young men at that high school in Colorado broke 17 laws, State and Federal''—laws that say it is against the law to possess a destructive device, or a bomb; laws that say that manufacturing a destructive device is wrong and against the law; laws that say the use of an explosive or incendiary device in the commission of a felony is against the law. They broke all of those. The law was there and it didn't stop them.

How about setting a device designed to cause an explosion upon being triggered? That is against the law. It is a violation of State law in Colorado. It didn't stop what happened there in Littleton. There is a law regarding the use of a firearm or destructive device to commit a murder that is prosecutable in a Federal court. That is against the law. Yet, those two young men defied the law. The use of a firearm or a destructive device in relation to other activities is against the law.

I could read all 17 of these laws, and not one of them saved one child or that teacher, that coach, at that high school. Maybe if you had stacked all the laws against the front door, in book form, you would have blocked the entry of those kids with their bombs for just a moment in time, and that school might have been saved. But nobody did that. We could rush to judgment today and pass a lot more laws and take those books of laws and stack them up against the schoolhouse door. My guess is that not one more child in America would be safer.

Laws are important, and I am not suggesting they are not. They direct a civil society to, hopefully, do better things. But they need to be carefully-thought-out laws. My guess is that the breaking point is at hand, when America as a culture had better turn and look at itself and ask, ''Why?''

When those kids asked me what I could do this afternoon, I asked them, ''What are you, as students, prepared to do?'' It ''ain't cool'' to rat on a fellow student. Peer pressure is such that young people don't talk about another young person with their principals or superintendents—even if the young person said, ''I am going to kill somebody,'' or do something else wrong. It isn't cool. Yet, if you don't do something, maybe it is Columbine that happens.

I would like to see our schools become zones for education. Drug-free? Absolutely. Gun-free? Absolutely. But zones for education, not primarily socialization and the mixing and all of the kinds of things that go on in schools. Let's set some rules. How about a dress code? How about random inspection of lockers? If you are going to educate and you are going to make a safe haven for education, maybe it is

time you bring discipline back to schools and you say to the bad actors: You are out.

I don't know that that is the answer, but I think it is time our society talks about it, because we have passed a lot of gun laws in the last decade in this Congress and children died last week in Littleton, CO, in spite of all those gun laws we passed, all those bomb laws we passed.

I don't think there is a Senator on the floor who is going to rush out and say it is against the law to buy a pipe—nor should they—or against the law to go out and buy a propane canister to fuel your barbecue. But those were tools used in bombs in Littleton's high school. There is no Senator who will do that, because there may not be any political bounce in it and it just would not make common sense.

So let us let the survivors mourn in Littleton, CO. Let us let that community heal. Let's let the law enforcement people try to make sense of what made these young men tick, by their diaries, by their web page, by their play-acting, by the evil that invaded their hearts. Then maybe we, as public people, can help reshape our very wonderful culture.

Yes, maybe it will take some changes in law. There is no disputing what I represent, and most people in this body know I am a strong supporter of second amendment rights. I am also a strong supporter of first amendment rights. I am not going to trample on those rights, and I am going to supply formidable debate and opposition to anybody who will on this floor try to reshape them in the name of safety and security. But I am willing to put those rights on the line, and I am willing to say—to a culture that has failed to recognize that along with rights comes responsibility—that it is now time to get responsible.

That is what I told those young people a few moments ago on the steps of their Nation's Capitol—that I was going to fight to secure for them the kind of freedoms my forebears had fought to secure for me; that I had accepted the responsibility that came with those rights and they, too, must; that passing laws in the U.S. Congress does not a safer world make, unless the laws are enforceable and unless people genuinely agree with them.

So I think it is appropriate that our leader has asked us to take pause, not rush to judgment, not play to the politics of the moment, but to take a deep breath and think awhile, let a community heal just a bit, speak to it in the form of the resolution that is now before us, allow the investigators to patch together this weird and terribly evil story. And then let's examine it as a Congress, as an American culture, and say to ourselves we must become more responsible—responsible as legislators, responsible as parents, responsible as a culture, in taking our rights in a way that demonstrates the responsibility that goes with them.

I say to the citizens of Littleton, CO, how terribly sorry I am. My wife and I mourn with them. We have three beautiful children and a grandbaby, and we are so glad that they are safe and happy today. We know there are parents in Littleton, CO, who have lost something that can never and will never be replaced. So I am pleased that today, as a Congress and as a Senate, we are speaking to the people of Littleton, CO, and then we will step back and allow the healing process to begin as the investigative work is completed. Then, and only then, is it right and proper that we engage. And I will not be a vehicle to obstruct that engagement. That would be wrong. But we will soon have a juvenile crime bill on the floor. That is the appropriate place to talk about how to deal with this issue, and from sound information make quality judgments about how we may help our culture reshape itself in a responsible and caring fashion.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that floor privileges for Angela Williams and David Goldberg be granted for the 106th Congress.

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

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, as we consider this resolution before the Senate to remember those who lost their lives just one short week ago in Littleton, Colorado, we are once again reminded of an event which is heart-wrenchingly tragic and one that bears out the need for educators, parents, and government officials to work together to ensure that the classroom is a safe place for all students.

The tragic events last Tuesday at Columbine High School serve as yet another warning that something has gone terribly wrong in our nation. Schools are not the idyllic places that they once were. They are less and less safe havens, conducive to study, but, rather, increasingly, are proving to be unstable communities, teetering on the brink of violent outbursts.

It makes me long for the old high school which I attended and from which I graduated 65 years ago. It makes me long for the little two-room schoolhouse in which I began my studies along about 1923. Sometimes I think schools are too large these days. They don't allow for the personal attention that teachers could otherwise show students. They are conducive, I think, by their very largeness to the creation of gangs, hate groups, and so on.

The scene of screaming students rushing outside through schoolhouse doors, some hobbling or clenching a gunshot wound to the arm or leg, and others overwhelmed with fear for their own lives, has become all too familiar to this nation during the past few years. From West Paducah, Kentucky, to Jonesboro, Arkansas; Springfield, Oregon; and now to the community of Littleton, Colorado, gun shots have shattered the silence and tranquillity of an otherwise typical high school day, abruptly ending the innocence of youth, and launching families and friends into some of the most difficult days of life that no human being should have to confront.

We would have never dreamed of this kind of thing in my school days.

Mr. President, there is a crying need to do more to protect our children. But, the unfortunate reality of the situation is that there is no single-step panacea to prevent further bloodshed at schools across the country. One could make many suggestions. Many suggestions are readily obvious. But the problem of school violence does not begin and end on school grounds. It is much more pervasive. It reaches beyond the schoolyard gates, into our communities and into our homes.

It is unfortunate that we live in a country where criminals find ways to get around the law and do evil, but it happens. Hatred is a powerful demon that can draw people to do things we do not truly understand. I have seen it in my own lifetime, and, I try, whenever possible, to help teach young people to avoid such egregious mistakes. Of course, the young are not alone in the making of these mistakes. But mine is only one voice. But it is one voice.

I often take time out to talk with the pages here. I don't have to do it. Nobody makes me do it. Nobody tells me to do it. But I like to talk to these young people. These are fine young people, these pages of ours on both sides of the aisle. I often pause to take a half hour with them to talk about wholesome experiences, and to relate good stories from Chaucer, and from other great authors, as I feel that if I can do a little good with these young people here, who knows where this influence will stop?

While it is my intention to make any and all efforts to prevent this kind of tragedy before it visits another region of the country, it is essential that we take up the effort and the responsibility to raise our children, to nurture them, to protect them, to guard them as much as we can from these evil influences that are always ready to prey upon them, and it is my desire always to try to provide these young people with a solid foundation, to encourage them to engage in wholesome pursuits and to read from good literature, and in this way I think adults can help to

provide them with a solid foundation—spiritually, emotionally, and intellectually. We have to indulge with caution any idea that there can be morality without religion. Protecting our Nation's children should be a team effort, not simply a matter of public policy.

If we ever have a hope of preventing violence in the classroom, parents must take an active role in their child's life and monitor their child's behavior for unusual actions or alarming conduct. Teachers carry similar responsibilities and must no longer ''chalk up'' unusual behavior to the simple conclusion of a student having a bad day. We have witnessed too many oversights like this which have snatched the lives of other innocent children caught in the line of fire.

Moreover, we should not be surprised, given the excessive and mindless violence—I tell you, it is excessive, because I see it when I turn on the television—mindless violence, excessive violence. We should not be surprised then, given the excessive and mindless violence infiltrating, permeating, the television airwaves and now the Internet, that we really have a problem in today's society. It is not a hidden fact that I am no fan of the muck that spews out over the tube or the obscenities rumbled by so-called actors and actresses in a TV drama, but there is little that we in Congress can do to regulate children from jumbling their brains with this nonsense.

Parents must no longer give their children free rein of the remote control or unmonitored access to dial up those polluted websites running rampant over the Internet. Children, with their inquisitive young minds, too often repeat what they see on TV or read about over the Internet, and with little guidance from parents, it is next to impossible to prevent this often fatal ''copycat'' action from recurring.

Probably most disappointing to me is that in watching the news recently, it seems that the tragic news of a school shooting has become somewhat of a feeding frenzy for the media to hit the airwaves with explicit details, often those that are too easily digested by a listening youngster experiencing emotional distress. It seems counterproductive, even dangerous, to offer what amounts to free advertising by reporting on the Internet websites that hand out free explanations on how to make a bomb or where to obtain a gun. Mr. President, when is enough enough?

Efforts to end school violence can be, and will likely be, undone by this practice of revealing too much information with little thought of the future implications. I urge the media to think about the possible consequences of their actions before trying to beat the other news team to the latest punch line. Supplying children with information that could lead to the perpetuation of school violence is not the solution. Children need not be confronted with all of the finite details of the gory pictures as they sit down to the breakfast table with their parents.

The tragedy at Columbine High School may be impossible to ever, ever truly understand. But that should not deter us from seeking answers and working for solutions. It is time to stop wringing our hands over this issue and take action so that we in Congress can support measures that might prevent a recurrence of this nightmare.

I am concerned that we may be approaching the day when our nation's students spend more time in the classroom thinking about the potential for a gun pop than a pop quiz. A day when teachers are too preoccupied with their own fear of a gun emerging into their classroom to teach their students the basic grammatical structure or algebraic formula properly. Today's children deserve the opportunity to get an education. Today's teachers deserve the opportunity to teach. They deserve this just as much as the children and the teachers of yesteryear. We must all do whatever we can to ensure that today's children and those of the future have an opportunity to excel academically in an environment free from guns, knives, and other weapons.

I look forward to working with Senator LIEBERMAN in the upcoming weeks to author legislation that would establish a National Commission on School Violence to help get at the root of this problem if that is possible. It is my hope that by joining forces between educators, children, parents, media, and others, we will gain a more vivid perspective on what leads to violent behavior behind the schoolhouse doors, and that we can begin to remedy this harrowing problem overtaking our nation's schools. I urge teachers and parents, church and civic leaders to do the same. This type of disaster can occur anywhere—we must act now if we are to prevent a replay of this nightmare in another American community.

I hope parents throughout the Nation are thinking soberly, soberly about this problem.

I took a piece of plastic clay
And idly fashioned it one day

And as my fingers pressed it still
It moved and yielded to my will.

I came again when days were past.
The bit of clay was hard at last.

The form I gave it, it still bore,
And I could change that form no more.

I took a piece of living clay
And gently formed it day by day.

And molded with my power and art.
A young child's soft and yielding heart.

I came again when years were gone,
He was a man I looked upon.

He still that early impress wore,
And I could change him nevermore.

There is a lesson in this for all of us. I hope we will learn it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. HATCH. Mr. President I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the resolution.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 92) expressing the sense of Congress with respect to the tragic shooting at Columbine High School in Littleton, Colorado.

The Senate proceeded to consider the resolution.

Mr. BUNNING. Mr. President, I rise in support of the resolution and to express my deepest, heartfelt sympathy for the families of the victims of Columbine High School shootings.

At a time like this, words seem to lose their meaning, and there is little that we can say to adequately express our regret and sorrow. There is no way to explain the senseless violence that claimed the lives of the students and teacher in Littleton, and we struggle to understand and explain the inexplicable.

Schools are supposed to be safe havens where teenagers—children—are supposed to grow and learn, not plot to murder their peers. What happened in Colorado simply defies explanation or comprehension. During trying times like this, we must fall back on our faith. Our faith in God, and family, and community. Our beliefs have been shaken, and we must rely on each other and trust that the Lord will help see us through the confusing darkness that has descended on our Nation after this terrible catastrophe.

A similar tragedy occurred at a high school in Paducah less than a year and a half ago. Unfortunately, this is an experience that we in Kentucky have been through and we grieve with our friends in Colorado. The children of Colorado and their families will continue to be in our thoughts and prayers.

Mr. MCCAIN. Mr. President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New York (Mr. MOYNIHAN) is absent due to surgery.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote ''aye.''

The result was announced—99 yeas, 0 nays, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—99

Abraham	Bayh	Boxer
Akaka	Bennett	Breaux
Allard	Biden	Brownback
Ashcroft	Bingaman	Bryan
Baucus	Bond	Bunning

Burns	Gregg	Mikulski
Byrd	Hagel	Murkowski
Campbell	Harkin	Murray
Chafee	Hatch	Nickles
Cleland	Helms	Reed
Cochran	Hollings	Reid
Collins	Hutchinson	Robb
Conrad	Hutchison	Roberts
Coverdell	Inhofe	Rockefeller
Craig	Inouye	Roth
Crapo	Jeffords	Santorum
Daschle	Johnson	Sarbanes
DeWine	Kennedy	Schumer
Dodd	Kerrey	Sessions
Domenici	Kerry	Shelby
Dorgan	Kohl	Smith (NH)
Durbin	Kyl	Smith (OR)
Edwards	Landrieu	Snowe
Enzi	Lautenberg	Specter
Feingold	Leahy	Stevens
Feinstein	Levin	Thomas
Fitzgerald	Lieberman	Thompson
Frist	Lincoln	Thurmond
Gorton	Lott	Torricelli
Graham	Lugar	Voinovich
Gramm	Mack	Warner
Grams	McCain	Wellstone
Grassley	McConnell	Wyden

NOT VOTING—1

Moynihan

The concurrent resolution (H. Con. Res. 92) was agreed to.

The preamble was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, April 26, 1999, the federal debt stood at $5,591,807,374,069.84 (Five trillion, five hundred ninety-one billion, eight hundred seven million, three hundred seventy-four thousand, sixty-nine dollars and eighty-four cents).

Five years ago, April 26, 1994, the federal debt stood at $4,561,451,000,000 (Four trillion, five hundred sixty-one billion, four hundred fifty-one million).

Ten years ago, April 26, 1989, the federal debt stood at $2,756,180,000,000 (Two trillion, seven hundred fifty-six billion, one hundred eighty million).

Fifteen years ago, April 26, 1984, the federal debt stood at $1,485,043,000,000 (One trillion, four hundred eighty-five billion, forty-three million).

Twenty-five years ago, April 26, 1974, the federal debt stood at $471,530,000,000 (Four hundred seventy-one billion, five hundred thirty million) which reflects a debt increase of more than $5 trillion—$5,120,277,374,069.84 (Five trillion, one hundred twenty billion, two hundred seventy-seven million, three hundred seventy-four thousand, sixty-nine dollars and eighty-four cents) during the past 25 years.

DAIRY POLICY REFORM

Mr. KOHL. Mr. President, I would like to take this opportunity to discuss the direction of our nation's dairy policy. When Congress passed the 1996 Farm Bill, we passed the most significant reform of our agricultural system since the Great Depression. In that bill, we ordered USDA to update our outdated milk pricing laws—something that had not happened for 60 years.

In taking these market oriented actions to drag dairy policy into—if not the 21st century—at least the second half of the 20th century, Congress may have spoken more boldly that we were willing to act. Congress has tried to put the brakes on USDA's milk pricing reform efforts from the moment they began. And now, mere days after USDA announced the reformed system, there are those who are seeking to insulate their home states from it by legislating compacts to set the price of milk artificially high in their regions.

These actions cannot stand. Though I understand my colleagues desire to protect the dairy farmers in their regions, I cannot let them do so at the expense of the productive dairy farmers in the upper Midwest—or at the expense of a national milk pricing system that, for the first time in sixty years, is market oriented and fair.

Expanding the anti-competitive Northeast dairy compact would regionalize the dairy industry and institutionalize market distorting, artificially high prices in one area of the country—just as the rest of the country is moving toward a simplified and more equitable system.

Dairy markets are truly national in nature. My region of the country, the Upper Midwest, has learned this lesson all too well. We have seen our competitive dairy industry decline, damaged by the distortion caused by an outmoded milk marketing order system. That system requires that higher prices be paid to producers the farther they are from Wisconsin. Sixty years ago, when the Upper Midwest was the hub of dairy production and the rest of the country lagged far behind, this regional discrimination had some justification. It encouraged the development of a dairy industry capable of producing a local supply of fluid milk in every region. But today, that goal is largely accomplished, and the continuation of the discriminatory pricing policy serves only to fuel the decline of the dairy industry in the Midwest.

The new system proposed by USDA is not all that we in the Upper Midwest would want. But it is an improvement in the current system, and a move toward a national compromise on this divisive issue. It is a step forward.

The legislation introduced today to continue the Northeast Dairy compact is just the opposite—a step backwards. It would remove a region from the new national dairy pricing system and move toward a Balkanized dairy policy. It hurts consumers in the affected region—consumers who will pay artificially high prices for their milk. And it hurts our hopes of achieving long-overdue unity on dairy pricing reforms that are fair and good for all regions of the country.

For all of these reasons, I oppose the expansion of regional milk pricing cartels like the Northeast Compact, and I ask my colleagues to do the same. Lets enter the next millennium with a dairy policy that is market-oriented and consumer friendly—not one that ties us to the unjustified protectionism and unnecessary inequities of the past.

CELEBRATING MISSOURI HOME EDUCATION WEEK

Mr. ASHCROFT. Mr. President, as a parent and former teacher, it is a privilege for me to be able to recognize Missouri home schoolers, who will observe Missouri Home Education Week during May 2–8, 1999.

Home schooling has been legal in Missouri since the state's founding in 1821. Since that time, and especially in the last two decades, home schoolers have faced numerous challenges and successes.

Fortunately, legislators are increasingly recognizant of the importance of local decision-making and parental involvement in our children's education. Home Education Week reminds us that parents are the first and best educators of their children. Study after study has shown that parental involvement is the most important factor in a child's academic achievement.

It is, therefore, appropriate that we celebrate Home Education Week by acknowledging the hard work, dedication, and commitment to academic excellence of the more than 4,300 home school families in my home state. Recently, the Washington Post lauded the academic achievement of these families. The Post article describes a study of home-schooled children, stating that they ''score well above the national median on standardized tests [and] often study above their normal grade level.''

It was an honor for me to proclaim Missouri's first Home Education Week in 1989. Now, in 1999, I look forward to the continued success of Missouri home school families, and to working with them to promote the kind of freedom that encourages parents to take an active role in guiding the course of their children's education.

ANTITRUST SUITS AND SMALL BUSINESS

Mr. ABRAHAM. Mr. President, I ask unanimous consent that articles written by Karen Kerrigan and Raymond J. Keating of the Small Business Survival Committee, along with a letter addressed from Karen Kerrigan to certain Members of Congress, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ABRAHAM. The Small Business Survival Committee, or SBSC, is a nonpartisan, nonprofit small business advocacy group with more than 50,000 members. These materials give a small business perspective on recent actions of the Department of Justice's Antitrust division, and of the action against Microsoft in particular.

As the SBSC point out, we are in an era of renewed activism on the part of the Antitrust Division. Since 1994 that Division has pursued more than 274 antitrust cases. The Antitrust Division was set up to protect consumers and our free enterprise system. But these materials demonstrate that it is questionable whether this new activism is in fact helpful to small businesses and entrepreneurs.

In particular, the SBSC questions whether the government's action against Microsoft, along with the concomitant actions of the state attorneys general, will not actually hurt small businesses and entrepreneurs who have profited from Microsoft's innovative practice. Worse, significant harm may be done to our ability to compete and to our very system of free enterprise, by the draconian measures being put forward in these talks.

Breaking up Microsoft or worse yet subjecting it and its suppliers to government approved contracting procedures will destroy business flexibility and substitute bureaucratic empire-building for free market competition as the force behind new initiatives. This would be tragic for all Americans as it would deny us the economic growth, innovation and freedom that open competition has provided for so long.

I hope my colleagues will study these and other materials as we consider the proper course for antitrust law in our political and economic systems.

[From the Business Journal, January 18, 1999]

BIG ANTITRUST CASES WILL HURT 'LITTLE GUYS'

(By Karen Kenigan)

Small-business owners seldom go running to the federal government for protection when competition threatens their market position.

But that, unfortunately, has become the strategy for some big businesses who see their market share eroding due to aggressive competition from a rival.

The Antitrust Division of the Department of Justice is currently being used by America's top CEOs who give up on the marketplace, essentially using the government as a temporary cushion against bleeding market share.

But make no mistake, due to the desperate pleadings of such big corporations, small businesses as consumers, suppliers—and even competitors—of successful big companies under attack will suffer from this excessive meddling in the marketplace.

Headed by Joel Klein, the antitrust division is operating with renewed vigor. If you care to take a look at Justice's web site, it proudly lists more than 274 antitrust cases brought by the U.S. government since December 1994 (along with amicus curiae briefs in 31 other cases).

''The criteria for antitrust investigations or lawsuits seems to be if a company merges or wildly succeeds, then it may be ripe for antitrust action. When government moves against successful businesses, the entrepreneurial sector of the economy pays a price, too,'' said Small Business Survival Committee chief economist Raymond Keating.

Keating argues that antitrust actions generally seek to supplant the wisdom of consumers with government regulators as the final arbiter to protect politically connected businesses that fail to adequately compete. He says small businesses that have gained from the success and innovation of companies under attack—Microsoft Corp. being a good example—will ultimately lose from aggressive antitrust action.

Most troublesome is the permanent damage inflicted on the company under attack and the impact on its small-business suppliers.

Nobel Prize-winning economist Milton Friedman recently said that the companies of Silicon Valley that encouraged Justice action against Microsoft are displaying ''suicidal'' behavior. The door has been opened for new regulations in an ''industry relatively free from government intrusions,'' he warned the industry at a CATO-sponsored event.

A new period has dawned in corporate America where some feel safe running to the government for protection and solace rather than responding to competition with better ways to serve consumers.

An activist antitrust division has helped to fuel this rather co-dependent behavior. Its doors are thrust open to all pleaders who wish to use the government to sideline or district the competition. A costly government investigation is one way to put the best brains of a business competitor into nonproductive status, warding off potential bad press and other fallouts that often accompany an antitrust challenge.

The government's pursuit of Microsoft is a bogus venture, according to Citizens Against Government Waste. In October, the group released a survey that showed 83 percent of the public views the case against Microsoft as a waste of federal and state taxpayer funds.

''With new evidence every day of the weakness in the government's case, it's only a matter of whether the government wants to wait 13 years, as it did in the IBM case,'' said CAGW president Tom Schatz.

According to the antitrust division's own literature, its work is supposed to be focused on protecting consumers and our system of free enterprise. What's becoming more clear is that its work is doing much more to thwart competition by protecting whiny competitors at the expense of free enterprise.

[From Small Business Reg Watch, December 1998]

IS ANTITRUST ANTI-ENTREPRENEUR?

(By Raymond J. Keating)

Once again, merger activity in the U.S. economy has accelerated. Among the proposed or consummated corporate marriages of 1998 are Chrysler Corporation and Daimler-Benz, American Online Inc. and Netscape Communications Corp., Deutsche Bank AG and Bankers Trust Co., Unum Corp, and Provident Cos., Tyco International Ltd. and AMP Inc., MCI Communications Corp. and WorldCom Inc., Cargill Inc. and Continental Grain Co., Bell Atlantic Corp. and GTE Corp., Wells Fargo & Co. and Northwest Corp., AT&T Corp. and TeleCommunications Inc., Exxon Corp and Mobil Corp., along with a host of others.

Of course, such mergers raise the antennae of government antitrust regulations at the U.S. Department of Justice (DoJ) and the Federal Trade Commission (FTC). These days, however, it does not seem to take very much to get the attention of the rather activist antitrust division headed by Joel Klein at the DoJ. Indeed, at the DoJ's website, the antitrust division lists 274 antitrust cases brought by the U.S. government since December 1994, along with Amicus Curiae briefs in 31 other cases.

And a proposed merger certainly is not required to warrant antitrust attention. For example, an antitrust case was filed in early October 1998 against Visa USA and MasterCard International. The FTC has filed suit against Intel Corp. And of course, DoJ is now in court against Microsoft Corp.

The criteria for antitrust investigations or lawsuits seems to be if a company merges or wildly succeeds, then it may be ripe for antitrust action. Of course, this problem springs from the combination of vague legislation (i.e., primarily the Sherman Act of 1890 and the Clayton Act of 1914) with zealous government lawyers and regulators.

While at first glance the issue of antitrust may seem remote to most small businesses and entrepreneurs, it does have an impact on and should be a concern to the entrepreneurial sector of our economy. In general, antitrust actions are anti-entrepreneur, and the reasons go far beyond the basic idea that the next Microsoft lurks among today's small or start-up firms, and will some day have to face the wrath of antitrust regulators.

Entrepreneurs as Consumers. Perhaps most obviously, small businesses are affected by antitrust regulation in their role as consumers. For example, small businesses are customers in almost every industry touched by antitrust actions—from telecommunications to computers to gasoline to grain to the Internet.

Any time our most successful businesses come under regulatory assault, consumers are bound to lose. Entangle companies in antitrust litigation and resources are diverted away from serving consumers, and instead put toward battling the government. Just ask IBM. The increased costs of government arrogantly overruling decisions made in the marketplace ultimately fall on the backs of consumers. After all, the consumer acts as final judge and jury in the marketplace. They ultimately decide the success or failure of mergers, who gains market share, and who loses market share. Transfer this power to government bureaucrats, and consumers—including small businesses—obviously suffer.

Entrepreneurs as Suppliers. In addition, government overriding the wisdom of millions of individuals in the marketplace directly hurts small business and entrepreneurs who supply goods and services to the firm under antitrust assault. Businesses who serve customers well and gain market share as a result, or those pulling off successful mergers, create new opportunities for entrepreneurs and small enterprises. Consultants, construction businesses, food services, dry cleaners, retail stores, and seemingly countless other suppliers grow up around these larger businesses. These smaller businesses inevitably get hit with the fallout from an antitrust attack on the larger companies.

Entrepreneurs as Competitors. Some might believe that smaller enterprises favor antitrust action as a means to hobble a dominant competitor. In fact, an overwhelming number of antitrust assaults begin with a faltering or less efficient firm trying to get the government to impede their successful competitor.

However, this most certainly is a case against antitrust action, not for it. The only possible beneficiary would be the firm seeking government protection, and any resulting advantage for that business would at

best be temporary as the market would still be working to weed out inefficiencies and reveal their shortcomings—and justifiably so.

In general, the entrepreneurial sector of the economy gains nothing by having government step in and punish success, or dictate which companies are allowed to merge.

Entrepreneurs vs. Regulators. Indeed, any further empowerment of regulators does not serve the over-regulated entrepreneur at all. Government stepping in and dictating business practices, assaulting efforts to gain market share, and punishing success goes far in shaking the confidence in and of business. Under such circumstances, the business environment becomes inclement for all. And one can easily envision robust antitrust regulation spilling into other regulatory arenas.

Entrepreneurs and Economics. The fundamental problem with antitrust regulation is that it rests on unsound economics. In reality, the economy is not the sterile, neat model of perfect competition taught in economics textbooks and desired by government lawyers. Instead, it is a tumultuous, ongoing struggle among enterprises to create temporary monopolies through innovation, invention and efficiencies. Those temporary monopolies are subsequently attacked and surpassed by competitors. Entrepreneurs, unlike many in government, understand this rivalry between current and future competitors.

Indeed, it is difficult, if not impossible, to think of a true monopoly—i.e., one supplier in an industry with no real or close substitutes—ever emerging from the competitive marketplace. Where true monopolies have existed, it was the government that either created, aided, or protected it (e.g., telephony, electricity, and education). The vaunted idea of predatory pricing—whereby a business lowers it prices below cost in order to destroy competitors, monopolize the market, and then hike prices dramatically—fails the reality test. It's never happened. The potential losses such a strategy would have to incur would be enormous and unpredictable. And even if it were to eventually succeed, consumers would have benefited enormously, and subsequent price increases would bring competitors back into the market.

Antitrust regulation at its core is contradictory. It purports to protect consumers from evil monopolies and so-called ''anticompetitive activity,'' but it is, in fact, consumers who make the final decisions in the market. In this light, antitrust regulation is revealed to be little more than another elitist government effort to protect us from ourselves. Antitrust actions generally seek to supplant the consumer with the government regulator as final arbiter in order to protect politically connected businesses who fail to adequately compete.

In the end, small businesses and entrepreneurs are not immune to the costs of government antitrust activism. None of us are.

EXHIBIT 1.

SMALL BUSINESS SURVIVAL COMMITTEE,
Washington, DC, April 13, 1999.

Hon. DENNIS HASTERT,
Speaker of the House,
U.S. House of Representative, Washington, DC.
Hon. TRENT LOTT,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR SPEAKER HASTERT AND SENATOR LOTT: The Small Business Survival Committee (SBSC), a nonpartisan, nonprofit small business advocacy group with more than 50,000 members, is very concerned about the growing antitrust activism exhibited by the U.S. Department of Justice. It often seems that an antitrust regulatory assault is launched simply because a business has served consumers well, become successful, and/or frustrated its competitors who now seek political remedies to their own economic challenges.

SBSC believes this is the case with the current antitrust assault against the Microsoft Corporation. Microsoft is the most successful U.S. company in recent memory. The firm gained market share by serving consumers well, not, for example, through any kind of government assistance. One would think that such a U.S. business exhibiting such global leadership would be praised, not punished.

You may be wondering, why should small business be concerned about the welfare of corporate giants and their battles with DoJ? As the attached report points out, what eventually happens with these various antitrust cases will have a dramatic impact on small businesses both as consumers and as entrepreneurs. I would even argue that renewed DoJ activism has helped to embolden the regulatory spirit, across-the-board, within the federal government.

What eventually happens with the Microsoft case-Whether it be more regulation, or one or more of the various ''remedies'' that have been publicly floated and discussed (most recently by the state AG's)—will have a deep and long-lasting impact on the high-tech industry. Small businesses, entrepreneurs and their workforce will be the ultimate losers—not to mention the economy and all consumers. The ''remedies'' being discussed by opponents of Microsoft, as well as the wish-list drawn up by the attorneys general who have joined the federal government's lawsuit are draconian-plain and simple. As a country whose free enterprise system has made the United States the envy of the world, SBSC is both ashamed and disturbed that these ''remedies'' are even being discussed.

The very notion of monopoly or monopoly power in today's dynamic, extremely fluid computer market is rather preposterous. Make no mistake, Microsoft competes against current, emerging and future competitors. Does anyone seriously doubt that it Microsoft slips and does not stay at the cutting edge. It will falter just like any business in a highly competitive industry?

In the accompanying materials, SBSC discusses many of these antitrust issues, as well as others. I particularly draw your attention to the report by our chief economist Raymond J. Keating which asks the question ''Is Antitrust Anti-Entrepreneur?'' The answer, as you shall see, is ''yes.''

Finally, I would like to mention two recent articles in the Seattle Times and New York Times which report on a wish list of punishments against Microsoft contemplated by the state attorneys general. I say the least, these are quite disturbing.

The 19 state attorneys general who joined the federal government's misguided antitrust lawsuit against Microsoft are considering several punishments if the government's lawsuit succeeds, including breaking the company into two or three parts based on product lines, breaking the company into three equal parts with each possessing Microsoft's source code and intellectual property, or forcing the company to license or auction off its Windows trademark and source code to other companies. Other proposals reportedly under consideration include extensive fines, giving government regulators ongoing access to the company's e-mail and documents, that Microsoft seek government approval before acquiring any software company, and forced standardization of Microsoft contracts.

These would be outrageous governmental intrusions into one of the top U.S. businesses in the world. If carried out, the precedents set for current and future businesses would be quite dangerous.

Unfrotunately, Microsoft has been cornered into a quagmire that no American company should be forced into by its own government. From our perspective the ''settlement talks'' now taking place are a bogus set up against Microsoft. Having approached ''settlement'' with reasonable alternatives to the draconian regulations and ''remedies'' sought by those hounding the company, the federal government and attorneys general will undoubtedly portray Microsoft as ''unreasonable'' and ''greedy'' because they will not forsake principles that could cause long-term damage to the industry. Of course, they owe their biggest competitors nothing since they are the ones who instigated the suit and prodded the DoJ in the first place.

This good-old boy gang up by the government and participating AG's is a farce and a waste of tax dollars. They have lost perspective, and their law-enforcement priorities are horribly misplaced.

I urge Members of Congress to review the following materials, and take a close look at current antitrust policies, which work against entrepreneurship, business, U.S. economic leadership and consumers. We believe the Congress has the obligation to ask why the DoJ is placing such a priority on the ''get Microsoft'' effort when more important law enforcement issues appear to be in the greater national interest.

Sincerely,

KAREN KERRIGAN,
President.

DAIRY COMPACTS

Mr. FEINGOLD. Mr. President, I rise in strong opposition to legislation introduced today by my colleagues Senator JEFFORDS, Senator LEAHY, Senator COCHRAN and Senator SPECTER. They have introduced a measure which will further aggravate the inequities of the Federal Milk Marketing Order system. Their legislation will make permanent and expand the Northeast Interstate Dairy Compact and will authorize the establishment of a southern dairy compact.

Despite the discrimination against dairy farmers in Wisconsin under the Federal Dairy policy known as the Eau Claire rule, the 1996 Farm Bill provided the final nail in the coffin when it created and authorized for 3-years, the existence of the Northeast Interstate Dairy Compact. The Northeast Interstate Dairy Compact sounded benign in 1996, but its effect has been anything but, magnifying the existing inequities of the system.

The bill which authorized the Northeast Interstate Dairy Compact established a commission for six Northeastern States—Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. This commission set minimum prices for fluid milk higher even than those established under Federal Milk Marketing Orders. Never mind that the Federal milk marketing order system, under the Eau Claire rule, already provided farmers in the region with minimum prices higher than those received by most other dairy farmers throughout the nation.

The compact, which controlled three percent of the country's milk, not only

allowed the six States to set artificially high prices for their producers, it allowed them to block entry of lower priced milk from producers in competing States. To give them an even bigger advantage, processors in the region get a subsidy to export their higher priced milk to noncompact States. It's a windfall for Northeast dairy farmers. It's also plainly unfair and unjust to the rest of the country.

Mr. President, the Northeast Interstate Dairy Compact (NEIDC) is set to expire at the implementation of USDA's new Federal Milk Market Order system. According to the Omnibus Appropriations measure passed last year, the expiration date of the NEIDC is scheduled for October 1, 1999. Now, Members of Congress are pushing for an extension and expansion of the existing milk cartel and for the authorization of another.

To make clear the magnitude of this legislation on producers and consumers we need to only look at the numbers. Currently, three percent of milk is under a compact, conceivably, under this new measure, over 40% of this country's milk will be affected. More importantly, one hundred percent of this country's milk prices will be affected—in Wisconsin, prices will be adversely affected.

These compacts amount to nothing short of government-sponsored price fixing. They are unfair, and bad policy. Now, my colleagues would like you to make this compact permanent, expand it to include other states, and authorize a southern dairy compact. After three years, we know that dairy compacts:

Blatantly interfere with interstate commerce and wildly distort the marketplace by erecting artificial barriers around one specially protected region of the Nation;

Arbitrarily provide preferential price treatment for farmers in the Northeast at the expense of farmers in other regions who work just as hard, who love their homes just as much and whose products are just as good—maybe better in Wisconsin;

Irresponsibly encourage excess milk production in one region without establishing effective supply control. This practice flaunts basic economic principles and ignores the obvious risk that it will drive down milk prices for producers everywhere else in the country;

Raises retail milk prices on the millions of consumers in the Compact region;

Imposes higher costs on every taxpayer because we all pay for nutrition programs such as food stamps and the national school lunch programs that provide milk and other dairy products.

As a price-fixing device, the Northeast Interstate Dairy Compact was unprecedented in the history of this Nation. As a dairy cartel, it is a poor legislative fix and bad precedent to deal with low milk prices.

Wisconsin's dairy farmers are being economically crippled by federal dairy policies. It's time to bring justice to federal dairy policy, and give Wisconsin Dairy farmers a fair shot in the market place.

I urge my colleagues not to buy into the rhetoric surrounding this issue. I urge you to work together towards fair national dairy policy. A policy that provides all dairy producers a fair price for their commodity, a policy that allows all of this country's dairy producers to succeed on the basis of hard work and a good product.

I urge my colleagues to oppose this legislation and to join me in the fight against its passage.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

REPORT OF AN EXECUTIVE ORDER RELATIVE TO RESERVE MEMBERS OF THE ARMED FORCES TO ACTIVE DUTY—MESSAGE FROM THE PRESIDENT—PM 20

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services.

To the Congress of the United States:

I have today, pursuant to section 12304 of title 10, United States Code, authorized the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service within the Department of the Navy, under their respective jurisdictions, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve, or any member in the Individual Ready Reserve mobilizations category and designated essential under regulations prescribed by the Secretary concerned. These reserves will augment the active components in support of operations in and around the former Yugoslavia related to the conflict in Kosovo.

A copy of the Executive order implementing this action is attached.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *April 27, 1999.*

MESSAGES FROM THE HOUSE

At 4:57 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 92. Concurrent resolution Expressing the sense of Congress with respect to the tragic shooting at Columbine High School in Littleton, Colorado.

ENROLLED BILL SIGNED

At 5:00 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 800. An act to provide for education flexibility partnerships.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2706. A communication from the Managing Director of the Federal Housing Finance Board, transmitting, pursuant to law, the annual report under the Government in the Sunshine Act for calendar year 1998; to the Committee on Governmental Affairs.

EC–2707. A communication from the Acting General Counsel of the Department of Defense, transmitting, proposed legislation relative to various management concerns; to the Committee on Government Affairs.

EC–2708. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the Information Collection Budget of the U.S. Government for fiscal year 1999; to the Committee on Governmental Affairs.

EC–2709. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a notice of a vacancy in the OMB office; to the Committee on Governmental Affairs.

EC–2710. A communication from the Comptroller General of the United States, transmitting, pursuant to law, various reports issued or released during February 1999; to the Committee on Governmental Affairs.

EC–2711. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the Government National Mortgage Association management report for fiscal year 1998; to the Committee on Governmental Affairs.

EC–2712. A communication from the Chairman, U.S. Merit Systems Protection Board, transmitting, pursuant to law, the annual statistical report for fiscal year 1998; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–37. A resolution adopted by the City Council of Cincinnati, Ohio relative to awarding a gold medal to Rosa Parks; ordered to lie on the table.

POM–38. A petition from the Commonwealth of Puerto Rico; to the Committee on Energy and Natural Resources.

CERTIFICATION

After the conclusion of the General Canvass as disposed in Article 6.008 the Electoral Law of Puerto Rico and in conformity with Article 29 of Law 249 of August 17, 1998, the Plebiscite Law of December 13, 1998, we certify the following official results of the Plebiscite held on December 13, 1998.

ISLAND WIDE RESULTS

	Votes	Percent
None of the Above	787,900	50.3
Petition Number 3	728,157	46.5
Petition Number 4	39,838	2.5
Petition Number 2	4,536	0.3
Petition Number 1	993	0.1
*Others:	4,846	0.3

*Ballots in blank: 1,890; void: 2,956.

Registered Voters: 2,197,824.
Participation: 71.3%.
Total voting polls: 5,611 of 5,611 for a 100%.

POM–39. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Committee on Rules and Administration.

SENATE CONCURRENT RESOLUTION NO. 1617

Whereas, By act of Congress, each state is invited to provide and furnish statues, not exceeding two in number, of deceased persons who have been citizens thereof and illustrious for their historic renown or for distinguished civic or military services, such as the state shall determine to be worthy of national commemoration in a national statuary hall; and

Whereas, The state of Kansas has had one citizen, Dwight David Eisenhower, who stands alone in the history of this state in achievement of a distinguished career in both the civic and military services, a man whose destiny led him from a boyhood home in Abilene, Kansas, to lead the armies of his nation and those of the free world in one of the greatest and most historic military engagements of all time and to lead the people of his nation in peace as the 34th president of the United States; and

Whereas, Dwight David Eisenhower, citizen of Kansas, General of the Army, President of the United States and honored and respected friend of presidents, kings and leaders and peoples of the free world is eminently worthy of national commemoration in a national statuary hall; and

Whereas, The state of Kansas in years past did provide for the placing of two statues of distinguished citizens of Kansas in statuary hall; and

Whereas, One of such statues is of the Honorable George W. Glick, a man who although he did not hold national office or win national or international acclaim, was a most honored and distinguished governor and legislative and civic leader in the state of Kansas; and

Whereas, Governor Glick can best be honored by locating his statue in a place of honor in the capitol of the state of Kansas where it may be enjoyed by our citizens and visitors; and

Whereas, The people of the state of Kansas wish to furnish a statue of Dwight David Eisenhower for placement in Statuary Hall in the capitol of this nation, with such statue hopefully being provided by the citizens of the state of Kansas through the efforts of the Eisenhower Foundation, Inc.; and

Whereas, The creation of the statue of Dwight David Eisenhower depends upon the willingness of the trustees of the Eisenhower Foundation, Inc. to organize a solicitation through appropriate representatives of the civic, fraternal and patriotic organizations of this state and the handling by such trustees of the funds so solicited; and

Whereas, A suitable statue of Dwight David Eisenhower must be created by a gifted and experienced sculptor who should be chosen by a committee of select persons suitably qualified to recommend the selection of such sculptor, and the trustees of the Eisenhower Foundation should name such a select commission; and

Whereas, When an appropriate sculptor has been selected to create the statue of Dwight David Eisenhower, the trustees of the Eisenhower Foundation, Inc. would be suitable to contract with the sculptor with funds obtained as indicated in this preamble for the creation of such a statue; and

Whereas, When the statue of Dwight David Eisenhower is completed, necessary plans need to be made and action needs to be taken to transport the statue to Washington, D.C. for installation in Statuary Hall and for the return of Governor Glick's statue to Kansas for installation in the state capitol in Topeka; and

Whereas, Should the Eisenhower Foundation, Inc. be unable or unwilling to perform the functions described in this preamble, the responsibility for the creation and installation of the statue of Dwight David Eisenhower should be assumed by the Kansas Department of Commerce and Housing; and

Whereas, Kansas has another hero, Amelia Earhart, a native of Atchison, who as a pioneer for women in aviation lost her life under still unknown circumstances, as is a Kansas worthy of recognition by placing a statue of her in Statuary Hall. Further, it is appropriate that the statute of Amelia Earhart be substituted for that of another Atchison native, former U.S. Senator John James Ingalls, whose statute should be returned to Kansas for an appropriate placement: Now, therefore, be it

Resolved by the Senate of the State of Kansas, the House of Representatives concurring therein, That the legislature of the state of Kansas respectfully requests that the Congress of the United States return the statute of George W. Glick earlier presented by the state of Kansas for placement in Statuary Hall and accept in return, for placement in Statuary Hall, a statue of Dwight David Eisenhower, a citizen of the free world, and worthy of national commemoration in Statuary Hall; and

Be it further resolved, That the legislature of the state of Kansas, on behalf of the people of this state and on behalf of this state itself, respectfully requests the trustees of the Eisenhower Foundation, Inc. to appoint a commission of representatives of civic, fraternal and patriotic organizations of this state, and to convey to such commission a charge to organize a solicitation for funds for the creation of a statue of Dwight David Eisenhower as contemplated by this resolution. Such trustees are further requested to provide management assistance to such commission and to receive and employ the funds so obtained to acquire such statue for placement in Statuary Hall in the capitol of this nation. Such trustees are further requested to appoint a committee of persons suitably qualified to select a gifted and experienced sculptor to create a suitable statue of Dwight David Eisenhower. Such trustees are further requested to contract with such sculptor with funds obtained as indicated in this resolution for the creation of such statue. Thereupon such trustees are further requested to make the statue so created of Dwight David Eisenhower available for placement in Statuary hall, the same to then be owned by the Congress of the United States; and

Be it further resolved, That the City of Atchison and the Atchison Chamber of Commerce should be tasked to find funds for the costs of the creation, transportation and installation of the statue of Amelia Earhart in Statuary Hall and for returning the statute of Senator Ingalls to Kansas; and

Be it further resolved, That should be efforts of the Eisenhower Foundation, Inc. and the commission of representatives of civic, fraternal and patriotic organizations of this state be unable to fulfill the object of this resolution, and the City of Atchison and the Atchison Chamber of Commerce be unable to successfully fund the placement of a statue of Amelia Earhart in Statuary Hall and transporting the statue of Senator Ingalls back to Kansas, the Kansas Department of Commerce and Housing is tasked to take action ultimately providing a statue of Dwight David Eisenhower and Amelia Earhart for placement in Statuary Hall; and

Be it further resolved, That the cost of the creation of the statue of Dwight David Eisenhower, as well as the costs for transporting the statue of Dwight David Eisenhower to Washington, D.C. and transporting the statue of Governor Glick to the state capitol in Topeka, plus incidental costs for installation of statues in their permanent locations and the essential costs of any unveiling ceremonies should be borne by the state of Kansas through the use of private or public funds; and

Be it further resolved, That the secretary of state is directed to transmit enrolled copies of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, each member of the Kansas delegation in the Congress of the United States, the Governor and Lieutenant Governor of the state of Kansas and to each of the trustees of the Eisenhower Foundation, Inc.

POM–40. A joint resolution adopted by the Legislature of the State of Vermont; to the Committee on Appropriations.

JOINT HOUSE RESOLUTION

Whereas, Veterans' Administration (VA) hospitals provide medical care for veterans, including men and women, who have risked their lives to protect the security of our nation, and

Whereas, the mission of the White River Junction VAMROC is to ''serve veterans and their families in a proficient, dependable and compassionate manner within an environment that focuses on quality health care, benefits & services, research & education and support of the Department of Defense,'' and

Whereas, in 1932, White River Junction was chosen by the Veterans' Administration as a site for a regional hospital which was then built on a 176-acre site donated by the Town of Hartford for that purpose, and

Whereas, building 1 was completed in 1938 and successive buildings have been built and the facility and its services have been continuously expanded and improved since that date, and

Whereas, the White River Junction VAMROC has steadfastly provided quality health care and efficient benefit administration to veterans who have served with dedication and courage to protect and defend the United States, and has provided solace and community to veterans and their families, and

Whereas, the White River Junction VAMROC has developed into an outstanding teaching hospital, utilizing cutting edge technology, and is an essential source of learning opportunities for medical students and physicians in training in a northern New England teaching hospital with the potential to encourage rural physician placement, and

Whereas, the White River Junction VAMROC has developed into a premier research facility, conducting studies on Gulf War illnesses, and delivery of cost-effective outpatient services, and

Whereas, the current and possible future funding reductions threaten to harm vital

infrastructures that are indispensable for optimal patient care such as the in-patient surgical unit, anesthesia staff, medicine and psychiatry units, and

Whereas, the current financial crisis at the White River Junction VAMROC may be mitigated if new and creative funding options were explored, including innovative research on the delivery of health services to veterans, and

Whereas, the priority of serving veterans must be absolute and irrevocable, and must be the foundation for medical care at this hospital, regardless of any new models of health care delivery, and

Whereas, any eliminated services would be very difficult and costly to replace or restart and would threaten the level of care of other services of both in-patient and out-patient units, now therefore be it

Resolved by the Senate and House of Representatives, That the General Assembly urgently requests that the United States Congress maintain stable and permanent funding of the White River Junction VAMROC, and be it further

Resolved, That the Governor and the Vermont Congressional Delegation, are urgently requested to support the White River Junction VAMROC to strengthen its capacity to provide Vermont's veterans with medical care and benefit services, to serve as a premier teaching facility, and to engage in essential research of benefits to veterans and the practice of medicine in Vermont, and be it further

Resolved, That Vermont's Congressional Delegation in conjunction with the Veterans' Administration and veteran service organizations are requested to investigate the broadening of the White River Junction VAMROC patient base, provided that the priority of serving Veterans remains absolute and irrevocable, and be it further

Resolved, That the Secretary of State be directed to send a copy of this resolution to the President of the United States, William Jefferson Clinton, Vice President Albert Gore, Veterans' Administration Secretary Togo D. West, Jr., Vermont Governor Howard Dean, New Hampshire Governor Jean Shaheen, New Hampshire Senate President Clesson Blaisdell, New Hampshire House Speaker Donna Sytek, to each member of the Vermont and New Hampshire Congressional Delegation, and to all Veterans' organizations registered with the State Veterans' Affairs Office at 118 State Street, Montpelier, VT.

POM–41. A concurrent resolution adopted by the Legislature of the State of North Dakota; to the Committee on Appropriations.

HOUSE CONCURRENT RESOLUTION NO. 3039

Whereas, employers pay a federal employment security tax under the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] as a payroll tax that produces revenue dedicated solely to use in the federal-state employment security system; and

Whereas, employers' payroll taxes pay for administering the employment security system; providing veterans' reemployment assistance, and producing labor market information to assist in matching workers' skills with the employment needs of employers; and

Whereas, congressional appropriations have remained flat in Wagner-Peyser funding, despite adequate availability of funds from dedicated employer taxes because the Federal Unemployment Tax Act accounts are used for federal budget deficit reduction; and

Whereas, congressional appropriations have not kept pace with fixed costs of operating the employment security system, creating problems similar to the problems the gas tax creates for transportation; and

Whereas, states cannot support an infrastructure to administer the employment security system, provide veterans' reemployment assistance, and produce labor market information, without adequate, predictable resources; and

Whereas, delivering services with inadequate federal funding is a major challenge facing the State of North Dakota and Job Service North Dakota: Now, therefore, be it

Resolved by the House of Representatives of North Dakota, the Senate concurring therein, That the Fifty-sixth Legislative Assembly urges the Congress of the United States to enact legislation to return adequate funds to states to fund the employment security system and give a fair return to employers for the taxes employers pay under the Federal Unemployment Tax Act; and

Be it further resolved, That the Secretary of State send copies of this resolution to the Speaker and Clerk of the United States House of Representatives, to the President Pro Tempore and Secretary of the United States Senate, to the news media of North Dakota, and to each member of the North Dakota Congressional Delegation.

POM–42. A joint resolution adopted by the Legislature of the state of Maine; to the Committee on Foreign Relations.

JOINT RESOLUTION NO. 1388

Whereas, We your Memorialists, the Members of the One Hundred and Nineteenth Legislature of the State of Maine, now assembled, in the First Regular Session, most respectfully present and petition the President of the United States and the United States Congress, as follows:

Whereas, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations General Assembly on December 18, 1979, became an international treaty on September 3, 1981 and as of December 1997 has been ratified or acceded to by 161 nations; and

Whereas, although the United States is considered a world leader in human rights, supports and has a position of leadership in the United Nations, was an active participant in the drafting and is a signatory of the convention, the United States is one of the few nations that have not ratified the treaty; and

Whereas, the spirit of the convention is rooted in the goals of the United Nations and the United States, which seek to affirm faith in fundamental human rights, in the dignity and worth of the person and in the equal rights of men and women; and

Whereas, the convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based on sex against half of the world's population and the 161 nations that have ratified the convention have agreed to follow the convention prescriptions; and

Whereas, although women have made major gains in the struggle for equality in social, business, political, legal and educational fields, there is much more to be accomplished; and through its support, leadership and prestige, the United States can help create a world where women are no longer discriminated against and have achieved one of the most fundamental of human rights, equality; now, therefore, be it

Resolved, That We, your Memorialists, request the President of the United States and the United States Congress to ratify the United Nations Convention on the Elimination of All Forms of Discrimination Against Women; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States; the President of the United States Senate; the Speaker of the House of Representatives of the United States; the President of the Senate or the equivalent officer in the 49 other states; the Speaker of the House or the equivalent officer in the 49 other states; the United Nations Secretary-General, Kofi Annan; and each member of the Maine Congressional Delegation.

POM–43. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Veterans' Affairs.

HOUSE RESOLUTION NO. 26

Whereas, The veterans who are treated at the Iron Mountain VA Medical Care Facility (VAMCF) have served our country with extreme dedication. They are deserving of our respect and care every day, not just on Veterans Day. We urge administrators and directors at the Veterans Affairs Health Administration to prevent the implementation of a policy that would greatly reduce the level of quality health care services for our veterans, especially in the Upper Peninsula and northern Wisconsin; and

Whereas, The Iron Mountain VA Medical Care Facility covers a patient service area of over 25,000 square miles. Veterans from the Upper Peninsula and northern Wisconsin depend on the full range of services provided by this facility. It is callous to ask veterans suffering from illness to travel approximately 300 miles (Sault Ste. Marie to Iron Mountain) and then another 200 miles (Iron Mountain to Milwaukee) by bus to receive care. This is what the Department of Veterans Affairs is asking of our veterans in the Upper Peninsula. In December of 1998, the VA bus broke down on the way to Milwaukee with 34 veterans who needed care. A second bus was called from Milwaukee to pick up the veterans and it also broke down. This is not a situation that facilitates a return to health; and

Whereas, There is a need for an increase of hospital beds in Iron Mountain, not a decrease. Several years ago, this hospital had approximately 200 beds. The decrease to the current 17 beds far surpasses the national decrease of VA bed utilization and places a tremendous hardship on our veterans and their families; and

Whereas, By providing quality outpatient services to veterans closer to their homes, the quality of care and the number of veterans served has been substantially improved. It does not make sense to reduce services to a facility that is providing much needed and necessary services. It is wrong to force our veterans to travel many hours, in harsh conditions, away from their families, and more appropriate to continue to provide the full range of services our veterans deserve at the Iron Mountain VA Medical Care Facility: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States and the Veterans Affairs Administration to prevent the reduction of hospital bed capacity at the Iron Mountain Veterans Administration Medical Care Facility; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, Dr. Togo West, Jr., Secretary, Veterans Health Administration, Dr. Kenneth Kizer, Undersecretary of Health, VA Administration, Dr. Hershel Gober, Deputy Secretary for Health, VA Administration and Dr. J.

Cummings, Regional VA Network Director, Department of Veterans Affairs.

POM–44. A resolution adopted by the Legislature of the State of Montana; to the Committee on Environment and Public Works.

JOINT RESOLUTION 4

Whereas, it is widely believed that the grizzly bear is classified as ''threatened'' or ''endangered'' only as a result of an arbitrary designation of habitat areas by the United States Fish and Wildlife Service (USFWS) and that the grizzly bear is, in reality, neither ''threatened'' nor ''endangered'' because the State of Montana successfully maintained a viable, breeding population of grizzly bears for years prior to the arbitrary USFWS classification; and

Whereas, grizzly bear populations continue to thrive, breeding and maintaining their populations in suitable habitat in other areas; and

Whereas, the habitat in the Selway-Bitterroot Wilderness is considered to be an inadequate ecosystem for supporting grizzly bears; and

Whereas, predation by grizzly bears is known to impose uncompensated costs and hazards to livestock growers and other citizens; and

Whereas, enforcement by federal agencies of arbitrary and capricious rules and regulations devised to exclude any real or imagined intrusion or disturbance to grizzly bears in recovery areas has caused the loss of many millions of dollars in personal and corporate income, the loss of many jobs, the displacement of families, the loss of needed revenue to the State of Montana, and the virtual closing of large areas of national forest land in Montana to traditional uses, such as lumbering, driving for pleasure, gathering firewood, and berry picking; and

Whereas, the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex is the only remaining wilderness in the geographical area where wilderness travelers can pursue a wilderness experience without fear of encountering grizzly bears; and

Whereas, introduction of grizzly bears into the Selway-Bitterroot Wilderness will complicate or further frustrate efforts to increase populations of anadromous salmon that traditionally spawn in the rivers and streams of the Selway-Bitterroot Wilderness; and

Whereas, introduction of grizzly bears into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex will further increase the rate of bear predation of the northern Idaho elk herd, a herd that is an important asset to outfitters, guides, and residents of western Montana and northern Idaho; and

Whereas, social benefits derived from the bear introduction program are drastically out of proportion to the costs to the public of capturing, transporting, examining, releasing, monitoring, and otherwise managing an introduced population of grizzly bears, and those funds are more urgently needed to help finance real and essential social programs; and

Whereas, programs undertaken under the authority of Public Law 93–205, the federal Endangered Species Act of 1973, including the grizzly bear recovery program, place the lives, property, and freedom of local citizens and visitors in jeopardy of the wrath of the United States government in the event of accidental or mistaken actions by citizens that could be judged as infringement on a listed species or the habitat of a listed species and further expand the body of laws and regulations of which United States citizens might become victims when applied: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the State of Montana,

(1) That grizzly bears not be released into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex as part of the federal grizzly bear recovery program.

(2) That control of grizzly bear populations by the United States Fish and Wildlife Service be ended and that the management of grizzly bears within the borders of Montana and Idaho be returned to the fish and wildlife agencies of those respective states.

(3) That the grizzly bear be removed from the list of threatened or endangered species, based on evidence of the viability of grizzly bear populations in Montana, Idaho, Wyoming, Alaska, and Canada.

(4) That if the United States government persists in its proposal to introduce grizzly bears into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex and succeeds in placing grizzly bears in those areas, the United States government be held financially liable for any damages to livestock and other domestic animals and to property, for loss of life, and for personal injury arising from the actions of the grizzly bears and of United States government agents engaged in the grizzly bear recovery program, including economic losses suffered by individuals or communities as a result of actions related to the program.

(5) That the Secretary of State send copies of this resolution to the members of the Montana and Idaho Congressional Delegations, the Director of the United States Fish and Wildlife Service, the President of the United States Senate, and the Speaker of the United States House of Representatives.

POM–45. A resolution adopted by the House of Legislature of the State of Michigan; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 17

Whereas, After considerable debate, Congress and the administration agreed in 1998 to a transportation measure that set place a formula for transportation spending. This agreement provided that unanticipated revenues would go to specific types of projects; and

Whereas, Historically low costs for gasoline have spurred a significant increase in gas tax revenue. In addition to the direct impact of the lower price per gallon while the tax per gallon is constant, the glut of oil in the marketplace has also encouraged the purchase and use of larger, less fuel efficient vehicles. As a result, gas tax revenues are higher than expected; and

Whereas, The administration has responded to the increased money available by proposing several new programs. A great number of these proposals are outside of the agreed upon provisions for transportation spending. The proportions and projects agreed upon provide a reliable tool for states in projecting how to meet future needs. It would be wrong for the federal government to ignore the agreement and the ability of the states to fill transportation needs as best serves their citizens: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the President and the Congress of the United States to refrain from divesting transportation money from the purposes and formula already in place; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–46. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Environment and Public Works.

JOINT RESOLUTION 1492

We, your Memorialists, the Members of the One Hundred and Nineteenth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the members of the Congress of the United States, as follows:

Whereas, the Federal Government under the Clean Air Act requires the use of an oxygenate for gasoline at a minimum of 2% of content by weight; and

Whereas, the State has serious concerns about the presence of methyl tertiary-butyl ether or MTBE, an oxygenate in reformulated gasoline, in groundwater; and

Whereas, the prescriptive requirements in the Clean Air Act for oxygenate content limit our State's ability to address our groundwater contamination issues: Now, therefore, be it

Resolved, That we, your memorialists, respectfully urge and request that the United States Congress remove the requirement in the Clean Air Act for 2%-by-weight oxygenate in reformulated gasoline so that additional alternate fuel mixtures may be available for use in Maine; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.

POM–47. A resolution adopted by the House of the Legislature of the State of Michigan; to be Committee on Finance.

HOUSE RESOLUTION NO. 14

Whereas, After a long and arduous effort, the states reached a settlement with several tobacco companies for damages to the public's health and to reform certain industry practices, including the impact of certain marketing efforts on children. The 1998 multi-billion dollar settlement extends over twenty-five years and includes the payment of money directly to the states and to funds established to address specific components of the settlement; and

Whereas, In the time since the settlement was reached, federal officials have raised various proposals for the federal government to claim portions of the settlement money. This possibility prompted legislation in the 105th Congress seeking to prohibit the federal government from seizing any state tobacco settlement funds. Legislation has been introduced in the 106th Congress, H.R. 351 and S. 346, to safeguard the states' money by prohibiting the Secretary of Health and Human Services from considering this money recoverable under Medicaid; and

Whereas, The settlement reached by the states and the tobacco industry was the result of risks, expenses, and initiatives of the states. They have every right to the funds to cover state health damages and costs. In carrying out the settlement provisions, the states must have the assurance that there will not be impediments to the settlement from any federal agency, including directives on how any of the funds can be spent. There can be no cloud of uncertainty hanging over the states as they project future activities in carrying out the directives of the agreement: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress to enact legislation to prohibit the federal government from claiming any tobacco settlement money from the states or directing how the states expend these funds; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

PM–48. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Finance.

JOINT RESOLUTION NO. 1469

Whereas, the state of Maine settled its litigation against the tobacco industry on November 23, 1998; and

Whereas, the Federal Government, through the Federal Health Care Financing Administration, has asserted that it is entitled to a significant share of the state settlement on the basis that it represents the federal share of Medicaid costs; and

Whereas, the Federal; Government asserts that it is authorized and obligated, under the United States Social Security Act, to collect its share of any settlement funds attributable to Medicaid; and

Whereas, the state lawsuit was brought for violation of state law under theories, and the state lawsuit did not make any federal claims; and

Whereas, the State bore all the risk and expense in the litigation brought in State Court and settled without any assistance from the Federal Government; and

Whereas, the State is entitled to all of the funds negotiated in the tobacco settlement agreement without any federal claim; now, therefore, be it

Resolved, That We, your Memorialists, request that the President of the United States and the United States Congress work together to support and sign legislation to allow the states to keep their tobacco settlement funds; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States; the President of the United States Senate; the Speaker of the House of Representatives of the United States; and to each Member of the Maine Congressional Delegation.

POM–49. A concurrent resolution adopted by the Legislature of the State of West Virginia; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 22

Whereas, the states of the union, at their own expense and on their own initiative, filed and pursued the unprecedented civil litigation against the tobacco industry that resulted in the historic settlement agreement negotiated by the states and entered into on the twenty-third day of November, one thousand nine hundred ninety-eight; and

Whereas, the settlement agreement reached between the parties to the litigation was based on the past and future health care expenditures of the aggregate populations of each participating state and not solely for those states' Medicaid beneficiaries; and

Whereas, the government of the United States was not a party to any of the litigation against the tobacco industry, it did not assume any of the risk or incur any of the costs associated with the litigation; nor has it yet sought recovery of any smoking-related health care expenditures paid out under the Medicare program; and

Whereas, the Health Care Financing Administration has voluntarily suspended its efforts to recoup Medicaid matching funds from the states' tobacco settlement awards pending action by the United States Congress, which voluntary suspension may be revoked at any time; and

Whereas, the Administrator of the Health Care Financing Administration has publicly stated the ultimate intention of the federal government to recoup up to two thirds of the tobacco settlement funds from the states and to dictate how states may spend the remaining settlement funds left untouched by the federal government; and

Whereas, it would be unjust to allow the federal government to enrich itself at the states' risk and expense and, at the same time, reward itself for its own inaction with respect to recovering tobacco-related health care costs; therefore, be it

Resolved by the Legislature of West Virginia, That the Congress of the United States is requested to enact legislation amending the Social Security Act so that funds due the states as a result of the Master Settlement Agreement reached with the tobacco industry are exempted from recoupment by the Health Care Financing Administration and prohibiting federal interference with the states in deciding how to best utilize those settlement funds; and be it further

Resolved, That the Clerk of the House shall, immediately upon its adoption, transmit duly authenticated copies of this resolution to the Speaker and the Clerk of the United States House of Representatives, the President Pro Tempore and the Secretary of the United States Senate, the members of the West Virginia Congressional Delegation, the Administrator of the Health Care Financing Administration, the Attorney General of the United States, and the President of the United States.

POM–50. A resolution adopted by the Senate of the Legislature of the State of Rhode Island; to the Committee on Finance.

SENATE RESOLUTION

Whereas, November 23, 1998, representatives from forty-six (46) states signed a settlement agreement with the five (5) largest tobacco manufacturers; and

Whereas, the Attorneys General Master Tobacco Settlement Agreement culminated legal action that began in 1994 when states began filing lawsuits against the tobacco industry; and

Whereas, the respective states are presently in the process of finalizing the terms of the Master Tobacco Settlement Agreement, and are making initial fiscal determinations relative to the most responsible ways and means to utilize the settlement funds; and

Whereas, under the terms of the agreement, tobacco manufacturers will pay $206 billion over the next twenty-five (25) years to the respective states in up-front and annual payments; and

Whereas, Rhode Island is projected to receive $1,408,469,747 through the year 2025 under the terms of the Master Tobacco Settlement Agreement; and

Whereas, because many state lawsuits sought to recover Medicaid funds spent to treat illnesses caused by tobacco use, the Health Care Financing Administration (HCFA) contends that it is authorized and obligated, under the Social Security Act, to collect its share of any tobacco settlement funds attributable to Medicaid; and

Whereas, the Master Tobacco Settlement Agreement does not address the Medicaid recoupment issue, and thus the Social Security Act must be amended to resolve the recoupment issue in favor of the respective states; and

Whereas, in addition to the recoupment issue, there is also considerable interest, at both the state and national levels, in earmaking state tobacco settlement fund expenditures; and

Whereas, as we move toward final approval of the Master Tobacco Settlement Agreement, it is imperative that state sovereignty be preserved; now, therefore, be it

Resolved, That this Senate of the State of Rhode Island and Providence Plantations do hereby memorialize the United States Congress to enact legislation amending the Social Security Act to prohibit recoupment by the federal government of state tobacco settlement funds; and be it further

Resolved, that it is the sense of this Senate that the respective state legislatures should have complete autonomy over the appropriation and expenditure of state tobacco settlement funds; and be it further

Resolved, that the the Secretary of State be and he is hereby authorized and directed to transmit duly certified copies of this resolution to the Honorable Bill Clinton, President of the United States of America; the President and the Secretary of the U.S. Senate; the Speaker and the Clerk of the U.S. House of Representatives; and to each member of the Rhode Island Congressional Delegation.

POM–51. A resolution adopted by the Senate of the Legislature of the State of New Mexico; to the Committee on Finance.

SENATE MEMORIAL 46

Whereas, on November 23, 1998, Representatives from forty-six States signed a Settlement Agreement with the five largest Tobacco Manufacturers; and

Whereas, the Attorneys General Master Tobacco Settlement Agreement culminated legal action that began in 1994 when States began filing Lawsuits against the Tobacco Industry; and

Whereas, New Mexico and the other States that signed the Master Tobacco Settlement Agreement are currently making their initial decisions regarding the most responsible ways and means to use the Settlement Funds; and

Whereas, under the terms of the Agreement, Tobacco Manufacturers will pay two hundred six billion dollars ($206,000,000,000) over the next twenty-five years to the respective States, and New Mexico is projected to receive about one billion one hundred seventy million dollars ($1,170,000,000) of that amount; and

Whereas, because many State Lawsuits sought to recover Medicaid Funds spent to treat illnesses caused by tobacco use, the Health Care Financing Administration contends that it is authorized and obligated under the Social Security Act to collect its share of any Tobacco Settlement Funds attributable to Medicaid; and

Whereas, the Master Tobacco Settlement Agreement does not address the Medicaid Recoupment Issue, and thus the Social Security Act must be amended to resolve the Recoupment Issue in favor of the respective States; and

Whereas, as we move toward final approval of the Master Tobacco Settlement Agreement, it is imperative that State Sovereignty be preserved; now, therefore, be it

Resolved by the Senate of the State of New Mexico, That the United States Congress enact Legislation amending the Social Security Act to prohibit Recoupment by the Federal Government of State Tobacco Settlement Funds; and be it further

Resolved, That State Legislatures have complete autonomy over the appropriation and expenditure of State Tobacco Settlement Funds, and that the Federal Government not earmark or impose any other restrictions on the respective States' use of State Tobacco Settlement Funds; and be it further

Resolved, That copies of this Memorial be transmitted to the President of the United States of America, the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives and each Member of the New Mexico Congressional Delegation.

POM–52. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on Finance.

JOINT RESOLUTION

Whereas, on November 23, 1998, 46 states, U.S. territories, commonwealths, and the District of Columbia reached a multibillion dollar settlement with six tobacco companies to end pending civil actions brought by the states claiming as damages money spent treating residents for injuries caused by smoking; and

Whereas, the United States has asserted a claim to over one-half of the settlement money, claiming that much of the money to be received by the states amounts to Medicaid overpayments and, as such, can be ''recouped'' by the federal government; and

Whereas, the record-setting settlement was achieved by the states, territories, commonwealths, and the District of Columbia through their efforts and their efforts alone, the federal government having played no role whatsoever in the proceedings leading to the settlement or the settlement negotiations; and

Whereas, having played no role in the lawsuits and settlements, any attempt by the United States to ''recoup'' the damages paid by the tobacco companies amounts to a seizure of money to which the states, territories, commonwealths, and the District of Columbia have a moral and legal claim; and

Whereas, there is bipartisan support forming in the U.S. Congress for the introduction of legislation to keep the United States from making good on its claim for recoupment; and

Whereas, strong support should be shown by Montana for the Congressional efforts to prevent the United States from further asserting ownership of the settlement proceeds: now, therefore, be it

Resolved by the Senate and the House of Representatives of the State of Montana, That the Montana Legislature convey to the U.S. Senate and House of Representatives its strong opposition to the taking by the federal government of any of the proceeds of the tobacco settlement. Be it further

Resolved, That the Legislature requests the Congress to enact legislation to keep the U.S. Department of Health and Human Services from further asserting or making good on a claim to the settlement proceeds. Be it further

Resolved, That the Legislature requests the Montana Congressional Delegation to work closely with those members of Congress who will sponsor legislation to see that the proceeds of the settlement be paid to and retained by the states. Be it further

Resolved, That the Secretary of State send copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Montana's Congressional Delegation.

POM–53. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 9

Whereas, Two years after filing suit against the tobacco industry, Texas' attorney general announced on January 16, 1998, that the industry had agreed to the largest settlement in the history of tobacco litigation; and

Whereas, Tireless negotiations between Texas and the defendants ensued, resulting in a memorandum of understanding signed in July 1998 that resolved all outstanding differences and settled Texas' lawsuit against the tobacco industry; and

Whereas, The federal government played no role in the litigation for Texas' $17.3 billion settlement with the tobacco companies and has declined to bring its own lawsuit against the industry, but now, through the Health Care Financing Administration, asserts that it is entitled to a significant share of state settlements on the basis that it represents the federal share of Medicaid costs; and

Whereas, Texas bore all of the risk and expense in the litigation and settlement negotiations, receiving no assistance from the federal government, and is entitled to all of the funds negotiated in the tobacco settlement agreement; and

Whereas, United States Senators Kay Bailey Hutchison of Texas and Bob Graham of Florida have introduced bipartisan legislation, S. 346, to prohibit the federal government from seizing any part of the tobacco settlement, and similar legislation, H.R. 351, has been introduced in the U.S. House of Representatives; now, therefore, be it

Resolved, That the 76th Legislature of the State of Texas hereby respectfully urge the Congress of the United States not to make federal claims against the proceeds of the Texas tobacco settlement; and, be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, and to all the members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

POM–54. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Finance.

SENATE RESOLUTION NO. 6

Whereas, Following an effort that involved considerable expense, time, and risk, the states have reached a settlement with tobacco companies in response to litigation initiated to recover damages to the states related to the public's health. This lawsuit was based on state claims for costs they incurred related to tobacco and on long-term concerns for public health and the vulnerability of children. State laws on consumer protection, health, and other areas provided the foundation for the legal actions; and

Whereas, Throughout the process of litigation, the states bore the burdens of bringing the case, without the assistance of the federal government. The terms of the settlement provided for the states' responsibilities in directing certain amounts to specific programs to remedy problems caused by tobacco products; and

Whereas, In the time since the settlement was first announced and finalized, some units of the federal government have been making claims on portions of the tobacco settlement funds. The administration's claims are apparently based on efforts to recoup money channeled through the state for the federal component of overall Medicaid costs; and

Whereas, The federal government's efforts to claim portions of the states' tobacco settlement are inappropriate. The states, acting together and on the basis of damages to the states—not the federal government—earned this settlement. There are measures before the Congress that would prohibit federal agencies from trying to recoup funds as a result of this agreement; now, therefore, be it

Resolved by the Senate, That we memorialize the President and the Congress of the United States to prohibit any agency of the federal government from recouping any of the tobacco settlement funds due the states; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–55. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Finance.

ASSEMBLY JOINT RESOLUTION NO. 5

Whereas, The provisions set forth in 42 U.S.C. §415 for determining the primary insurance amount of a person receiving social security were amended in 1977 by Public Law 95–216; and

Whereas, Those amendments resulted in disparate benefits according to when a person initially becomes eligible for benefits; and

Whereas, Persons who were born during the years 1917 to 1926, inclusive, and who are commonly referred to as ''notch babies,'' receive lower benefits than persons who were born before that time; and

Whereas, The payment of benefits under the social security system is not based on need or other considerations related to welfare, but on a program of insurance based on contributions by a person and his employer, and

Whereas, During the 105th session of Congress, H.R. 3008 and S. 2003 were introduced in the House of Representatives and the Senate, respectively, to provide compensation for the inequities in the payment of social security benefits to persons based on the year in which they initially become eligible for such benefits, but no action has been taken on such legislation; and

Whereas, The discrimination between persons receiving benefits is contrary to the principles of justice and fairness; now, therefore, be it

Resolved by the Assembly and Senate of the State of Nevada, Jointly, That Congress is hereby urged to enact legislation that provides for the payment of lump sums to persons who became eligible for social security benefits after 1981 and before 1992 and have received lower benefits as a result of the changes in the computation of benefits enacted by Public Law 95–216, as compensation for the reduced benefits they have been paid; and be it further

Resolved, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage and approval.

POM–56. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 5015

Whereas, The State of Kansas is very concerned about the health and well-being of its senior and disabled citizens; and

Whereas, The State of Kansas believes that its senior and disabled citizens should have access to high quality, cost-effective home health care services; and

Whereas, Medicare beneficiaries needing the most care are being denied access to home health services as a result of medicare payment reforms; and

Whereas, The provisions of the Balanced Budget Act of 1997 establishing the interim payment system calling for payment cuts for medicare home health services will result in a cut back of those necessary services which will lead to increased utilization of more costly settings like emergency rooms, hospitals and nursing homes as well as shifting

an enormous financial and time consuming burden to the families of the senior or disabled citizens; and

Whereas, The medicare home health cuts will most likely shift service needs and costs to more expensive state programs, especially long-term care facilities, thus resulting in an unfunded mandate to Kansas and resulting in greater expense to both medicare and medicaid: Now, therefore, be it

Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature hereby requests Congress to rescind the provisions of the Balanced Budget Act of 1997 related to the interim payment system for medicare home health services; and be it further

Resolved: That the Secretary of State is hereby directed to send enrolled copies of this resolution to the President and President pro tempore of the Senate of the United States, to the Speaker of the House of Representatives of the United States and to each member of the Kansas Congressional Delegation.

POM–57. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on Finance.

JOINT RESOLUTION NO. 5

Whereas, the ever-increasing cost of prescription drugs and long-term care is beyond the income of most senior citizens; and

Whereas, 30 years ago the average monthly Social Security check would more than cover a month's stay in a nursing home as well as pay the cost of prescription drugs, while today the average monthly Social Security check will not pay for 1 week's stay in a nursing home; and

Whereas, prescription drugs can be purchased in either Mexico or Canada for one-fourth to one-third of the cost in the United States; and

Whereas, the cost of research and development of prescription drugs in the United States is so high that pharmaceutical companies must sell their product for as great a price as the market will bear in order to recoup some of those research and development costs; and

Whereas, billions of dollars are wasted because Congress will not allow Medicare to use competitive bidding in ordering supplies and equipment; and

Whereas, according to government estimates, Medicare improperly paid approximately $23 billion in the 1997 fiscal year because of fraud and abuse: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the State of Montana:

(1) That the United States Congress is urged to enact legislation to place long-term care and prescription drugs in the Medicare program and that in order to pay for these changes to the Medicare program, a serious effort to eliminate fraud and abuse be inaugurated and that Congress give Medicare the right to use competitive bidding for purchasing prescription drugs and other supplies.

(2) That the federal government is urged to take serious measures to eliminate fraud and abuse wherever it may be found in the expenditure of federal tax dollars.

(3) That the United States Congress review the necessity for statutes and regulations that contribute to the high cost of research and development of prescription drugs in the United States and revise or eliminate those statutes and regulations that cause or contribute to the high cost of research and development of those drugs; be it further

Resolved, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate and to each member of the Montana Congressional Delegation.

POM–58. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the Social Security system; to the Committee on Finance.

POM–59. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the decennial census; to the Committee on Governmental Affairs.

POM–60. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 9

Whereas, The fragile ecology of the Great Lakes has been threatened by new species of fish and plant life introduced into this water system by ships releasing ballast water. In recent years, the zebra mussel, ruffe, and goby have posed significant challenges to the delicate balance of the most important fresh water resource of North America and the largest and most accessible source of fresh water in the world; and

Whereas, With changing technologies in the shipping industry and in the ability to monitor and test water, there are opportunities to make progress in the effort to halt the introduction of more nonindigenous species into the Great Lakes. Congress can contribute enormously to this work through stronger legislation to prohibit the dumping of ballast water in the Great Lakes water system and grants to promote better compliance; and

Whereas, The quality of the Great Lakes will play a large role in shaping the future not only for Michigan and the United States, but for all of North America; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to strengthen measures to prohibit the dumping of shipping ballast water into the Great Lakes and connecting waterways; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BENNETT (for himself, Mr. MACK, Mr. MURKOWSKI, and Mr. SANTORUM):

S. 881. A bill to ensure confidentiality with respect to medical records and health care-related information, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MURKOWSKI (for himself, Mr. HAGEL, Mr. BYRD, Mr. CRAIG, Mr. ROBERTS, Mr. GRAMS, Mr. HUTCHINSON, Mr. ENZI, Mr. SMITH of Oregon, and Mr. MCCAIN):

S. 882. A bill to strengthen provisions in the Energy Policy Act of 1992 and the Federal Nonnuclear Energy Research and Development Act of 1974 with respect to potential Climate Change; to the Committee on Energy and Natural Resources.

By Mr. BIDEN:

S. 883. A bill to authorize the Attorney General to reschedule certain drugs that pose an imminent danger to public safety, and to provide for the rescheduling of the date-rape drug and the classification of a certain ''club'' drug; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. TORRICELLI, and Mr. HUTCHINSON):

S. 884. A bill to establish the National Military Museum Foundation, and for other purposes; to the Committee on Armed Services.

By Mr. BIDEN.

S. 885. A bill to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to provide incentives for the development of drugs for the treatment of addiction to illegal drugs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HELMS:

S. 886. An original bill to authorize appropriations for the Department of State for fiscal years 2000 and 2001; to provide for enhanced security at United States diplomatic facilities; to provide for certain arms control, nonproliferation, and other national security measures; to provide for the reform of the United Nations; and for other purposes; from the Committee on Foreign Relations; placed on the calendar.

By Mr. SHELBY:

S. 887. A bill to establish a moratorum on the Foreign Visitors Program at the Department of Energy nuclear laboratories, and for other purposes; to the Committee on Armed Services.

By Mr. MURKOWSKI (for himself, Mr. AKAKA, Mr. STEVENS, and Mr. INOUYE):

S. 888. A bill to amend the Internal Revenue Code of 1986 to modify the air transportation tax changes made by the Taxpayer Relief Act of 1997; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. SANTORUM, and Mr. COCHRAN):

S. 889. A bill to amend the Internal Revenue Code of 1986 to provide tax credit for investment necessary to revitalize communities within the United States, and for other purposes; to the Committee on Finance.

By Mr. WELLSTONE (for himself, Mr. ROBB, and Mr. FEINGOLD):

S. 890. A bill to faciliate the naturalization of aliens who served with special guerrilla units or irregular forces in Laos; to the Committee on the Judiciary.

By Mr. SCHUMER:

S. 891. A bill to amend section 922(x) of title 18, United States Code, to prohibit the transfer to and possession of handguns, semi-automatic assault weapons, and large capacity ammunition feeding devices by individuals who are less than 21 years of age, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. MACK, Mr. BRYAN, Mr. MURKOWSKI, and Mr. BREAUX):

S. 892. A bill to amend the Internal Revenue Code of 1986 to permanently extend the subpart F exemption for active financing income; to the Committee on Finance.

By Mr. GORTON (for himself and Mrs. MURRAY):

S. 893. A bill to amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. SPECTER, Mr. COCHRAN, Mr. MOYNIHAN, Mr. SESSIONS, Ms. SNOWE, Mr. LOTT, Ms. LANDRIEU, Ms. COLLINS, Mr. KENNEDY, Mr. SCHUMER, Mr. SHELBY, Ms. MIKULSKI, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. DODD,

Mr. BREAUX, Mr. THURMOND, Mr. CHAFEE, Mr. SMITH of New Hampshire, Mr. SARBANES, Mr. COVERDELL, Mr. CLELAND, Mr. GREGG, Mr. REED, Mr. KERRY, Mr. HELMS, Mr. BYRD, Mr. TORRICELLI, Mr. EDWARDS, Mr. LIEBERMAN, Mr. ASHCROFT, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. BIDEN, Mr. FIRST, Mr. BOND, and Mr. THOMPSON):

S.J. Res. 22. A joint resolution to reauthorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Diary Compact and to grant the consent of Congress to the Southern Diary Compact; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURBIN (for himself and Mr. FITZGERALD):

S. Res. 86. A resolution supporting the National Railroad Hall of Fame, Inc. of Galesburg, Illinois, in its endeavor to erect a monument known as the National Railroad Hall of Fame; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN (for himself, Mr. BOND, and Mr. MOYNIHAN):

S. Res. 87. A resolution commemorating the 60th Anniversary of the International Visitors Program; to the Committee on Foreign Relations.

By Mr. SMITH of Oregon (for himself, Mr. WELLSTONE, Mr. THOMAS, Mr. SARBANES, and Mr. BROWNBACK):

S. Con. Res. 30. A concurrent resolution recognizing the sacrifice and dedication of members of America's non-governmental organizations and private volunteer organizations throughout their history and specifically in answer to their courageous response to recent disasters in Central America and Kosovo; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENNETT (for himself, Mr. MACK, Mr. MURKOWSKI, and Mr. SANTORUM):

S. 881. A bill to ensure confidentiality with respect to medical records and health care-related information, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

THE MEDICAL INFORMATION PROTECTION ACT OF 1999

Mr. BENNETT. Mr. President, I rise today to introduce the Medical Information Protection Act of 1999. Trying to find the right balance between legitimate uses of health care data and the need for privacy has been a very difficult road to go down; however, I feel that great progress has been made and that the legislation that I am introducing strikes the right balance between the desire the patient has for increased confidentiality and the need our health care system has for information that will enable it to provide a higher quality of care. I am pleased that Senators MACK, MURKOWSKI and SANTORUM have joined me as co-sponsors of this legislation and I am hopeful that a number of other senators will soon join us as well. In addition, I am pleased to include in the record a list of groups that have come out in support of this legislation. I am grateful for the many comments and suggestions I have received from a wide variety of organizations and individuals.

Most of us wrongly assume that our personal health information is protected under federal law. It is not. Federal law protects the confidentiality of our video rental records, and federal law ensures us access to information about us such as our credit history. However, there is no current federal law which will protect the confidentiality of our medical information against unauthorized use and ensure us access to that same sensitive information about us. This is a circumstance that I believe should and must change.

At this time, the only protection of an individual's personal medical information is under state law. These state laws, where they exist, are incomplete, inconsistent and in most cases inadequate. At last check, there were approximately 35 states with 35 unique laws governing the use and disclosure of medical information. Even in those states where there are existing laws, there is no penalty for releasing and disseminating the most private information about our health and the health care we have received.

As our health care delivery systems continue to expand across state lines, efficiency, research advances and the delivery of the highest quality of care possible depend upon the flow of information. This year alone, a large number of states have either considered passing new legislation or have attempted to modify existing laws. As states act to meet the concerns of their residents, the patchwork of state laws become ever more complex. If this trend continues, the high quality care and research breakthroughs we have come to expect and demand from our health care system would be jeopardized because health care organizations would be forced to track and comply with multiple, conflicting and increasingly complex state laws.

Clearly, in today's world, health information must be permitted to flow across state lines if we are to expect the highest level of health care. For example, in Utah, Intermountain Health Care (IHC), the largest care provider based in my state also provides care in four other western states. IHC currently maintains secure databases of patient information which each of its member facilities in Utah, Nevada, Idaho and Wyoming draw upon to provide and improve care. Requiring them to comply with multiple state laws does not add to the quality of health care they provide, but does add to the cost of health care they provide. Many IHC patients live in one state yet their closest hospital, clinic or physicians office is in another state. I am sure this example appears throughout the country in one form or another given the consolidation of the health care industry and the large percentage of us who live near state lines.

In addition, we are seeing an emergence of telemedicine and health care services over the internet that adds another degree of complexity to this entire circumstance. Technology is not only improving the quality of care and improving patient access to services, it is also making the need for one strong federal law more critical. The majority of providers, insurers, health care professionals, researchers and patients agree that there is an increasingly urgent need for uniformity in our laws that govern access to and disclosure of personal health information.

Mr. President, I remind my colleagues that if we do not act by August of 1999 the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires the Secretary of Health and Human Services (HHS) to put in to place regulations governing health information in an electronic format. Thus, we could have a circumstance where paper based records and electronic based records are treated differently. I do not believe Congress wants to protect one form of medical records and not another, and I do not think that we should permit the Secretary of Health and Human Services to implement regulations without further direction from the Congress. Congress should not neglect its responsibility and duty to legislate and provide appropriate direction to the executive branch. I urge my colleagues to work with me to pass legislation that would give HHS clear direction and provide each American with greater protection of their health information.

Mr. President, I ask unanimous consent that the bill and a list of groups supporting this legislation be included in the RECORD.

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

S. 881

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medical Information Protection Act of 1999''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.

TITLE I—INDIVIDUAL'S RIGHTS

Subtitle A—Review of Protected Health Information by Subjects of the Information

Sec. 101. Inspection and copying of protected health information.
Sec. 102. Amendment of protected health information.
Sec. 103. Notice of confidentiality practices.

Subtitle B—Establishment of Safeguards

Sec. 111. Establishment of safeguards.
Sec. 112. Accounting for disclosures.

TITLE II—RESTRICTIONS ON USE AND DISCLOSURE

Sec. 201. General rules regarding use and disclosure.

Sec. 202. Procurement of authorizations for use and disclosure of protected health information for treatment, payment, and health care operations.
Sec. 203. Authorizations for use or disclosure of protected health information other than for treatment, payment, and health care operations.
Sec. 204. Next of kin and directory information.
Sec. 205. Emergency circumstances.
Sec. 206. Oversight.
Sec. 207. Public health.
Sec. 208. Health research.
Sec. 209. Disclosure in civil, judicial, and administrative procedures.
Sec. 210. Disclosure for law enforcement purposes.
Sec. 211. Payment card and electronic payment transaction.
Sec. 212. Individual representatives.
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TITLE III—SANCTIONS
Subtitle A—Criminal Provisions
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Sec. 311. Civil penalty violation.
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Sec. 313. Enforcement by State insurance commissioners.
TITLE IV—MISCELLANEOUS
Sec. 401. Relationship to other laws.
Sec. 402. Conforming amendment.
Sec. 403. Study by Institute of Medicine.
Sec. 405. Effective date.

SEC. 2. FINDINGS.

The Congress finds that—

(1) individuals have a right of confidentiality with respect to their personal health information and records;

(2) with respect to information about medical care and health status, the traditional right of confidentiality is at risk;

(3) an erosion of the right of confidentiality may reduce the willingness of patients to confide in physicians and other practitioners, thus jeopardizing quality health care;

(4) an individual's confidentiality right means that an individual's consent is needed to disclose his or her protected health information, except in limited circumstances required by the public interest;

(5) any disclosure of protected health information should be limited to that information or portion of the medical record necessary to fulfill the purpose of the disclosure;

(6) the availability of timely and accurate personal health data for the delivery of health care services throughout the Nation is needed;

(7) personal health care data is essential for medical research;

(8) public health uses of personal health data are critical to both personal health as well as public health; and

(9) confidentiality of an individual's health information must be assured without jeopardizing the pursuit of clinical and epidemiological research undertaken to improve health care and health outcomes and to assure the quality and efficiency of health care.

SEC. 3. PURPOSES.

The purpose of this Act is to—

(1) establish strong and effective mechanisms to protect against the unauthorized and inappropriate disclosure of protected health information that is created or maintained as part of health care treatment, diagnosis, enrollment, payment, plan administration, testing, or research processes;

(2) promote the efficiency and security of the health information infrastructure so that members of the health care community may more effectively exchange and transfer health information in a manner that will ensure the confidentiality of protected health information without impeding the delivery of high quality health care; and

(3) establish strong and effective remedies for violations of this Act.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) ACCREDITING BODY.—The term ''accrediting body'' means a national body, committee, organization, or institution (such as the Joint Commission on Accreditation of Health Care Organizations or the National Committee for Quality Assurance) that has been authorized by law or is recognized by a health care regulating authority as an accrediting entity or any other entity that has been similarly authorized or recognized by law to perform specific accreditation, licensing or credentialing activities.

(2) AGENT.—The term ''agent'' means a person, including a contractor, who represents and acts for another under the contract or relation of agency, or whose function is to bring about, modify, effect, accept performance of, or terminate contractual obligations between the principal and a third person.

(3) COMMON RULE.—The term ''common rule'' means the Federal policy for protection of human subjects from research risks originally published as 56 Federal Register 28.025 (1991) as adopted and implemented by a Federal department or agency.

(4) DISCLOSE AND DISCLOSURE.—

(A) DISCLOSE.—The term ''disclose'' means to release, transfer, provide access to, or otherwise divulge protected health information to any person other than the individual who is the subject of such information.

(B) DISCLOSURE.—

(i) IN GENERAL.—The term ''disclosure'' refers to a release, transfer, provision for access to, or communication of information as described in subparagraph (A).

(ii) USE.—The use of protected health information by an authorized person and its agents shall not be considered a disclosure for purposes of this Act if the use is consistent with the purposes for which the information was lawfully obtained. Using or providing access to health information in the form of nonidentifiable health information shall not be construed as a disclosure of protected health information.

(5) EMPLOYER.—The term ''employer'' has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)), except that such term shall include only employers of two or more employees.

(6) HEALTH CARE.—The term ''health care'' means—

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, including appropriate assistance with disease or symptom management and maintenance, counseling, assessment, service, or procedure—

(i) with respect to the physical or mental condition of an individual; or

(ii) affecting the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(B) pursuant to a prescription or medical order any sale or dispensing of a drug, device, equipment, or other health care related item to an individual, or for the use of an individual.

(7) HEALTH CARE OPERATIONS.—The term ''health care operations'' means services provided by or on behalf of a health plan or health care provider for the purpose of carrying out the management functions of a health care provider or health plan, or implementing the terms of a contract for health plan benefits, including—

(A) coordinating health care, including health care management of the individual through risk assessment and case management;

(B) conducting quality assessment and improvement activities, including outcomes evaluation, clinical guideline development, and improvement;

(C) reviewing the competence or qualifications of health care professionals, evaluating provider performance, and conducting health care education, accreditation, certification, licensing, or credentialing activities;

(D) carrying out utilization review activities, including precertification and preauthorization of services, and health plan rating and insurance activities, including underwriting, experience rating and reinsurance; and

(E) conducting or arranging for auditing services, including fraud detection and compliance programs.

(8) HEALTH CARE PROVIDER.—The term ''health care provider'' means a person, who with respect to a specific item of protected health information, receives, creates, uses, maintains, or discloses the information while acting in whole or in part in the capacity of—

(A) a person who is licensed, certified, registered, or otherwise authorized by Federal or State law to provide an item or service that constitutes health care in the ordinary course of business, or practice of a profession;

(B) a Federal, State, employer sponsored or other privately sponsored program that directly provides items or services that constitute health care to beneficiaries; or

(C) an officer or employee of a person described in subparagraph (A) or (B).

(9) HEALTH OVERSIGHT AGENCY.—The term ''health oversight agency'' means a person who, with respect to a specific item of protected health information, receives, creates, uses, maintains, or discloses the information while acting in whole or in part in the capacity of—

(A) a person who performs or oversees the performance of an assessment, evaluation, determination, or investigation, relating to the licensing, accreditation, certification, or credentialing of health care providers; or

(B) a person who—

(i) performs or oversees the performance of an audit, assessment, evaluation, determination, or investigation relating to the effectiveness of, compliance with, or applicability of, legal, fiscal, medical, or scientific standards or aspects of performance related to the delivery of health care; and

(ii) is a public agency, acting on behalf of a public agency, acting pursuant to a requirement of a public agency, or carrying out activities under a Federal or State law governing the assessment, evaluation, determination, investigation, or prosecution described in subparagraph (A).

(10) HEALTH PLAN.—The term ''health plan'' means any health insurance issuer, health insurance plan, including any hospital or medical service plan, dental or other health service plan or health maintenance organization plan, provider sponsored organization, or other program providing or arranging for the provision of health benefits. Such term does not include any policy, plan or program to the extent that it provides, arranges or administers health benefits pursuant to a program of workers compensation or automobile insurance.

(11) HEALTH RESEARCH AND HEALTH RESEARCHER.—

(A) HEALTH RESEARCH.—The term ''health research'' means a systematic investigation of health (including basic biological processes and structures), health care, or its delivery and financing, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge concerning human health, health care, or health care delivery.

(B) HEALTH RESEARCHER.—The term ''health researcher'' means a person involved in health research, or an officer, employee, or agent of such person.

(12) KEY.—The term ''key'' means a method or procedure used to transform nonidentifiable health information that is in a coded or encrypted form into protected health information.

(13) LAW ENFORCEMENT INQUIRY.—The term ''law enforcement inquiry'' means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant to such a statute.

(14) LIFE INSURER.—The term ''life insurer'' means life insurance company as defined in section 816 of the Internal Revenue Code of 1986 .

(15) NONIDENTIFIABLE HEALTH INFORMATION.—The term ''nonidentifiable health information'' means protected health information from which personal identifiers, that directly reveal the identity of the individual who is the subject of such information or provide a direct means of identifying the individual (such as name, address, and social security number), have been removed, encrypted, or replaced with a code, such that the identity of the individual is not evident without (in the case of encrypted or coded information) use of key.

(16) ORIGINATING PROVIDER.—The term ''originating provider'' means a health care provider who initiates a treatment episode, such as prescribing a drug, ordering a diagnostic test, or admitting an individual to a health care facility. A hospital or nursing facility is the originating provider with respect to protected health information created or received as part of inpatient or outpatient treatment provided in such settings.

(17) PAYMENT.—The term ''payment'' means—

(A) the activities undertaken by—

(i) or on behalf of a health plan to determine its responsibility for coverage under the plan; or

(ii) a health care provider to obtain payment for items or services provided to an individual, provided under a health plan, or provided based on a determination by the health plan of responsibility for coverage under the plan; and

(B) activities undertaken as described in subparagraph (A) including—

(i) billing, claims management, medical data processing, other administrative services, and actual payment;

(ii) determinations of coverage or adjudication of health benefit or subrogation claims; and

(iii) review of health care services with respect to coverage under a health plan or justification of charges.

(18) PERSON.—The term ''person'' means a government, governmental subdivision, agency or authority; corporation; company; association; firm; partnership; society; estate; trust; joint venture; individual; individual representative; tribal government; and any other legal entity.

(19) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' with respect to the individual who is the subject of such information means any information which identifies such individual, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, health oversight agency, public health authority, employer, life insurer, school or university;

(B) relates to the past, present, or future physical or mental health or condition of an individual (including individual cells and their components);

(C) is derived from—

(i) the provision of health care to the individual; or

(ii) payment for the provision of health care to the individual; and

(D) is not nonidentifiable health information.

(20) PUBLIC HEALTH AUTHORITY.—The term ''public health authority'' means an authority or instrumentality of the United States, a tribal government, a State, or a political subdivision of a State that is—

(A) primarily responsible for health or welfare matters; and

(B) primarily engaged in activities such as incidence reporting, public health surveillance, and investigation or intervention.

(21) SCHOOL OR UNIVERSITY.—The term ''school or university'' means an institution or place accredited or licensed for purposes of providing for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under one corporate organization or government.

(22) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(23) SIGNED.—The term ''signed'' refers to documentation of assent in any medium, whether ink, digital or biometric signatures, or recorded oral authorizations.

(24) STATE.—The term ''State'' includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(25) TREATMENT.—The term ''treatment'' means the provision of health care by a health care provider.

(26) WRITING AND WRITTEN.—

(A) WRITING.—The term ''writing'' means any form of documentation, whether paper, electronic, digital, biometric or tape recorded.

(B) WRITTEN.—The term ''written'' includes paper, electronic, digital, biometric and tape-recorded formats.

TITLE I—INDIVIDUAL'S RIGHTS

Subtitle A—Review of Protected Health Information by Subjects of the Information

SEC. 101. INSPECTION AND COPYING OF PROTECTED HEALTH INFORMATION.

(a) GENERAL RULES.—

(1) COMPLIANCE WITH SECTION.—At the request of an individual who is the subject of protected health information and except as provided in subsection (c), a health care provider, a health plan, employer, life insurer, school, or university shall arrange for inspection or copying of protected health information concerning the individual, including records created under section 102, as provided for in this section.

(2) AVAILABILITY OF INFORMATION THROUGH ORIGINATING PROVIDER.—Protected health information that is created or received by a health plan or health care provider as part of treatment or payment shall be made available for inspection or copying as provided for in this title through the originating provider.

(3) OTHER ENTITIES.—An employer, life insurer, school, or university that creates or receives protected health information in performing any function other than providing treatment, payment, or health care operations with respect to the individual who is the subject of such information, shall make such information available for inspection or copying as provided for in this title, or through any provider designated by the individual.

(4) PROCEDURES.—The person providing access to information under this title may set forth appropriate procedures to be followed for such inspection or copying and may require an individual to pay reasonable costs associated with such inspection or copying.

(b) SPECIAL CIRCUMSTANCES.—If an originating provider, its agent, or contractor no longer maintains the protected health information sought by an individual pursuant to subsection (a), a health plan or another health care provider that maintains such information shall arrange for inspection or copying.

(c) EXCEPTIONS.—Unless ordered by a court of competent jurisdiction, a person acting pursuant to subsection (a) or (b) is not required to permit the inspection or copying of protected health information if any of the following conditions are met:

(1) ENDANGERMENT TO LIFE OR SAFETY.—The person determines that the disclosure of the information could reasonably be expected to endanger the life or physical safety of any individual.

(2) CONFIDENTIAL SOURCE.—The information identifies, or could reasonably lead to the identification of, a person who provided information under a promise of confidentiality to a health care provider concerning the individual who is the subject of the information.

(3) INFORMATION COMPILED IN ANTICIPATION OF OR IN CONNECTION WITH A FRAUD INVESTIGATION OR LITIGATION.—The information is compiled principally—

(A) in anticipation of or in connection with a fraud investigation, an investigation of material misrepresentation in connection with an insurance policy, a civil, criminal, or administrative action or proceeding; or

(B) for use in such action or proceeding.

(4) INVESTIGATIONAL INFORMATION.—The protected health information was created, received or maintained by a health researcher as provided in section 208.

(d) DENIAL OF A REQUEST FOR INSPECTION OR COPYING.—If a person described in subsection (a) or (b) denies a request for inspection or copying pursuant to subsection (c), the person shall inform the individual in writing of—

(1) the reasons for the denial of the request for inspection or copying;

(2) the availability of procedures for further review of the denial; and

(3) the individual's right to file with the person a concise statement setting forth the request for inspection or copying.

(e) STATEMENT REGARDING REQUEST.—If an individual has filed a statement under subsection (d)(3), the person in any subsequent disclosure of the portion of the information requested under subsection (a) or (b)—

(1) shall include a notation concerning the individual's statement; and

(2) may include a concise statement of the reasons for denying the request for inspection or copying.

(f) INSPECTION AND COPYING OF SEGREGABLE PORTION.—A person described in subsection (a) or (b) shall permit the inspection and copying of any reasonably segregable portion of a record after deletion of any portion that is exempt under subsection (c).

(g) DEADLINE.—A person described in subsection (a) or (b) shall comply with or deny, in accordance with subsection (d), a request for inspection or copying of protected health information under this section not later than 60 days after the date on which the person receives the request.

(h) RULES OF CONSTRUCTION.—

(1) AGENTS.—An agent of a person described in subsection (a) or (b) shall not be required to provide for the inspection and copying of protected health information, except where—

(A) the protected health information is retained by the agent; and

(B) the agent has been asked in writing by the person involved to fulfill the requirements of this section.

(2) NO REQUIREMENT FOR HEARING.—This section shall not be construed to require a person described in subsection (a) or (b) to conduct a formal, informal, or other hearing or proceeding concerning a request for inspection or copying of protected health information.

SEC. 102. AMENDMENT OF PROTECTED HEALTH INFORMATION.

(a) RIGHT TO AMEND.—

(1) IN GENERAL.—Protected health information shall be subject to amendment as provided for in this section.

(2) COMPLIANCE WITH REQUEST.—Except as provided in subsection (c), not later than 45 days after the date on which an originating provider, employer, life insurer, school, or university receives from an individual a request in writing to amend protected health information, such person shall—

(A) make the amendment requested;

(B) inform the individual of the amendment that has been made; and

(C) inform any person identified by the individual in the request for amendment and—

(i) who is not an officer, employee, or agent of the person; and

(ii) to whom the unamended portion of the information was disclosed within the previous year by sending a notice to the individual's last known address that there has been a substantive amendment to the protected health information of such individual.

(b) REQUEST OF ORIGINATING PROVIDERS.—

(1) IN GENERAL.—Protected health information that is created or received by a health plan or health care provider as part of treatment or payment shall be subject to amendment as provided for in this section upon a written request made to the originating provider.

(2) SPECIAL CIRCUMSTANCES.—If an originating provider, its agent, or contractor no longer maintains the protected health information sought to be amended by an individual pursuant to paragraph (1), a health plan or another health care provider that maintains such information may arrange for amendment consistent with this section.

(c) REFUSAL TO AMEND.—If a person described in subsection (a)(2) refuses to make the amendment requested under such subsection, the person shall inform the individual in writing of—

(1) the reasons for the refusal to make the amendment;

(2) the availability of procedures for further review of the refusal; and

(3) the procedures by which the individual may file with the person a concise statement setting forth the requested amendment and the individual's reasons for disagreeing with the refusal.

(d) STATEMENT OF DISAGREEMENT.—If an individual has filed a statement of disagreement under subsection (c)(3), the person involved, in any subsequent disclosure of the disputed portion of the information—

(1) shall include a notation concerning the individual's statement; and

(2) may include a concise statement of the reasons for not making the requested amendment.

(e) RULES GOVERNING AGENTS.—The agent of a person described in subsection (a)(2) shall not be required to make amendments to protected health information, except where—

(1) the protected health information is retained by the agent; and

(2) the agent has been asked in writing by such person to fulfill the requirements of this section.

(f) REPEATED REQUESTS FOR AMENDMENTS.—If a person described in subsection (a)(2) receives a request for an amendment of information as provided for in such subsection and a statement of disagreement has been filed pursuant to subsection (d), the person shall inform the individual of such filing and shall not be required to carry out the procedures required under this section.

(g) RULES OF CONSTRUCTION.—This section shall not be construed to—

(1) require that a person described in subsection (a)(2) conduct a formal, informal, or other hearing or proceeding concerning a request for an amendment to protected health information;

(2) require a provider to amend an individual's protected health information as to the type, duration, or quality of treatment the individual believes he or she should have been provided; or

(3) permit any deletions or alterations of the original information.

SEC. 103. NOTICE OF CONFIDENTIALITY PRACTICES.

(a) PREPARATION OF WRITTEN NOTICE.—A health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, school, or university shall post or provide, in writing and in a clear and conspicuous manner, notice of the person's confidentiality practices, that shall include—

(1) a description of an individual's rights with respect to protected health information;

(2) the uses and disclosures of protected health information authorized under this Act;

(3) the procedures for authorizing disclosures of protected health information and for revoking such authorizations;

(4) the procedures established by the person for the exercise of the individual's rights; and

(5) the right to obtain a copy of the notice of the confidentiality practices required under this Act.

(b) MODEL NOTICE.—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model notices of confidentiality practices, using the advice of the National Committee on Vital Health Statistics, for use under this section. Use of the model notice shall serve as an absolute defense against claims of receiving inappropriate notice.

Subtitle B—Establishment of Safeguards

SEC. 111. ESTABLISHMENT OF SAFEGUARDS.

(a) IN GENERAL.—A health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, law enforcement official, school, or university shall establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality, security, accuracy, and integrity of protected health information created, received, obtained, maintained, used, transmitted, or disposed of by such person.

(b) FUNDAMENTAL SAFEGUARDS.—The safeguards established pursuant to subsection (a) shall address the following factors:

(1) The purpose for which protected health information is needed and whether that purpose can be accomplished with nonidentifiable health information.

(2) Appropriate procedures for maintaining the security of protected health information and assuring the appropriate use of any key used in creating nonidentifiable health information.

(3) The categories of personnel who will have access to protected health information and appropriate training, supervision and sanctioning of such personnel with respect to their use of protected health information and adherence to established safeguards.

(4) Appropriate limitations on access to individual identifiers.

(5) Appropriate mechanisms for limiting disclosures of protected information to the information necessary to respond to the request for disclosure.

(6) Procedures for handling requests for protected health information by persons other than the individual who is the subject of such information, including relatives and affiliates of such individual, law enforcement officials, parties in civil litigation, health care providers, and health plans.

SEC. 112. ACCOUNTING FOR DISCLOSURES.

(a) IN GENERAL.—A health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, law enforcement official, school, or university shall establish and maintain a process for documenting the disclosure of protected health information by any such person through the recording of the name and address of the recipient of the information, or through the recording of another mean of contacting the recipient, and the purpose of the disclosure.

(b) RECORD OF DISCLOSURE.—A record (or other means of documentation) established under subsection (a) shall be maintained for not less than 7 years.

(c) IDENTIFICATION OF DISCLOSED INFORMATION AS PROTECTED HEALTH INFORMATION.—Except as otherwise provided in this title, protected health information shall be clearly identified as protected health information that is subject to this Act.

TITLE II—RESTRICTIONS ON USE AND DISCLOSURE

SEC. 201. GENERAL RULES REGARDING USE AND DISCLOSURE.

(a) DISCLOSURE PROHIBITED.—A health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, law enforcement official, school, or university, or any agents of such a person, may not disclose protected health information except as authorized under this Act or as authorized by the individual who is the subject of such information.

(b) APPLICABILITY TO AGENTS.—

(1) IN GENERAL.—A person described in subsection (a) may use an agent, including a contractor, to carry out an otherwise lawful activity using protected health information maintained by such person if the person specifies the activities for which the agent is authorized to use such protected health information and prohibits the agent from using or disclosing protected health information for purposes other than carrying out the specified activities.

(2) LIMITATION ON LIABILITY.—Notwithstanding any other provision of this Act, a person who has limited the activities of an agent as provided for in paragraph (1), shall not be liable for the actions or disclosures of the agent that are not in fulfillment of those activities.

(3) LIMITATIONS ON AGENTS.—An agent who receives protected health information from a person described in subsection (a) shall, in its own right, be subject to the applicable provisions of this Act.

(c) APPLICABILITY TO EMPLOYERS.—

(1) IN GENERAL.—An employer may use an employee or agent to create, receive, or maintain protected health information in order to carry out an otherwise lawful activity so long as—

(A) the disclosure of the protected employee health information within the entity is compatible with the purpose for which the information was obtained and limited to information necessary to accomplish the purpose of the disclosure; and

(B) the employer prohibits the release, transfer or communication of the protected health information to officers, employees, or agents responsible for hiring, promotion, and making work assignment decisions with respect to the subject of the information.

(2) DETERMINATION.—For purposes of paragraph (1)(A), the determination of what constitutes information necessary to accomplish the purpose for which the information is obtained shall be made by a health care provider, except in situations involving payment for health plan operations undertaken by the employer.

(d) CREATION OF NONIDENTIFIABLE HEALTH INFORMATION.—A person described in subsection (a) may use protected health information for the purpose of creating nonidentifiable health information.

(e) INDIVIDUAL AUTHORIZATION.—To be valid, an authorization to disclose protected health information under this title shall—

(1) identify the individual who is the subject of the protected health information;

(2) describe the nature of the information to be disclosed;

(3) identify the type of person to whom the information is to be disclosed;

(4) describe the purpose of the disclosure;

(5) be subject to revocation by the individual and indicate that the authorization is valid until revocation by the individual; and

(6) be in writing, dated, and signed by the individual, a family member or other authorized representative.

(f) MANIPULATION OF NONIDENTIFIABLE HEALTH INFORMATION.—Any person who manipulates nonidentifiable health information in order to identify an individual, or uses a key to identify an individual without authorization, is deemed to have disclosed protected health information.

SEC. 202. PROCUREMENT OF AUTHORIZATIONS FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.

(a) AUTHORIZATIONS.—

(1) IN GENERAL.—With respect to each individual, a single authorization that substantially complies with section 201(e) must be secured to permit the use and disclosure of protected health information concerning such individual for treatment, payment, and health care operations, as provided for in this subsection.

(2) EMPLOYERS.—Every employer offering a health plan to its employees shall, at the time of, and as a condition of enrollment in the health plan, obtain a signed, written authorization that is a legal, informed authorization concerning the use and disclosure of protected health information for treatment, payment, and health care operations with respect to each individual who is eligible to receive care under the health plan.

(3) HEALTH PLANS.—Every health plan offering enrollment to individuals or non-employer groups shall, at the time of, and as a condition of enrollment in the health plan, obtain a signed, written authorization that is a legal, informed authorization concerning the use and disclosure of protected health information for treatment, payment, and health care operations, with respect to each individual who is eligible to receive care under the plan.

(4) UNINSURED.—An originating provider providing health care to an uninsured individual, shall obtain a signed, written authorization to use and disclose protected health information with respect to such individual for treatment, payment, and health care operations of such provider, and in arranging for treatment and payment from other providers.

(5) PROVIDERS.—Any health care provider providing health care to an individual may, in connection with providing such care, obtain a signed, written authorization that is a legal, informed authorization concerning the use and disclosure of protected health information with respect to such individual for treatment, payment, and health care operations of such provider.

(b) REVOCATION OF AUTHORIZATION.—

(1) IN GENERAL.—An individual may revoke an authorization under this section at any time, by sending written notice to the person who obtained such authorization, unless the disclosure that is the subject of the authorization is required to complete a course of treatment, effectuate payment, or conduct health care operations for health care that has been provided to the individual.

(2) HEALTH PLANS.—With respect to a health plan, the authorization of an individual is deemed to be revoked at the time of the cancellation or non-renewal of enrollment in the health plan, except as may be necessary to conduct health care operations and complete payment requirements related to the individual's period of enrollment.

(3) TERMINATION OF PLAN.—With respect to the revocation of an authorization under this section by an enrollee in a health plan, the health plan may terminate the coverage of such enrollee under such plan if the health plan determines that the revocation has resulted in the inability of the plan to provide care for the enrollee or conduct health care operations.

(c) RECORD OF INDIVIDUAL'S AUTHORIZATIONS AND REVOCATIONS.—Each person who obtains or is required to obtain an authorization under this section shall maintain a record for a period of 7 years of each such authorization of an individual and revocation thereof.

(d) MODEL AUTHORIZATIONS.—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model written authorizations of the type described in subsection (a). The Secretary shall consult with the National Committee on Vital and Health Statistics in developing such authorizations. An authorization obtained on a model authorization form developed by the Secretary pursuant to the preceding sentence shall be deemed to meet the authorization requirements of this section.

(e) RULES OF CONSTRUCTION.—

(1) SINGLE AUTHORIZATIONS.—An employer or health plan shall be deemed to meet the requirements of subsection (a) with respect to a spouse, child, or other eligible dependent if, at the time of enrollment, a single authorization under subsection (a) is obtained from the employee or other individual who accepts responsibility for health plan enrollment.

(2) REQUIREMENT FOR SEPARATE AUTHORIZATION.—An authorization for the disclosure of protected health information for treatment, payment, and health care operations shall not directly or indirectly authorize the disclosure of such information for any other purpose. Any other such disclosures shall require a separate authorization under section 203.

SEC. 203. AUTHORIZATIONS FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION OTHER THAN FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.

(a) IN GENERAL.—An individual who is the subject of protected health information may authorize any person to disclose or use such information for any purpose. An authorization under this section shall not be valid if the signing of such authorization by the individual is a prerequisite for the signing of an authorization under section 202.

(b) WRITTEN AUTHORIZATIONS.—A person may disclose and use protected health information, for purposes other than those authorized under section 202, pursuant to a written authorization signed by the individual who is the subject of the information that meets the requirements of section 201(e). An authorization under this section shall be separate from any authorization provided under section 202.

(c) LIMITATION ON AUTHORIZATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, life insurers, and any other entity that offers disability income or long term care insurance under the laws of any State, shall meet the requirements of section 201(a) with respect to an individual for purposes of life, disability income or long term care insurance, by obtaining the authorization of the individual under this section.

(2) DURING PERIOD OF COVERAGE.—Notwithstanding paragraph (1), an authorization obtained in the ordinary course of business in connection with life, disability income or long-term care insurance under this section shall remain in effect during the term of the individual's insurance coverage and as may be necessary to enable the issuer to meet its obligations with respect to such individual under the terms of the policy, plan or program.

(3) OTHER AUTHORIZATIONS.—An authorization obtained from an individual in connection with an application that does not result in coverage with respect to such individual shall expire the earlier of the date specified in the individual's authorization or the effective date of any revocation under subsection (d).

(d) REVOCATION OR AMENDMENT OF AUTHORIZATION.—

(1) IN GENERAL.—Except as otherwise provided for in this section, an individual may revoke or amend an authorization described in this section by providing written notice to the person who obtained such authorization unless the disclosure that is the subject of the authorization is related to the evaluation of an application for life, disability income or long-term care insurance coverage or a claim for life, disability income or long-term care insurance benefits.

(2) NOTICE OF REVOCATION.—A person that discloses protected health information pursuant to an authorization that has been revoked under paragraph (1) shall not be subject to any liability or penalty under this title if that person had no actual notice of the revocation.

(e) DISCLOSURE FOR PURPOSE ONLY.—A recipient of protected health information pursuant to an authorization under subsection (b) may disclose such information only to carry out the purposes for which the information was authorized to be disclosed.

(f) MODEL AUTHORIZATIONS.—

(1) IN GENERAL.—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model written authorizations of the type described in subsection (b). The Secretary shall consult with the National Committee on Vital and Health Statistics in developing such authorizations.

(2) AUTHORITY OF INSURANCE COMMISSIONER.—Notwithstanding paragraph (1), the insurance commissioner of the State of domicile of a life insurer may exercise exclusive authority in developing and disseminating model written authorizations for purposes of subsection (c).

(3) COMPLIANCE WITH REQUIREMENTS.—An authorization obtained using a model authorization promulgated under this subsection shall be deemed to meet the authorization requirements of this section.

(g) AUTHORIZATIONS FOR RESEARCH.—This section applies to health research only where such research is not governed by section 208.

SEC. 204. NEXT OF KIN AND DIRECTORY INFORMATION.

(a) NEXT OF KIN.—A health care provider, or a person who receives protected health information under section 205, may disclose protected health information regarding an individual to the individual's spouse, parent, child, sister, brother, next of kin, or to another person whom the individual has identified, if—

(1) the individual who is the subject of the information—

(A) has been notified of the individual's right to object to such disclosure and the individual has not objected to the disclosure; or

(B) is in a physical or mental condition such that the individual is not capable of objecting, and there are no prior indications that the individual would object;

(2) the information disclosed relates to health care currently being provided to that individual; and

(3) the disclosure of the protected health information is consistent with good medical or professional practice.

(b) DIRECTORY INFORMATION.—

(1) DISCLOSURE.—

(A) IN GENERAL.—Except as provided in paragraph (2), a person described in subsection (a) may disclose the information described in subparagraph (B) to any person if the individual who is the subject of the information—

(i) has been notified of the individual's right to object and the individual has not objected to the disclosure; or

(ii) is in a physical or mental condition such that the individual is not capable of objecting, the individual's next of kin has not objected, and there are no prior indications that the individual would object.

(B) INFORMATION.—Information described in this subparagraph is information that consists only of 1 or more of the following items:

(i) The name of the individual who is the subject of the information.

(ii) The general health status of the individual, described as critical, poor, fair, stable, or satisfactory or in terms denoting similar conditions.

(iii) The location of the individual on premises controlled by a provider.

(2) EXCEPTION.—

(A) LOCATION.—Paragraph (1)(B)(iii) shall not apply if disclosure of the location of the individual would reveal specific information about the physical or mental condition of the individual, unless the individual expressly authorizes such disclosure.

(B) DIRECTORY OR NEXT OF KIN INFORMATION.—A disclosure may not be made under this section if the health care provider involved has reason to believe that the disclosure of directory or next of kin information could lead to the physical or mental harm of the individual, unless the individual expressly authorizes such disclosure.

SEC. 205. EMERGENCY CIRCUMSTANCES.

Any person who creates or receives protected health information under this title may disclose protected health information in emergency circumstances when necessary to protect the health or safety of the individual who is the subject of such information from serious, imminent harm. No disclosure made in the good faith belief that the disclosure was necessary to protect the health or safety of an individual from serious, imminent harm shall be in violation of, or punishable under, this Act.

SEC. 206. OVERSIGHT.

(a) IN GENERAL.—Any person may disclose protected health information to an accrediting body or public health authority, a health oversight agency, or a State insurance department, for purposes of an oversight function authorized by law.

(b) PROTECTION FROM FURTHER DISCLOSURE.—Protected health information this is disclosed under this section shall not be further disclosed by an accrediting body or public health authority, a health oversight agency, a State insurance department, or their agents for any purpose unrelated to the authorized oversight function. Notwithstanding any other provision of law, protected health information disclosed under this section shall be protected from further disclosure by an accrediting body or public health authority, a health oversight agency, a State insurance department, or their agents pursuant to a subpoena, discovery request, introduction as evidence, testimony, or otherwise.

(c) AUTHORIZATION BY A SUPERVISOR.—For purposes of this section, the individual with authority to authorize the oversight function involved shall provide to the person described in subsection (a) a statement that the protected health information is being sought for a legally authorized oversight function.

(d) USE IN ACTION AGAINST INDIVIDUALS.—Protected health information about an individual that is disclosed under this section may not be used by the recipient in, or disclosed by the recipient to any person for use in, an administrative, civil, or criminal action or investigation directed against the individual who is the subject of the protected health information unless the action or investigation arises out of and is directly related to—

(1) the receipt of health care or payment for health care; or

(2) a fraudulent claim related to health care, or a fraudulent or material misrepresentation of the health of the individual.

SEC. 207. PUBLIC HEALTH.

(a) IN GENERAL.—A health care provider, health plan, public health authority, health researcher, employer, life insurer, law enforcement official, school, or university may disclose protected health information to a public health authority or other person authorized by law for use in a legally authorized—

(1) disease or injury report;

(2) public health surveillance;

(3) public health investigation or intervention;

(4) vital statistics report, such as birth or death information;

(5) report of abuse or neglect information about any individual; or

(6) report of information concerning a communicable disease status.

(b) IDENTIFICATION OF DECEASED INDIVIDUAL.—Any person may disclose protected health information if such disclosure is necessary to assist in the identification or safe handling of a deceased individual.

(c) REQUIREMENT TO RELEASE PROTECTED HEALTH INFORMATION TO CORONERS AND MEDICAL EXAMINERS.—

(1) IN GENERAL.—When a Coroner or a Medical Examiner, or the duly appointed deputy of a Coroner or Medical Examiner, seeks protected health information for the purpose of inquiry into and determination of, the cause, manner, and circumstances of a death, the health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, law enforcement official, school, or university involved shall provide the protected health information to the Coroner or Medical Examiner or to the duly appointed deputy without undue delay.

(2) PRODUCTION OF ADDITIONAL INFORMATION.—If a Coroner or Medical Examiner, or the duly appointed deputy of a Coroner or Medical Examiner, receives health information from a person referred to in paragraph (1), such health information shall remain as protected health information unless the health information is attached to or otherwise made a part of a Coroner's or Medical Examiner's official report, in which case it shall no longer be protected.

(3) EXEMPTION.—Health information attached to or otherwise made a part of a Coroner's or Medical Examiner's official report, shall be exempt from the provisions of this Act.

SEC. 208. HEALTH RESEARCH.

(a) IN GENERAL.—A person lawfully in possession of protected health information may disclose such information to a health researcher under any of the following arrangements:

(1) RESEARCH GOVERNED BY THE COMMON RULE.—A person identified in subsection (a) may disclose protected health information to a health researcher if the research project has been approved by an institutional review board pursuant to the requirements of the common rule as implemented by a Federal agency.

(2) ANALYSES OF HEALTH CARE RECORDS AND MEDICAL ARCHIVES.—A person identified in subsection (a) may disclose protected health information to a health researcher if—

(A) consistent with the safeguards established pursuant to section 111 and the person's policies and procedures established under this section, the health research has been reviewed by a board, committee, or other group formally designated by such person to review research programs;

(B) the health research involves analysis of protected health information previously created or collected by the person;

(C) the person that maintains the protected health information to be used in the analyses has in place a written policy and procedure to assure the security and confidentiality of protected health information and to specify permissible and impermissible uses of such information for health research;

(D) the person that maintains the protected health information to be used in the analyses enters into a written agreement with the recipient health researcher that specifies the permissible and impermissible uses of the protected health information and provides notice to the researcher that any misuse or further disclosure of the information to other persons is prohibited and may provide a basis for action against the health researcher under this Act; and

(E) the person keeps a record of health researchers to whom protected health information has been disclosed.

(3) SAFETY AND EFFICACY REPORTS.—A person may disclose protected health information to a manufacturer of a drug, biologic or medical device, in connection with any monitoring activity or reports made to such manufacturer for use in verifying the safety or efficacy of such manufacturer's approved product in special populations or for long term use.

(b) OVERSIGHT.—On the advice of the National Committee on Vital and Health Statistics, the Secretary shall report to the Congress not later than 18 months after the effective date of this section concerning the adequacy of the policies and procedures implemented pursuant to subsection (a)(2) for protecting the confidentiality of protected health information while promoting its use in research concerning health care outcomes, the epidemiology and etiology of diseases and conditions and the safety, efficacy and cost effectiveness of health care interventions. Based on the conclusions of such report, the Secretary may promulgate model

language for written agreements deemed to comply with subsection (a)(2)(C).

(c) STATUTORY ASSURANCE OF CONFIDENTIALITY.—

(1) IN GENERAL.—Protected health information obtained by a health researcher pursuant to this section shall be used and maintained in confidence, consistent with the confidentiality practices established by the health researcher pursuant to section 111.

(2) LIMITATION ON COMPELLED DISCLOSURE.—A health researcher may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to disclose protected health information created, maintained or received under this section. Nothing in this paragraph shall be construed to prevent an audit or lawful investigation pursuant to the authority of a Federal department or agency, of a research project conducted, supported or subject to regulation by such department or agency.

(3) LIMITATION ON FURTHER USE OR DISCLOSURE.—Notwithstanding any other provision of law, information disclosed by a health researcher to a Federal department or agency under this subsection may not be further used or disclosed by the department or agency for a purpose unrelated to the department's or agency's oversight or investigation.

SEC. 209. DISCLOSURE IN CIVIL, JUDICIAL, AND ADMINISTRATIVE PROCEDURES.

(a) IN GENERAL.—A health care provider, health plan, public health authority, employer, life insurer, law enforcement official, school, or university may disclose protected health information pursuant to a discovery request or subpoena in a civil action brought in a Federal or State court or a request or subpoena related to a Federal or State administrative proceeding if such discovery request or subpoena is made through or pursuant to a court order as provided for in subsection (b).

(b) COURT ORDERS.—

(1) STANDARD FOR ISSUANCE.—In considering a request for a court order regarding the disclosure of protected health information under subsection (a), the court shall issue such order if the court determines that without the disclosure of such information, the person requesting the order would be impaired from establishing a claim or defense.

(2) REQUIREMENTS.—An order issued under paragraph (1) shall—

(A) provide that the protected health information involved is subject to court protection;

(B) specify to whom the information may be disclosed;

(C) specify that such information may not otherwise be disclosed or used; and

(D) meet any other requirements that the court determines are needed to protect the confidentiality of the information.

(c) APPLICABILITY.—This section shall not apply in a case in which the protected health information sought under such discovery request or subpoena relates to a party to the litigation or an individual whose medical condition is at issue.

(d) EFFECT OF SECTION.—This section shall not be construed to supersede any grounds that may apply under Federal or State law for objecting to turning over the protected health information.

SEC. 210. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES.

A person who receives protected health information pursuant to sections 202 through 207, may disclose such information to a State or Federal law enforcement agency if such disclosure is pursuant to—

(1) a subpoena issued under the authority of a grand jury;

(2) an administrative or judicial subpoena or summons;

(3) a warrant issued upon a showing of probable cause;

(4) a Federal or State law requiring the reporting of specific medical information to law enforcement authorities;

(5) a written consent or waiver of privilege by an individual allowing access to the individual's protected health information; or

(6) by other court order.

SEC. 211. PAYMENT CARD AND ELECTRONIC PAYMENT TRANSACTION.

(a) PAYMENT FOR HEALTH CARE THROUGH CARD OR ELECTRONIC MEANS.—If an individual pays for health care by presenting a debit, credit, or other payment card or account number, or by any other payment means, the person receiving the payment may disclose to a person described in subsection (b) only such protected health information about the individual as is necessary in connection with activities described in subsection (b), including the processing of the payment transaction or the billing or collection of amounts charged to, debited from, or otherwise paid by, the individual using the card, number, or other means.

(b) TRANSACTION PROCESSING.—A person who is a debit, credit, or other payment card issuer, a payment system operator, a financial institution participant in a payment system or is an entity assisting such an issuer, operator, or participant in connection with activities described in this subsection, may use or disclose protected health information about an individual in connection with—

(1) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means;

(2) the transfer of receivables, accounts, or interest therein;

(3) the audit of the debit, credit, or other payment information;

(4) compliance with Federal, State, or local law;

(5) compliance with a properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities as governed by the requirements of this section; or

(6) fraud protection, risk control, resolving customer disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.

(c) SPECIFIC PROHIBITIONS.—A person described in subsection (b) may not disclose protected health information for any purpose that is not described in subsection (b). Notwithstanding any other provision of law, any health care provider, health plan, health oversight agency, health researcher, employer, life insurer, school or university who makes a good faith disclosure of protected health information to an entity and for the purposes described in subsection (b) shall not be liable for subsequent disclosures by such entity.

(d) SCOPE.—

(1) IN GENERAL.—The use of protected health information by a person described in subsection (b) and its agents shall not be considered a disclosure for purposes of this Act, so long as the use involved is consistent with the activities authorized in subsection (b) or other purposes for which the information was lawfully obtained.

(2) REGULATED INSTITUTIONS.—A person who is subject to enforcement pursuant to section 8 of the Federal Deposit Insurance Act or who is a Federal credit union or State credit union as defined in the Federal Credit Union Act or who is registered pursuant to the Securities and Exchange Act, or who is an entity assisting such a person—

(A) shall not be subject to this Act to the extent that such person or entity is described in subsection (b) and to the extent that such person or entity is engaged in activities authorized in that subsection; and

(B) shall be subject to enforcement exclusively under section 8 of the Federal Deposit Insurance Act, the Federal Credit Union Act, or the Securities and Exchange Act, as applicable, to the extent that such person or entity is engaged in activities other than those permitted under subsection (b).

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to exempt entities described in paragraph (2) from the prohibition set forth in subsection (c).

SEC. 212. INDIVIDUAL REPRESENTATIVES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person who is authorized by law (based on grounds other than the individual being a minor), or by an instrument recognized under law, to act as an agent, attorney, proxy, or other legal representative of a protected individual, may, to the extent so authorized, exercise and discharge the rights of the individual under this Act.

(b) HEALTH CARE POWER OF ATTORNEY.—A person who is authorized by law (based on grounds other than being a minor), or by an instrument recognized under law, to make decisions about the provision of health care to an individual who is incapacitated, may exercise and discharge the rights of the individual under this Act to the extent necessary to effectuate the terms or purposes of the grant of authority.

(c) NO COURT DECLARATION.—If a health care provider determines that an individual, who has not been declared to be legally incompetent, suffers from a medical condition that prevents the individual from acting knowingly or effectively on the individual's own behalf, the right of the individual to authorize disclosure under this Act may be exercised and discharged in the best interest of the individual by—

(1) a person described in subsection (b) with respect to the individual;

(2) a person described in subsection (a) with respect to the individual, but only if a person described in paragraph (1) cannot be contacted after a reasonable effort;

(3) the next of kin of the individual, but only if a person described in paragraph (1) or (2) cannot be contacted after a reasonable effort; or

(4) the health care provider, but only if a person described in paragraph (1), (2), or (3) cannot be contacted after a reasonable effort.

(d) APPLICATION TO DECEASED INDIVIDUALS.—The provisions of this Act shall continue to prevent disclosure of protected health information concerning a deceased individual.

(e) EXERCISE OF RIGHTS ON BEHALF OF A DECEASED INDIVIDUAL.—

(1) IN GENERAL.—A person who is authorized by law or by an instrument recognized under law, to act as an executor of the estate of a deceased individual, or otherwise to exercise the rights of the deceased individual, may, to the extent so authorized, exercise and discharge the rights of such deceased individual under this Act for a period of 2 years following the death of such individual. If no such designee has been authorized, the rights of the deceased individual may be exercised as provided for in subsection (c).

(2) INSURED INDIVIDUALS.—In the case of an individual who is deceased and who was the insured under an insurance policy or policies, the right to authorize disclosure of protected health information may be exercised by the beneficiary or beneficiaries of such insurance policy or policies.

(f) RIGHTS OF MINORS.—The rights of minors under this Act shall be exercised by a parent, the minor or other person as provided under applicable state law.

SEC. 213. NO LIABILITY FOR PERMISSIBLE DISCLOSURES.

A health care provider, health plan, health oversight agency, health researcher, employer, life insurer, school, or university, or an agent of any such person, that makes a disclosure of protected health information about an individual that is permitted by this Act shall not be liable to the individual for such disclosure under common law.

SEC. 214. SALE OF BUSINESS, MERGERS, ETC.

(a) IN GENERAL.—A health care provider, health plan, health oversight agency, employer, life insurer, school, or university may disclose protected health information to a person or persons for purposes of enabling business decisions to be made about or in connection with the purchase, transfer, merger, or sale of a business or businesses.

(b) NO FURTHER USE OR DISCLOSURE.—A person or persons who receive protected health information under this section shall make no further use or disclosure of such information unless otherwise authorized under this Act.

TITLE III—SANCTIONS

Subtitle A—Criminal Provisions

SEC. 301. WRONGFUL DISCLOSURE OF PROTECTED HEALTH INFORMATION.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by adding at the end the following:

"CHAPTER 124—WRONGFUL DISCLOSURE OF PROTECTED HEALTH INFORMATION

"SEC. 2801. WRONGFUL DISCLOSURE OF PROTECTED HEALTH INFORMATION.

''(a) OFFENSE.—The penalties described in subsection (b) shall apply to a person that knowingly and intentionally—

''(1) obtains protected health information relating to an individual from a health care provider, health plan, health oversight agency, public health authority, employer, life insurer, health researcher, law enforcement official, school, or university except as provided in title II of the Medical Information Protection Act of 1999; or

''(2) discloses protected health information to another person in a manner other than that which is permitted under title II of the Medical Information Protection Act of 1999.

''(b) PENALTIES.—A person described in subsection (a) shall—

''(1) be fined not more than $50,000, imprisoned not more than 1 year, or both;

''(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; or

''(3) if the offense is committed with the intent to sell, transfer, or use protected health information for monetary gain or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.

''(c) SUBSEQUENT OFFENSES.—In the case of a person described in subsection (a), the maximum penalties described in subsection (b) shall be doubled for every subsequent conviction for an offense arising out of a violation or violations related to a set of circumstances that are different from those involved in the previous violation or set of related violations described in such subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 123 the following new item:

''124. Wrongful disclosure of protected health information ..... 2801''.

Subtitle B—Civil Sanctions

SEC. 311. CIVIL PENALTY VIOLATION.

A person who the Secretary, in consultation with the Attorney General, determines has substantially and materially failed to comply with this Act shall be subject, in addition to any other penalties that may be prescribed by law—

(1) in a case in which the violation relates to title I, to a civil penalty of not more than $500 for each such violation, but not to exceed $5,000 in the aggregate for multiple violations arising from the same failure to comply with the Act;

(2) in a case in which the violation relates to title II, to a civil penalty of not more than $10,000 for each such violation, but not to exceed $50,000 in the aggregate for multiple violations arising from the same failure to comply with the Act; or

(3) in a case in which the Secretary finds that such violations have occurred with such frequency as to constitute a general business practice, to a civil penalty of not more than $100,000.

SEC. 312. PROCEDURES FOR IMPOSITION OF PENALTIES.

(a) INITIATION OF PROCEEDINGS.—

(1) IN GENERAL.—The Secretary, in consultation with the Attorney General, may initiate a proceeding to determine whether to impose a civil money penalty under section 311. The Secretary may not initiate an action under this section with respect to any violation described in section 311 after the expiration of the 6-year period beginning on the date on which such violation was alleged to have occurred. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary shall not make a determination adverse to any person under paragraph (1) until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) SANCTIONS FOR FAILURE TO COMPLY.—The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(b) SCOPE OF PENALTY.—In determining the amount or scope of any penalty imposed pursuant to section 311, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented;

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims;

(3) evidence of good faith endeavor to protect the confidentiality of protected health information; and

(4) such other matters as justice may require.

(c) REVIEW OF DETERMINATION.—

(1) IN GENERAL.—Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within 60 days following the date the person is notified of the determination of the Secretary) a written petition requesting that the determination be modified or set aside.

(2) FILING OF RECORD.—A copy of the petition filed under paragraph (1) shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified.

(3) CONSIDERATION OF OBJECTIONS.—No objection that has not been raised before the Secretary with respect to a determination described in paragraph (1) shall be considered by the court, unless the failure or neglect to raise such objection shall be excused because of extraordinary circumstances.

(4) FINDINGS.—The findings of the Secretary with respect to questions of fact in an action under this subsection, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and shall file with the court such modified or new findings, and such findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, and the recommendations of the Secretary, if any, for the modification or setting aside of the original order, shall be conclusive.

(5) EXCLUSIVE JURISDICTION.—Upon the filing of the record with the court under paragraph (2), the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided for in section 1254 of title 28, United States Code.

(d) RECOVERY OF PENALTIES.—

(1) IN GENERAL.—Civil money penalties imposed under this subtitle may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and deposited as

miscellaneous receipts of the Treasury of the United States.

(2) DEDUCTION FROM AMOUNTS OWING.—The amount of any penalty, when finally determined under this section, or the amount agreed upon in compromise under paragraph (1), may be deducted from any sum then or later owing by the United States or a State to the person against whom the penalty has been assessed.

(e) DETERMINATION FINAL.—A determination by the Secretary to impose a penalty under section 311 shall be final upon the expiration of the 60-day period referred to in subsection (c)(1). Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (c) may not be raised as a defense to a civil action by the United States to collect a penalty under section 311.

(f) SUBPOENA AUTHORITY.—

(1) IN GENERAL.—For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, or relative to any other matter within the jurisdiction of the Attorney General hereunder, the Attorney General, acting through the Secretary shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof.

(2) SERVICE.—Subpoenas of the Secretary under paragraph (1) shall be served by anyone authorized by the Secretary by delivering a copy thereof to the individual named therein.

(3) PROOF OF SERVICE.—A verified return by the individual serving the subpoena under this subsection setting forth the manner of service shall be proof of service.

(4) FEES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district court of the United States.

(5) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoenaed duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both. Any failure to obey such order of the court may be punished by the court as contempt thereof.

(g) INJUNCTIVE RELIEF.—Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under section 311, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

(h) AGENCY.—A principal is liable for penalties under section 311 for the actions of the principal's agent acting within the scope of the agency.

SEC. 313. ENFORCEMENT BY STATE INSURANCE COMMISSIONERS.

(a) STATE PENALTIES.—Subject to section 401, and notwithstanding any other provision of this title, the insurance commissioner of the State of residence of an insured under a life, disability income or long-term care insurance policy may exercise exclusive authority to impose any penalties on a life insurer for violations of this Act in connection with life, disability income or long-term care insurance pursuant to the administrative procedures provided under that State's insurance laws.

(b) FAIL-SAFE FEDERAL AUTHORITY.—In the case of a State that fails to substantially enforce the requirements of title I or title II of this Act with respect to life insurers regulated by such State, the provisions of this title shall apply with respect to a life insurer in the same way that they apply to other persons subject to the Act.

TITLE IV—MISCELLANEOUS

SEC. 401. RELATIONSHIP TO OTHER LAWS.

(a) STATE AND FEDERAL LAW.—Except as provided in this section, the provisions of this Act shall preempt any State law that relates to matters covered by this Act. Nothing in this Act shall be construed to preempt, modify, repeal or affect the interpretation of a provision of Federal or State law that relates to the disclosure of protected health information or any other information about a minor to a parent or guardian of such minor. This Act shall not be construed as repealing, explicitly or implicitly, other Federal laws or regulations relating to protected health information or relating to an individual's access to protected health information or health care services.

(b) PRIVILEGES.—Nothing in this title shall be construed to preempt or modify any provisions of State statutory or common law to the extent that such law concerns a privilege of a witness or person in a court of that State. This title shall not be construed to supersede or modify any provision of Federal statutory or common law to the extent such law concerns a privilege of a witness or person in a court of the United States. Authorizations pursuant to sections 202 and 203 shall not be construed as a waiver of any such privilege.

(c) REPORTS CONCERNING FEDERAL PRIVACY ACT.—Not later than 1 year after the date of enactment of this Act, the head of each Federal agency shall prepare and submit to Congress a report concerning the effect of this Act on each such agency. Such reports shall include recommendations for legislation to address concerns relating to the Federal Privacy Act.

(d) APPLICATION TO CERTAIN FEDERAL AGENCIES.—

(1) DEPARTMENT OF DEFENSE.—

(A) EXCEPTIONS.—The Secretary of Defense may, by regulation, establish exceptions to the disclosure requirements of this Act to the extent such Secretary determines that disclosure of protected health information relating to members of the armed forces from systems of records operated by the Department of Defense is necessary under circumstances different from those permitted under this Act for the proper conduct of national defense functions by members of the armed forces.

(B) APPLICATION TO CIVILIAN EMPLOYEES.—The Secretary of Defense may, by regulation, establish for civilian employees of the Department of Defense and employees of Department of Defense contractors, limitations on the right of such persons to revoke or amend authorizations for disclosures under section 203 when such authorizations were provided by such employees as a condition of employment and the disclosure is determined necessary by the Secretary of Defense to the proper conduct of national defense functions by such employees.

(2) DEPARTMENT OF TRANSPORTATION.—

(A) EXCEPTIONS.—The Secretary of Transportation may, with respect to members of the Coast Guard, exercise the same powers as the Secretary of Defense may exercise under paragraph (1)(A).

(B) APPLICATION TO CIVILIAN EMPLOYEES.—The Secretary of Transportation may, with respect to civilian employees of the Coast Guard and Coast Guard contractors, exercise the same powers as the Secretary of Defense may exercise under paragraph (1)(B).

(3) DEPARTMENT OF VETERANS AFFAIRS.—The limitations on use and disclosure of protected health information under this Act shall not be construed to prevent any exchange of such information within and among components of the Department of Veterans Affairs that determine eligibility for or entitlement to, or that provide, benefits under laws administered by the Secretary of Veteran Affairs.

SEC. 402. CONFORMING AMENDMENT.

Section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)) is amended to read as follows:

''(6) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term 'individually identifiable health information' has the same meaning given the term 'protected health information' by section 4 of the Medical Information Protection Act of 1999.''.

SEC. 403. STUDY BY INSTITUTE OF MEDICINE.

Not later than 2 years after the date of enactment of this Act, the National Research Council in conjunction with the Institute of Medicine of the National Academy of Sciences shall conduct a study to examine research issues relating to protected health information, such as the quality and uniformity of institutional review boards and their practices with respect to data management for both researchers and institutional review boards, as well as current and proposed protection of health information in relation to the legitimate needs of law enforcement. The Council shall prepare and submit to Congress a report concerning the results of such study.

SEC. 405. EFFECTIVE DATE.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date that is 12 months after the date on which regulations are promulgated as required under subsection (c).

(b) APPLICABILITY.—The provisions of this Act shall only apply to protected health information collected and disclosed 12 months after the date on which regulations are promulgated as required under subsection (c).

(c) REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Secretary shall, in consultation with the National Committee on Vital and Health Statistics, promulgate regulations implementing this Act.

(d) EXCEPTION.—If, not later than 18 months after the date of enactment of this Act, the Secretary has not promulgated the regulations required under subsection (c), the effective date for purposes of subsections (a) and (b) shall be the date that is 30 months after the date of enactment of this Act or 12 months after the promulgation of such regulations, whichever is earlier.

GROUPS SUPPORTING THE MEDICAL INFORMATION PROTECTION ACT OF 1999

American Medical Informatics Association (AMIA).

Joint Healthcare Information Technology Alliance (JHITA).

Intermountain Health Care (IHC).

Premier Institute.

Association of American Medical Colleges (AAMC).

American Health Information Management Association (AHIMA).

Healthcare Leadership Council (HLC).

Federation of American Health Systems.

National Association of Chain Drug Stores (NACDS).
PCS Health Systems.
Academy of Managed Care Pharmacy.
Genentech.
Baxter Healthcare Corporation.
Biotechnology Industry Organization (BIO).
Eli Lilly and Co.
Pan Am and Wausau Insurance.
SmithKline Beecham.
Leukemia Society of America.
Kidney Cancer Foundation.
Mutual of Omaha.
American Hospital Association (AHA).
American Association of Health Plans (AAHP).
Cleveland Clinic Foundation.
First Health Group Corporation.
Health Insurance Association of America (HIAA).
Knoll Pharmaceuticals Co.
Lahey Clinic.
Mayo Foundation.
Pharmaceutical Research and Manufacturers Association (PhRMA).
American Society of Consultant Pharmacists.
Association for Electronic Health Care Transactions.
CIGNA.
Cleveland Clinic Foundation.
Express Scripts/ValueRx.
First Health Group Corporation.
Food Marketing Institute.
Humana, Inc.
Knoll Pharmaceuticals.
National Association of Manufacturers.
Pharmaceutical Care Management Association.
VHA Inc.
WellPoint Networks, Inc.
Blue Cross Blue Shield Association.
American Association of Occupational Health Nurses.
Merck & Co., Inc.

By Mr. MURKOWSKI (for himself, Mr. HAGEL, Mr. BYRD, Mr. CRAIG, Mr. ROBERTS, Mr. GRAMS, Mr. HUTCHINSON, and Mr. ENZI):

S. 882. A bill to strengthen provisions in the Energy Policy Act of 1992 and the Federal Nonnuclear Energy Research and Development Act of 1974 with respect to potential Climate Change; to the Committee on Energy and Natural Resources.

ENERGY AND CLIMATE POLICY ACT OF 1999

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation cosponsored by Senator HAGEL, who is here, Senator BYRD, Senator CRAIG, Senator ROBERTS, Senator GRAMS, Senator HUTCHINSON, Senator ENZI, and, of course, Senator HAGEL.

This is a bill that deals with the issue of the potential climate change that we have heard so much about in this body over the last several months.

Our specific bill would do three things, Mr. President. First, the bill would create a new $2 billion research, development, and demonstration program designed to develop and enhance new technology to help stabilize greenhouse gas concentrations in the atmosphere.

This would be a cost-shared partnership with industry to spur innovation and technology so that we can use this technology and have it deployed in the United States, as well as have it exported around the world. Think about the tremendous advancements that have been made in technology in the last decade, Mr. President. Apply the same basis of need for that technology to be used to reduce greenhouse gases and address climate change. The necessity of doing this, Mr. President, is obvious.

We have seen discussed and examined the costs of Kyoto. The cost of complying with Kyoto is estimated to be up to $338 billion in lost gross domestic product by the year 2010. That equates to $3,068 per household by that year. So it is a substantial investment and deserves our attention now.

Our bill would improve the provisions in existing law which promote voluntary reductions in greenhouse gas emissions. Our emphasis remains on encouraging voluntary action and not creating new regulatory burdens.

Finally, our bill would establish greater accountability and responsibility for climate change and related matters within the Department of Energy by establishing a statutory office of global climate change. Somebody needs to be accountable in the Department of Energy for policies in this area. While the Secretary is ultimately accountable, we want to see greater program direction and focus in this area. It is justified, Mr. President, when we think of the costs associated with meeting the demands and requirements of Kyoto. We can do this and achieve this through technology, and it is an investment well spent.

Now, there are other commonsense approaches we continue to work on that we or others will later propose in separate bills or as amendments to this bill as we get into the debate. For example, we would like to protect the U.S. Global Climate Change Research Program from politics and ensure that it is conducting high-quality, merit-based, peer-reviewed science; we would like to remove regulatory obstacles that stand in the way of voluntary greenhouse gas emissions reduction; we would like to promote voluntary agricultural management practices that sequester, or trap, additional carbon dioxide in biomass and soils; we would like to promote forest management practices that sequester carbon. Mr. President, we encourage the growth of more trees.

We would like to promote U.S. exports of clean technologies to nations such as China and India, who are belching greenhouse gases and choking on their own pollutants. For this to be a global approach to a global issue, the developing countries must be engaged in the solution—unlike Kyoto, where there is a mandate that developing countries simply get a free ride. The recognition is—if you buy that logic—there is no net gain, no substantial decrease in emissions. Under our proposal, the technology would be applicable to the developing nations, so there would be a substantial net decrease in greenhouse gases.

Where sensible and cost effective, we would like to pursue possible changes to the Tax Code to promote certain activities or practices designed to reduce, sequester, or avoid greenhouse gas emissions.

These are all approaches that we plan to pursue, in a bipartisan manner, to address the issue of greenhouse gas emissions and potential climate change, because we believe the potential threat of human-induced climate change will best be solved on a global basis, and solved with technology and American innovation over the long term.

This is the reason we are engaging the developing nations to come aboard—by getting new technology into the marketplace, get it out there and installed and reduce emissions.

Compare our approach with that taken by the Kyoto protocol, which gives developing nations a free ride. Kyoto explicitly ignores the provision of the Byrd-Hagel resolution, which passed this Senate 95 to 0 in 1997.

We are, of course, a body of advice and consent. We gave the administration our advice 95 to 0, so they shouldn't expect our consent. Ninety-five Senators, Mr. President, rarely agree on anything. As a consequence, I think we have spoken relative to the merits of the treaty that was brought before us.

Although the President may seek short-term political gain in simply signing a treaty that imposes burdens long after his watch is over—and that is the applicability of these targets—these targets will come long after the current administration is gone. So it is very easy to set these targets, because this administration won't be held accountable. If the President chooses to ignore our advice, then I don't think he should expect our consent. That is kind of where we are now.

If we recall the Byrd-Hagel resolution, it said that all nations must be included in emission targets and that serious economic harm must not result—serious economic harm. But what serious economic harm? Mr. President, I suggest that a cost to this Nation of $338 billion in lost GDP in the year 2010 is significant economic harm.

Yet the Kyoto proposal does not include all nations. Only 35 industrial nations are subject to emission limits, even though the 134 developing nations will surpass them in emissions by the year 2015. Moreover, the Kyoto protocol's regulatory approach requires legally binding quantified emissions reductions of 7 percent below 1990 levels by the years 2008–2012. That is roughly a 40-percent decrease in emissions from our current baseline. We simply can't get there from here without endangering energy supply, reliability, or our economy.

According to the economic analysis of the Department of Energy's Energy Information Administration, if we were to adopt Kyoto, here is what American consumers could face in the year 2010:

53 percent higher gasoline prices;
86 percent higher electric prices;
Upward pressure on interest rates;
New inflationary pressures.
There goes your surplus.

At a recent hearing of the Energy and Natural Resources Committee, one witness testified that the economic downturn accompanying the Kyoto implementation would depress tax revenues, erase the surplus we have earmarked to shore up Social Security, and reduce the public debt.

With the Kyoto approach, we say goodbye to the budget surplus, goodbye to the hopes of saving Social Security, and goodbye to the economic prosperity in this country today.

What do we get for enduring this economic pain? Do we stabilize the greenhouse gas concentrations in the atmosphere under Kyoto? The answer is clearly no. Do we even reduce global greenhouse gas emissions? No, because any reductions by the 35 developed nations and the parties to the treaty would be overwhelmed by the growing emissions from the 134 nations that aren't covered by the Kyoto emissions limit.

That is what is wrong with Kyoto. Make no mistake about it, Mr. President, the Kyoto protocol is an expensive, short-term, narrowly applied regulatory approach that will erode U.S. sovereignty, punish U.S. consumers, and do nothing to enhance the global environment.

We are, with this bill and others that will follow, charting a different, a new, a progressive course. Ours is a long-term, technology-based, global effort. If human-induced greenhouse gas emissions are indeed changing the climate for the worse—and there remains substantial scientific uncertainty at this point—then we should act in a prudent manner to reduce, sequester, or avoid those emissions through technology.

I would like to address criticisms leveled by the administration about our bill that are based, I hope, on a misunderstanding.

A recent administration ''fact sheet,'' after recognizing that there are ''positive features'' in the bill, and noting that it ''makes improvements to current law'' regarding voluntary efforts to curtail emissions, goes on to incorrectly erroneously state that our bill ''rolls back energy efficiency and clean energy programs with a long history of bipartisan support.''

The administration ''fact sheet'' is incorrect. Our bill does not roll back funding for renewable energy or energy efficiency. Instead, it authorizes $200 million per year in new money; it does not deauthorize any existing programs.

With that clarification, it would be my hope that the administration would support our bill and join us in a prudent, common sense approach to greenhouse gas emissions and climate.

Mr. President, I think I had 20 minutes under special orders this morning.

The PRESIDING OFFICER. The Senator is correct.

Mr. MURKOWSKI. I ask that the remainder of my time be available to my cosponsor, Senator HAGEL.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. MURKOWSKI. I thank the Chair. I thank my colleagues.

Mr. HAGEL. Thank you, Mr. President. I thank as well Senator MURKOWSKI.

Mr. President, I rise this morning to join my colleague and friend, the distinguished chairman of the Senate Energy and Natural Resources Committee, and the senior Senator from West Virginia, Senator BYRD, and other colleagues in introducing the Energy and Climate Policy Act of 1999. We offer this legislation because we believe it is time that Congress take a new, bipartisan approach to dealing with the issue of global climate change.

This legislation turns the debate away from unachievable, U.N.-mandated, arbitrary, short-term targets and timetables as dictated by the Kyoto protocol toward a long-term strategy that focuses on sound science, increased research and development, incentives for voluntary action, and public-private technological initiatives that are market driven and technology based.

Twenty-first century technologies, American ingenuity, and public-private cooperation—not U.N.-mandated energy rationing—should be, in fact, the focus of climate change efforts in the Congress. I hope Members on both sides of the aisle will join this effort.

Mr. President, this has never been a debate about who is for or against the environment. This has never been a partisan issue. I have not met one Member of the Senate—Republican or Democrat—who wants to leave their children a dirty and uninhabitable environment. We all agree that we have a responsibility to protect our environment. What this debate should be about is bringing some common sense—common sense—to this issue.

This bill that we are introducing today—the Energy and Climate Policy Act—brings some common sense to the issue of climate change.

Senator MURKOWSKI laid out a number of the more specific parts of our bill—accountability for one. We put this responsibility in the Department of Energy where there is someone ''in charge.''

Presently we have accountability for global climate change spread throughout the Government. It is in the White House. It is in the EPA. It is in the Departments of Commerce, Agriculture, Interior, and Energy. All of these organizations have their tentacles wrapped around this issue. So with this, we will focus on accountability, responsibility. Let's get the job done.

Second, this bill moves the current focus of climate change policy away from short-term, draconian energy rationing and cost increases mandated by the United Nations Kyoto protocol toward a long-term domestic commitment to research and development. As Senator MURKOWSKI pointed out, it adds significant Government funding in a private-public enterprise over the next 10 years. It focuses on real science, sound science.

Third, this bill continues Congress' commitment to supporting voluntary energy efforts to reduce, sequester, or avoid manmade greenhouse gas emissions. It does so by strengthening current law—not by creating new international, bureaucratic, governmental regimes in which we will all be accountable.

In short, among other things this bill does, we look at the entire picture—the consequences of our actions. That means including activities that naturally lower the levels of greenhouse gas emissions.

This bill also addresses the issue of whether such voluntary efforts are ''real and verifiable''—Who enforces these kinds of mandates?—the role of agriculture, the role of industry, business, labor, and long-term standard of living consequences: How competitive are our products in the world markets?—market driven, technology based. We build on what is already the foundation of this great, free land and this great, free market economy.

This bill also allows all of our enterprises in this country to plan for the future and build commitments into outyear planning and investment decisions. Kyoto doesn't talk about that. Who finances these efforts?

This is the best way to deal with the issue of climate change: a long-term commitment based on American ingenuity, exports, scientific certainty, 21st century technology, and market principles.

By doing these things we can walk away from the disastrous path that this administration and the Kyoto protocol would lead us and focus our efforts instead on a positive, bipartisan, achievable commonsense approach.

I hope my colleagues will take a look at what we are introducing today. It is a bipartisan bill. It does make sense. I look forward to working with the Presiding Officer and others this year and into next year in crafting something that is achievable and workable and good for this country.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 882

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Energy and Climate Policy Act of 1999.''

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Although there are significant uncertainties surrounding the science of climate

change, human activities may contribute to increasing global concentrations of greenhouse gases in the atmosphere, which in turn may ultimately contribute to global climate change beyond that resulting from natural variability;

(2) the characteristics of greenhouse gases and the physical nature of the climate system require that any stabilization of atmospheric greenhouse gas concentrations must be a long-term effort undertaken on a global basis;

(3) since developing countries will constitute the major source of greenhouse gas emissions early in the 21st century, all nations must share in an effective international response to potential climate change;

(4) environmental progress and economic prosperity are interrelated;

(5) effective greenhouse gas management efforts depend on the development of long-term, cost-effective technologies and practices that can be developed, refined, and deployed commercially in an orderly manner in the United States and around the world;

(6) in its present form as signed by the Administration, the Kyoto Protocol to the United Nations Framework Convention on Climate Change fails to meet the minimum conditions of Senate Resolution 98, 105th Congress, which was adopted by the Senate on July 25 1997 by a vote of 95–0;

(7) The President has not submitted the Kyoto Protocol to the Senate for debate and advice and consent to ratification under Article II, Section 2, clause 2 of the United States Constitution and has indicated that the Administration has no intention to do so in the foreseeable future, or to implement any portion of the Kyoto Protocol prior to its ratification in the Senate.

(b) PURPOSE.—The purpose of this Act is to strengthen provisions of the Energy Policy Act of 1992 (42 U.S.C. 13381 et seq.) and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.) to—

(1) further promote voluntary efforts to reduce or avoid greenhouse gas emissions and improve energy efficiency;

(2) focus Department of Energy efforts in this area; and

(3) authorize and undertake a long-term research, development, and demonstration program to—

(A) develop new and enhance existing technologies that reduce or avoid anthropogenic emissions of greenhouse gases;

(B) develop new technologies that could remove and sequester greenhouse gases from emissions streams; and

(C) develop new technologies and practices to remove and sequester greenhouse gases from the atmosphere.

SEC. 3. OFFICE OF GLOBAL CLIMATE CHANGE.

Section 1603 of the Energy Policy Act of 1992 (42 U.S.C. 13383) is amended—

(1) in the section heading, by striking ''**DIRECTOR OF CLIMATE PROTECTION**'' and inserting ''**OFFICE OF GLOBAL CLIMATE CHANGE**''; and

(2) by striking the first sentence and inserting the following:

''(a) ESTABLISHMENT.—There is established by this Act in the Department of Energy an Office of Global Climate Change.

''(b) FUNCTION.—The Office shall serve as a focal point for coordinating for the Secretary and Congress all departmental issues and policies regarding climate change and related matters.

''(c) DIRECTOR.—The Secretary shall appoint a director of the Office, who—

''(1) shall be compensated at no less than level IV of the Executive Schedule;

''(2) shall report to the Secretary; and

''(3) at the request of the Committees of the Senate and House of Representatives with appropriation and legislative jurisdiction over programs and activities of the Department of Energy, shall report to Congress on the activities of the Office.'';

(3) in the second sentence, by striking ''The Director'' and inserting the following:

''(d) DUTIES.—The Director''; and

(4) in subsection (c) (as designated by paragraph (2)), by striking paragraphs (2) and (3) and inserting the following:

''(2) participate, in cooperation with other federal agencies, in the development and monitoring of domestic and international policies for their effects of any kind on climate change globally and domestically and on the generation, reduction, avoidance, and sequestration of greenhouse gases;

''(3) develop and implement a balanced, scientifically sound, nonadvocacy educational and informative public awareness program on—

''(A) potential global climate change, including any known adverse and beneficial effects on the United States and the economy of the United States and the world economy, taking into consideration whether those effects are known or expected to be temporary, long-term, or permanent; and

''(B) voluntary means and measures to mitigate or minimize significantly adverse effects and, where appropriate, to adapt, to the greatest extent practicable, to climate change;

''(4) provide, consistent with applicable provisions of law (including section 1605 (b)(3)), public access to all information on climate change, effects of climate change, and adaptation to climate change;

''(5) promote and cooperate in the research, development, demonstration, and diffusion of environmentally sound, cost-effective and commercially practicable technologies, practices and processes that avoid, sequester, control, or reduce anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol for all relevant economic sectors, including, where appropriate, the transfer of environmentally sound, cost-effective and commercially practicable technologies, practices, and processes developed with Federal funds by the Department of Energy or any of its facilities and laboratories to interested persons in the United State and to developing country Parties to the United Nations Framework Convention on Climate Change, and Parties thereto with economies in transition to market-based economies, consistent with, and subject to, any applicable Federal law, including patent and intellectual property laws, and any applicable contracts, and taking into consideration the provisions and purposes of section 1608; and

''(6) have the authority to participate in the planning activities of relevant Department of Energy programs.''.

SEC. 4. NATIONAL INVENTORY AND VOLUNTARY REPORTING OF GREENHOUSE GASES.

(a) Section 1605 of the Energy Policy Act of 1992 (42 U.S.C. 13385) is amended—

(1) by amending the second sentence of subsection (a) to read as follows: ''The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data, including beginning in calendar year 2001, information collected as a result of voluntary reporting under subsection (b). The inventory shall identify for calendar year 2001 and thereafter the amount of emissions reductions attributed to those reported under subsection (b).''

(2) by amending subsection (b)(1)(B) and (C) to read as follows:

''(B) annual reductions or avoidance of greenhouse gas emissions and sequestration and carbon fixation achieved through any measures, including agricultural activities, cogeneration, appliance efficiency, energy efficiency, forestry activities that increase carbon sequestration stocks (including the use of forest products), fuel switching, management of grasslands and drylands, manufacture or use of vehicles with reduced greenhouse gas emissions, methane recovery, ocean seeding, use of renewable energy, chlorofluourocarbon capture and replacement, and power plant heat rate improvement; and''

''(C) reductions in, or avoidance of, greenhouse gas emissions achieved as a result of voluntary activities domestically, or internationally, plant or facility closings, and State or Federal requirements.''

(3) by striking in the first sentence of subsection (b)(2) the word ''entities'' and inserting ''persons or entities'' and in the second sentence of such subsection, by inserting after ''Persons'' the words ''or entities'';

(4) by inserting in the second sentence of subsection (b)(4) the words ''persons or'' before ''entity''; and

(5) by adding after subsection (b)(4) the following new paragraphs—

''(5) RECOGNITION OF VOLUNTARY REDUCTIONS OR AVOIDED EMISSIONS OF GREENHOUSE GASES.—In order to encourage and facilitate new and increased voluntary efforts on a continuing basis, particularly by persons and entities in the private sector, to reduce global emissions of greenhouse gases, including voluntary efforts to limit, control, sequester, and avoid such emissions, the Secretary shall promptly develop and establish, after an opportunity for public comment of at least 60 days, a program of giving annual public recognition, beginning not later than January 31, 2001, to all reporting persons and entities demonstrating, pursuant to the voluntary collections and reporting guidelines issued under this section, voluntarily achieved greenhouse gases reductions, including such information reported prior to the enactment of this paragraph. Such recognition shall be based on the information certified, subject to 18 U.S.C. 1001, by such persons or entities for accuracy as provided in paragraph 2 of this subsection. At a minimum such recognition shall annually be published in the Federal Register.

''(6) CHANGES IN GUIDELINES TO IMPROVE ACCURACY AND RELIABILITY.—The Secretary of Energy, through the Administrator of the Energy Information Administration, shall conduct a review, which shall include an opportunity for public comment, of what, if any, changes should be made to the guidelines established under this section regarding the accuracy and reliability of greenhouse gas reductions and related information reported under this section. Any such review shall give considerable weight to the voluntary nature of this section and to the purpose of encouraging voluntary greenhouse gas emission reductions by the private sector. Changes to be reviewed shall include the need for, and the appropriateness of—

''(A) a random or other verification process using the authorities available to the Administrator under other provisions of law;

''(B) a range of reference cases for reporting of project-based activities in sectors, including, but not limited to, the measures specified in subparagraph (1)(B) of this subsection, and the inclusion of benchmark and default methodologies for use in the reference cases for 'greenfield' projects; and

''(C) provisions to address the possibility of reporting, inadvertently or otherwise, of some or all of the same greenhouse gas emissions reductions by more than one reporting entity or person and to make corrections where necessary.

The review should consider the costs and benefits of any such changes, the impacts on

encouraging participation in this section, including by farmers and small businesses, and the need to avoid creating undue economic advantages or disadvantages for persons or entities of the private sector. The review should provide, where appropriate, a range of reasonable options that are consistent with the voluntary nature of this section and that will help further the purposes of this section. The review should be available in draft form for public comment of at least 45 days before it is submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Commerce of the House of Representatives. Such submittal should be made by December 31, 2000. If the Secretary, in consultation with the Administrator, finds, based on the study results, that such changes are likely to be beneficial and cost effective in improving the accuracy and reliability of reported greenhouse gas reductions and related information, are consistent with the voluntary nature of this section, and furthers the purposes of this section, the Secretary shall propose and promulgate, consistent with such finding, such guidelines, together with such findings. In carrying out the provisions of this paragraph, the Secretary shall consult with the Secretary of Agriculture and the Administrator of the Small Business Administration to facilitate greater participation by small business and farmers in this subsection for the purpose of addressing greenhouse gas emission reductions and reporting such reductions.''

(6) in subsection (c), by inserting ''the Secretary of the Department of Agriculture, the Secretary of the Department of Commerce, the Administrator of the Energy Information Administration, and'' before ''the Administrator''.

(b) The Secretary shall revise, after opportunity for public comment, the guidelines issued under section 1605(b) of the Energy Policy Act of 1992 to reflect the amendments made to such section 1605(b) by subsection (a)(2) through (4) of this section not later than 18 months after the date of enactment of this Act. Such revised guidelines shall specify their effective date.

(c) The provisions of subsection (a)(5) and (6) of this section shall be effective on the date of enactment of this Act.

SEC. 5. CLIMATE TECHNOLOGY RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM.

Subtitle B of title XXI of the Energy Policy Act of 1992 (42 U.S.C. 13471) is amended by adding the following new subsection—

''SEC. 2120. CLIMATE TECHNOLOGY RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM.

''(a) PURPOSE.—The purpose of this section is to direct the Secretary to further the goals of development and commercialization of technologies, through widespread application and utilization of which will assist in stabilizing global concentrations of greenhouse gases, by the conduct of a long-term research, development, and demonstration program undertaken with selected industry participants or consortia.

''(b) PROGRAM.—The Secretary, in consultation with the Advisory Board established under section 2302, shall establish a long-term Climate Technology Research, Development, and Demonstration Program, in accordance with sections 3001 and 3002.

''(c) PROGRAM OBJECTIVES.—The program shall foster—

''(1) development of new technologies and the enhancement of existing technologies that reduce or avoid anthropogenic emissions of greenhouse gases and improve energy efficiency;

''(2) development of new technologies that are able to remove and sequester greenhouse gases from emissions streams; and

''(3) development of new technologies and practices to remove and sequester greenhouse gases from the atmosphere.

''(d) PROGRAM PLAN.—

''(1) INITIAL PLAN.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 10-year program plan to guide activities under this section.

''(2) BIENNIAL UPDATE.—The Secretary shall biennially update and resubmit the program plan to the Congress.

''(e) PROPOSALS.—

''(1) SOLICITATION.—Not later than one year after the date of submittal of the 10-year program plan, and consistent with section 3001 and 3002, the Secretary shall solicit proposals for conducting activities consistent with the 10-year program plan and select one or more proposals not later than 180 days after such solicitation.

''(2) QUALIFICATIONS.—In order for a proposal to be considered by the Secretary, an applicant shall provide evidence that the applicant has in existence—

''(A) the technical capability to enable it to make use of existing research support and facilities in carrying out its research objectives;

''(B) a multi-disciplinary research staff experienced in—

''(i) energy generation, transmission, distribution and end-use technologies; or

''(ii) technologies or practices able to sequester, avoid, or capture greenhouse gas emissions; or

''(iii) other directly related technologies or practices;

''(C) access to facilities and equipment to enable the conduct of laboratory-scale testing or demonstration of technologies or related processes undertaken through the program.

''(3) PROPOSAL CRITERIA.—Each proposal shall—

''(A) demonstrate the support of the relevant industry by describing—

''(i) how the relevant industry has participated in deciding what research activities will be undertaken;

''(ii) how the relevant industry will participate in the evaluation of the applicant's progress in research and development activities; and

''(iii) the extent to which industry funds are committed to the applicant's submission;

''(B) have a commitment for matching funds from non-Federal sources, which shall consist of—

''(i) cash; or

''(ii) as determined by the Secretary, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

''(C) include a single-year and multi-year management plan that outline how the research and development activities will be administered and carried out;

''(D) state the annual cost of the proposal and a breakdown of those costs; and

''(E) describe the technology transfer mechanisms that the applicant will use to make available research results to industry and to other researchers.

''(4) CONTENTS OF PROPOSALS.—A proposal under this subsection shall include—

''(A) an explanation of how the proposal will expedite the research, development, demonstration, and commercialization of technologies capable of—

''(i) reducing or avoiding anthropogenic emissions of greenhouse gases;

''(ii) removing and sequestering greenhouse gases from emissions streams; or

''(iii) removing and sequestering greenhouse gases from the atmosphere.

''(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrant collaboration with those laboratories, and the extent of the collaboration proposed;

''(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations;

''(D) evidence of the ability of the applicant to undertake and complete the proposed project;

''(E) evidence of applicant's ability to successfully introduce the technology into commerce, as demonstrated by past experience and current relationships with industry; and

''(F) a demonstration of continued financial commitment during the entire term of the proposal from all industrial sectors involved in the technology development.

''(f) SELECTION OF PROPOSALS.—From the proposals submitted, the Secretary shall select for funding one or more proposals that—

''(1) will best result in carrying out needed research, development, and demonstration related to technologies able to assist in the stabilization of lobal greenhouse gas concentrations through one or more of the following approaches—

''(A) improvement in the performance of fossil-fueled energy technologies;

''(B) development of greenhouse gas capture and sequestration technologies and processes;

''(C) cost reduction and acceleration of deployment of renewable resource and distributed generation technologies;

''(D) development of an advanced nuclear generation design; and

''(E) improvement in the efficiency of electrical generation, transmission, distribution, and end use;''

''(F) design and use of—

''(i) closed-loop multi-stage industrial processes that minimize raw material consumption and waste streams;

''(ii) advanced co-production systems (such as coal-based chemical processing and biomass fuel processing); and

''(iii) recycling and industrial-ecology programs integrating energy efficiency.

''(2) represent research and development in specific areas identified in the program plan developed biennially by the Secretary and submitted to Congress under subsection (c);

''(3) demonstrate strong industry support;

''(4) ensure the timely transfer of technology to industry; and

''(5) otherwise best carry out this section.

''(g) ANNUAL PROGRESS REPORTS.—The Director of the Office of Science and Technology, in consultation with the Director of the Office of Management and Budget, shall prepare and submit an annual report to Congress that—

''(1) certifies that the program objectives are adequately focused, peer-reviewed and merit-reviewed, and not unnecessarily duplicative with the science and technology research being conducted by other Federal agencies and agents, and

''(2) state whether the program as conducted in the prior year addresses an adequate breadth and range of technologies and solutions to address anthropogenic climate change, including—

''(A) capture and sequestration of greenhouse gas emissions;

''(B) development of photovoltaic, high-efficiency coal, advanced nuclear, and fuel cell generation technologies;

''(C) cost reduction and acceleration of deployment of renewable resource and distrbuted generation technologies; and

''(D) improvement in the efficiency of electrical generation, transmission, distribution, and end use;

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2001 through 2010, to remain available until expended. This authorization is supplemental to existing authorities and shall not be construed as a cap on the Department of Energy's Research, Development and Demonstration programs''.

SEC. 6. COMPREHENSIVE PLAN AND IMPLEMENTING PROGRAM FOR ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

Section 6 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5905) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) solutions to the effective management of greenhouse gas emissions in the long term by the development of technologies and practices designed to—

''(A) reduce or avoid anthropogenic emissions of greenhouse gases;

''(B) remove and sequester greenhouse gases from emissions streams; and

''(C) remove and sequester greenhouse gases from the atmosphere.''; and

(2) in subsection (b)—

(A) in paragraph (2), by striking ''subdivision (a)(1) through (3)'' and inserting ''paragraphs (1) through (4) of subsection (a); and

(B) in paragraph (3)—

(i) in subparagraph (R), by striking ''and'' at the end;

(ii) in subparagraph (S), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(T) to pursue a long-term climate technology strategy designed to demonstrate a variety of technologies by which stabilization of greenhouse gases might be best achieved, including—

''(i) the accelerated commercial demonstration of low-cost and high efficiency photovoltaic power systems;

''(ii) advanced clean coal technology;

''(iii) advanced nuclear power plant designs;

''(iv) fuel cell technology development for cost-effective application in residential, industrial and transportation applications;

''(v) low cost carbon sequestration practices and technologies including biotechnology, tree physiology, soil productivity and remote sensing;

''(vi) hydro and other renewables;

''(vii) electrical generation, transmission and distribution technologies and end use technologies; and

''(viii) bio-energy technology.''

SEC. 7. DEFINITIONS.

For the purpose of this Act and the provisions of the Energy Policy Act of 1992 (42 U.S.C. 13381, et seq.) and the provisions of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.) which statutes are amended by this Act, these terms are defined as follows:

''(1) AGRICULTURAL ACTIVITY.—The term 'agricultural activity' means livestock production, cropland cultivation, biogas recovery and nutrient management.

''(2) CLIMATE CHANGE.—The term 'climate change' means a change of climate which is attributed directly or indirectly to human activity which is in addition to natural climate variability observed over comparable time periods.

''(3) CLIMATE SYSTEM.—The term 'climate system' means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

''(4) GREENHOUSE GASES.—The term 'greenhouse gases' means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

''(5) GREENHOUSE GAS REDUCTION.—The term 'greenhouse gas reduction' means 1 metric ton of greenhouse gas (expressed in terms of carbon dioxide equivalent) that is voluntarily certified to have been achieved under section 1605 of the Energy Policy Act of 1992 (42 U.S.C. 13385).

''(6) GREENHOUSE GAS SEQUESTRATION.—The term 'greenhouse gas sequestration' means extracting one or more greenhouse gases from the atmosphere or an emissions stream through a technological process designed to extract and isolate those gases from the atmosphere or an emissions stream; or the natural process of photosynthesis that extracts carbon dioxide from the atmosphere and stores it as carbon in trees, roots, stems, soil, foliage, or durable wood products.

''(7) FOREST PRODUCTS.—The term 'forest products' means all products or goods manufactured from trees.

(8) FORESTRY ACTIVITY.—

''(A) IN GENERAL.—The term 'forestry activity' means any ownership or management action that has a discernible impact on the use and productivity of forests.

''(B) INCLUSIONS.—Forestry activities include, but are not limited to, the establishment of trees on an area not previously forested, the establishment of trees on an area previously forested if a net carbon benefit can be demonstrated, enhanced forest management (e.g., thinning, stand improvement, fire protection, weed control, nutrient application, pest management, other silvicultural practices), forest protection or conservation if a net carbon benefit can be demonstrated, and biomass energy (using wood, grass or other biomass in lieu of fossil fuel).

''(C) EXCLUSIONS.—The term 'forest activity' does not include a land use change associated with—

''(i) an act of war; or

''(ii) an act of nature, including floods, storms, earthquakes, fires, hurricanes, and tornadoes.

''(9) MANAGEMENT OF GRASSLANDS AND DRYLANDS.—The term 'management of grasslands and drylands' means seeding, cultivation, and nutrient management.

''(10) OCEAN SEEDING.—The term 'ocean seeding' means adding nutrients to oceans to enhance the biological fixation of carbon dioxide.''.

Mr. BYRD. Mr. President, I join with my distinguished colleagues, Senators MURKOWSKI, HAGEL, CRAIG, HUTCHINSON, GRAMS, and ROBERTS, in cosponsoring the Energy and Climate Policy Act of 1999 which was introduced earlier today. The legislation provided in this bill is one of a number of options that the U.S. could undertake to improve energy efficiency and security and reduce greenhouse gas emissions. While the complex issue of climate change will not be solved by a single bill or action, this legislaiton provides additional funding for research and development for important programs that I have long supported, like clean coal technologies, an American-developed initiative. The bill would also take steps to coordinate and implement energy efficiency research as well as begin the process of better reporting greehouse gas reductions at the Department of Energy.

If substantial steps are going to be taken globally to reduce greenhouse gas emissions, we must accelerate the development and commercialization of new technologies, anticipate changing conditions, and encourage public/private partnerships. Both developing and industrialized nations must find ways to tackle this complex and multi-faceted problem. There is no single answer—there is no one silver bullet to fix this issue.

Any viable climate change policy must include efforts to develop cleaner and more efficient fossil fuel-based energy production in order to meet growing energy needs. Clean coal technologies must be a part of that solution. When one examines the increase in global greenhouse gas emissions over the next several decades, the utilization of clean coal technologies is essential. Nations that are serious about reducing greenhouse gas emissions in the long term, especially many of the largest developing nations like China, cannot ignore clean coal technologies.

In 1984, I proposed, and the Congress adopted, a $750 million Clean Coal Technology program. Originally, the program was designed to achieve long-term, real reductions in acid rain. Since then, the program has expanded, thanks to a joint government-industry investment of more than $6 billion. This investment has led to 40 first-of-a-kind projects in 18 states, including an array of high-technology ideas that can spearhead a new era of clean, efficient power plants which will continue to burn our nation's abundant coal resources. Much useful technology has resulted from this synergy of effort between government and private investment by incorporating leading-edge federal laboratories and practical business applications. More needs to be done, and the Energy and Climate Policy Act of 1999 seeks to fuel this synergy by encouraging more public-private projects in all areas of energy production and use. This boost will help to move ideas into reality.

It is critical that the U.S. find better ways to use our own energy resources by encouraging more research and development. These initiatives have both environmental and economic benefits. This bill provides an additional $200 million per year for ten years for research, development, and demonstration programs through competitive grants. It would also take further steps to coordinate and implement energy research and development. These programs build upon the many voluntary efforts that government at all levels and industry have already undertaken to improve energy use as well as to reduce, avoid, or sequester greenhouse gas emissions. All sectors of the economy should be able to benefit from these programs.

In addition to its many benefits at home, the clean coal technology program can also provide an economically beneficial and environmentally sound solution in the international market. According to the coal industry, coal production will continue to increase

worldwide. Coal can be a cost-competitive source of fuel for electricity generation, but, like other fossil fuels, it will require improvements in its environmental credentials. Developing nations are currently searching for cost-effective ways to upgrade their older, higher-polluting power plants and to expand their power production capacity. These nations can learn from our experiences and utilize our new technologies to combat these problems. I note that during the recent visit of Chinese Premier Zhu Rongji, the U.S. and China both agreed that more should be done to employ clean coal technologies.

After 2015, China is expected to surpass the U.S. as the world's largest emitter of greenhouse gases. Global warming is a global problem. It is not just an American problem. It is not just a European problem. And as such, it requires a global solution. Industrialized nations' efforts to reduce our own greenhouse gas emissions will be for naught unless reductions are also made by nations like China and India. Coal will continue to be a major source of their energy production; therefore, clean coal technologies are essential to their responsible growth. The U.S. must support further efforts to encourage clean coal and other energy efficient technologies and to take them from the drawing board to the marketplace. Funding for these programs is pointless unless our government works in conjunction with the private sector to break down market barriers and prove the viability of such programs in the global market.

Research, development, and demonstration programs provide numerous benefits to improve air quality standards, increase our energy efficiency, and reduce greenhouse gases. While the intent of this bill is independent of the Kyoto Protocol, this legislation, in addition to its many other benefits, could help the U.S. in addressing climate change challenges that might result from the implementation of any future treaty.

In its present form, the Kyoto Protocol does not meet the conditions outlined in S. Res. 98, which passed the Senate on July 25, 1997; namely, it must include developing country participation as well as provide sufficient detail to explain the economic impact of such an agreement for the United States. I recognize that the Protocol is a work in progress. The international negotiations to bring it into compliance with S. Res. 98 will require perseverance and patience and are part of a long-term effort to address global climate change. The Administration has not submitted the Kyoto Protocol to the Senate for its advice and consent and has indicated it has no intention of doing so in the foreseeable future. the Administration has indicated that it needs at least two additional years to complete negotiations on the Buenos Aires Action Plan which includes negotiating major aspects of the Protocol such as developing country participation, emissions trading, the Clean Development Mechanism, and forest and soil sinks. The Administration has also pledged not to implement any portion of the Kyoto Protocol prior to its advice and consent in the Senate. I hope that that pledge will continue to be honored.

Over the last year and a half, a number of economic studies have been completed, but we have yet to see a comprehensive analysis of the Kyoto Protocol. I remain firmly convinced that it is critical that the United States knows in some detail the probable costs and benefits of the specific actions proposed to address global climate change.

In summary, improved resource use, energy efficiency and security, and global climate change will all be critical issues for every nation in the new millennium. Market-based solutions and research and development funding will play a vital role in addressing these issues. By cosponsoring the Energy and Climate Policy Act of 1999, I hope that U.S. firms can receive additional funding to help increase research and development for important new technologies. These initiatives, in addition to other market-based solutions, could provide vehicles for real improvements in energy efficiency as well as reductions in greenhouse gas emissions, and an important marketable solution for global participation in such reductions.

Mr. CRAIG. Mr. President, I rise today to join with my distinguished colleagues, Senators MURKOWSKI, HAGEL, BYRD, and others, in introducing the Energy and Climate Policy Act of 1999. I commend Chairman MURKOWSKI and Senators HAGEL and BYRD for their leadership on this very important legislation.

Sufficient scientific information and public interest exist to justify the encouragement and acknowledgment of responsible actions by private entities to reduce greenhouse gas emissions, even though all scientific, technological, economic, and public policy questions have not yet been resolved.

The global climate issue presents profound questions in these areas that require comprehensive, integrated resolution. Current scientific research, experimentation, and data collection are not adequately coordinated or focused on answering key questions within the United States, as well as internationally.

Moreover, public access to scientific, economic, and public policy information is severely limited. The public's right to know is not being satisfied. Open and balanced discussion leading to public support for best approaches to climate policy resolution is urgently needed.

This measure does not depend on future regulatory mandates, an approach preferred by the current Administration to reduce greenhouse gas emissions. It also provides a valid alternative to S. 547, the Credit for Voluntary Reductions Act, introduced recently by my friends and colleague Senator JOHN CHAFEE. The key difference between Senator CHAFEE's bill and our bill is that our bill is not dependent on the Kyoto protocol or any other regulatory mandate.

It is my belief, Mr. President, that voluntary measures should be encouraged through incentives rather than in anticipation of future domestic or international regulatory mandates.

Mr. President, I am also very concerned about the Administration's strong desire to drastically cut carbon and its seeming willingness to do so by whatever regulatory measure available. Demonstrative evidence of the Administration's thinking on this issue is contained in the April 10, 1998, EPA General Counsel memo to Carol Browner, describing EPA's authority to regulate carbon dioxide under the Clean Air Act.

This memo, in my opinion, clearly overstates EPA's authority to regulate pollutants under the Clean Air Act. Moreover, this memo is indicative of the Administration's penchant for finding regulatory fixes for problems. Its allies in this campaign are those in the international community who are either indifferent to, or against our economic interests. we all know, or should know, that at this moment in history, when you cap carbon you cap economic growth.

We need a whole new paradigm for handling this serious political issue. People care about it on all sides, and now Congress will be involved in this issue during this session. Let's get serious about the science and fully inform the American people so that whatever the outcome, they'll know that their government was working for them and not against their important economic interests.

Let's force the current Administration to stop politicizing science and get to the point where the issue is confidently understood. There is simply no compelling reason for our government at this time to force Americans to take preventive measures of uncertain competence against a problem that may or may not lie in the earth's future.

It is for these reasons that I, along with Senators MURKOWSKI, HAGEL, and others, are continuing to work on the next step in this very important response to the climate change issue—a more comprehensive proposal that will include provisions that address:

(1) Policy mechanisms for assessing the effects of greenhouse gas emissions;

(2) Accelerated development and deployment of climate response technology;

(3) International deployment of technology to mitigate climate change;

(4) The advancement of climate science; and

(5) Improving public access to government information on the broad spectrum of scientific opinion on the causes and effects of climate change.

Mr. President, significant greenhouse gas emission reductions can be achieved through voluntary measures that are warranted even as we answer yet unresolved key questions about the global and regional climates.

What is required now is an approach that will encourage public support for appropriate action. I believe this bill paves the way for such public support, and, by reasonably addressing the important economic and political issues associated with the current climate change debate, sets the proper tone for future discourse that will ultimately lead to a safe and economically prudent resolution of this highly charged issue.

Mr. GRAMS. Mr. President, I rise today to support the efforts of Senator MURKOWSKI and Senator HAGEL by cosponsoring the Energy and Climate Policy Act of 1999.

This legislation marks a turning point in how we address the potential problems associated with global climate change.

It addresses these potential problems not by mandating draconian reductions in energy use and hiking energy taxes, but by providing America's businesses and innovators with the tools they need to make long-term, substantive carbon dioxide emissions reductions.

One of the problems with the administration's support of the Kyoto Protocol is that while they have already agreed to legally-binding greenhouse gas emissions reductions, the GAO found last year that the administration does not have quantitative performance goals for the money they intend to spend on their intiatives.

In other words, the administration has agreed to a treaty with legally-binding reductions and they clearly want to spend a lot of money to reach those limits—but they don't have any idea how much of an impact all of their spending will have on emissions reductions.

This legislation says ''let's take a different road.'' The Murkowski-Hagel bill will establish a new research, development and demonstration program that promotes technologies and practices which allow energy users to avoid or reduce greenhouse gas emissions.

Those technologies include alternative energy technologies, energy efficiency technologies, and technologies that take current energy production processes and make them better and more efficient.

The bill will also promote technologies that remove and sequester greenhouse gases from the atmosphere and emissions streams.

This bill is aimed at involving the private sector in our decisionmaking processes and bringing them to the table as well. It is aimed at putting American ingenuity to work whether it be in the home, at the business, or out on the farm. The Murkowski-Hagel bill simply says that we recognize our responsibility to reduce or sequester greenhouse gas emissions and we are taking substantive, long-term steps to that rising challenge.

The Murkowski-Hagel bill does not start from the premise that we are to blame for the theoretical impacts of global warming. It doesn't attempt to punish American businesses by forcing them to reduce their energy consumption or by bankrupting them through higher energy prices. This bill does not accept the long-held beltway view that Washington knows best. It recognizes that American businesses and individuals can do tremendous things when they are challenged to do better and when Government is their partner rather than their adversary.

I sincerely hope that all Members of the Senate can support this piece of legislation so that it can pass into law as soon as possible. I look forward to continuing to work with Senators MURKOWSKI and HAGEL and others interested to continue our efforts to both protect the environment and strengthen the American economy as we enter into the 21st century.

While I am here this morning, I would like to renew my request to President Clinton that he submit the recently signed Kyoto Protocol to the Senate for ratification. Mr. President, the United States Senate has clearly expressed its interest in this matter and its opposition to any attempts to implement the Treaty prior to Senate advice and consent.

In the 105th Congress, the Senate undertook a number of activities which illustrated these concerns. First, S. Res. 98 unanimously expressed the Senate's position on both the projected economic impacts of the Treaty and the participation of developing nations.

Second, in a series of measures, including the FY99 Energy and Water Appropriations Bill, the FY99 Department of Defense Appropriations Bill, the Strom Thurmond National Defense Authorization Act, and the FY99 VA, HUD, and Independent Agencies Appropriations Act, the Senate expressed its concern with any attempts at premature implementation and Administration actions which advance the provisions of the Treaty prior to Senate advice and consent. It is my understanding that the Administration has largely ignored the provisions of those pieces of legislation.

While President Clinton has long maintained that he will not submit the Treaty to the Senate prior to obtaining ''meaningful'' developing nation participation, his recent actions clearly demonstrate that he will not withdraw U.S. support, regardless of what the final agreement may be.

By signing the Treaty on November 12, 1998, while allowing an additional two years for continued negotiations on elements critical to the Treaty's impact on our nation, he has predetermined the outcome and weakened our nation's negotiating position. And despite the Senate's unanimous framework provided within S. Res. 98, there has been little substantive progress towards obtaining any ''meaningful'' participation among developing nations.

I can only conclude that the Administration's premature signing of this Treaty was based on political considerations that should never have been factored into such an important decision. Under no circumstances should a Treaty be signed until we agree with its principals. Just briefly, as I conclude, once a Treaty has been signed by the United States, it should immediately be sent to the Congress for ratification, not used for political purposes.

So again, I strongly urge the President to submit the Kyoto Protocol, which he has already signed, to the Senate for ratification. If he believes it is important enough to sign and to implement through backdoor tactics, then he should also believe it is important enough to for Congress, the people's voice, to have an opportunity to review it, debate it, and vote on its ratification.

I believe the Senate must have the opportunity to examine the Treaty now and debate it openly before the American people.

By Mr. BIDEN:

S. 883. A bill to authorize the Attorney General to reschedule certain drugs that pose an imminent danger to public safety, and to provide for the rescheduling of the date-rape drug and the classification of a certain ''club'' drug; to the Committee on the Judiciary.

THE NEW DRUGS OF THE 1990S CONTROL ACT

Mr. BIDEN. Mr. President, the best time to target a new drug with uncompromising enforcement pressure is before abuse of that drug has overwhelmed our communities.

That is why I introduced legislation in previous Congresses to place tight federal controls on the date rape drug Rohpynol—also known as Roofies—which was becoming known as the Quaalude of the Nineties as its popularity spreads throughout the United States.

My bill would have shifted Rohpynol to schedule 1 of the Federal Controlled Substances Act. Rescheduling is important for three simple reasons:

First, Federal re-scheduling triggers increases in State drug law penalties, and since we all know that more than 95 percent of all drug cases are prosecuted at the State level, not by the Federal Government, it is vitally important that we re-schedule.

Second, Federal re-scheduling to schedule 1 triggers the toughest Federal penalties—up to a year in prison and at least a $1,000 fine for a first offense of simple possession.

And, third, re-scheduling has proven to work. In 1984, I worked to reschedule Quaaludes, Congress passed the law, and the Quaalude epidemic was greatly reduced. And, in 1990, I worked to reschedule steroids, Congress passed the law, and again a drug epidemic that had been on the rise was reversed.

Despite evidence of a growing Rohypnol epidemic, some argued that my efforts to reschedule the drug by legislation were premature. Accordingly, I agreed to hold off on legislative action and wait for a Drug Enforcement Administration decision on whether to schedule the drug through the lengthy and cumbersome administrative process.

As I predicted, the DEA report on Rohpynol—handed down in November—correctly concludes that despite the rapid spread of Rohpynol throughout the country, DEA cannot re-schedule Rohpynol by rulemaking at this time.

The report notes, however, that Congress is not bound by the bureaucratic re-scheduling process the DEA must follow. Congress can—and in my view should—pass legislation to reschedule Rohpynol.

Sepcifically the report states: ''This inability to reschedule [Rohpynol] administratively * * * does not affect Congress' ability to place [the drug] in schedule 1 through the legislative process''—as we did with Quaaludes in 1984 and Anabolic Steroids in 1990.

Let me also note that the DEA report confirmed a number of facts about the extent of the Rohpynol problem:

DEA found more than 4,000 documented cases—in 36 States—of sale or possession of the drug, which is not marketed in the United States and must be smuggled in.

''In spite of DEA's inability to reschedule [Rohpynol] through administrative proceedings, DEA remains very concerned about the abuse'' of the drug.

''Middle and high school students have been known to use [Rohpynol] as an alternative to alcohol to achieve an intoxicated state during school hours. [The drug] is much more difficult to detect than alcohol, which produces a characteristic odor.''

''DEA is extremely concerned about the use of [Rohpynol] in the commission of sexual assaults.''

''The number of sexual assaults in which [Rohpynol] is used may be underreported''—because the drug's effects often cause rape victims to be unable to remember details of their assaults and because rape crisis centers, hospitals, and law enforcement have only recently become aware that Rohpynol can be used to facilitate sex crimes.

Nonetheless, ''DEA is aware of at least 5 individuals who have been convicted of rape in which the evidence suggests that [the Rohypnol drug] was used to incapacitate the victim.'' ''The actual number of sexual assault cases involving [the drug] is not known. It is difficult to obtain evidence that [the Rohypnol drug] was used in an assault.''

I would also note that my efforts to re-schedule this drug have already had beneficial results: The manufacturer of Rohypnol recently announced that it had developed a new formula to minimize the potential for abuse of the drug in sexual assaults.

This is an important step. But pills produced under the old Rohypnol formula are still in circulation, and pills made by other manufacturers can still be smuggled in. Furthermore, the new formula will not prevent kids from continuing to ingest this dangerous drug voluntarily for a cheap high.

In short, stricter, Federal controls remain necessary; and DEA is powerless to respond to Rohypnol abuse until the problem gets even worse.

Therefore, I am reintroducing my bill to re-schedule Rohypnol in schedule 1 of the Controlled Substances Act. I urge my colleagues to support this effort to take action against this dangerous drug now, rather than waiting for the problem to develop into an epidemic.

My bill also places ''Special K''—ketamine hydrochloride—a dangerous hallucinogen very similar to PCP, on schedule III of the Controlled Substances Act. Despite Special K's rising popularity as a ''club drug'' of choice among kids, the drug is not even illegal in most States. This has crippled State authorities' ability to fight ketamine abuse.

For example, in Federal 1997, two men accused of stealing ketamine from a Ville Platte, Louisiana veterinary clinic and cooking the drug into a powder could not be prosecuted under State drug control laws because ketamine is not listed as a Federal controlled substance.

Similarly, a New Jersey youth recently found to be possessing and distributing ketamine could be charged with only a disorderly persons offense.

Prosecutors are trying to combat increased Ketamine use by seeking lengthy prison terms for possession of the drugs—like marijuana—that users mix with Ketamine, but if it is just Special K, there's nothing they can do about it.

I am convinced that scheduling Ketamine will help our effort to fight the spread of this dangerous drug by triggering increases in State drug law penalties.

Without Federal scheduling, many States will not be able to address the Ketamine problem until it is too late and Special K has already infiltrated their communities.

Medical professions who use Ketamine—including the American Veterinary Medical Association and the American Association of Nurse Anesthetists—support scheduling, having determined that it will accomplish our goal of ''preventing the diversion and unauthorized use of Ketamine'' while allowing ''continued, responsible use'' of the drug for legitimate purposes. [Letter from Mary Beth Leininger, D.V.M., President of the American Veterinary Medical Association]

And the largest manufacturer of Ketamine has concluded that ''moving the product to schedule III classification is in the best interest of the veterinary industry and the public.'' [Letter from E. Thomas Corcoran, President of Fort Dodge Animal Health, a Division of American Home Products Corporation].

Scheduling Ketamine will give State authorities the tools they desperately need to fight its abuse by young people—and end the legal anomaly that leaves those who sell Ketamine to our children beyond the reach of the law—even when they are caught ''red-handed.'' I urge my colleagues to support this legislation.

In addition to raising controls on Rohypnol and Ketamine, the legislation I am introducing today would increase the ability of the Attorney General to respond to new drug emergencies in the future.

Our Federal drug control laws currently allow the Attorney General limited authority to respond to certain new drugs on an emergency basis—by temporarily subjecting them the strictest Federal control while the extensive administrative procedure for permanent scheduling proceeds.

But the Attorney General has not been able to use this authority to respond to the Rohypnol and Special K emergencies—because she does not have authority to—move drugs from one schedule to another, or to schedule drugs that the Food and Drug Administration has allowed companies to research but not to sell.

This amendment would grant the administration this important authority by—authorizing the Attorney General to move a scheduled drug—like Rohypnol—to schedule I in an Emergency; by applying emergency rescheduling authority to ''investigational new drugs''—like Special K—that the Food and Drug Administration has approved for research purposes only, but not for marketing.

And by providing that a rescheduling drug remains on the temporary schedule until the administrative proceedings reach a final conclusion on whether to schedule. This legislation would give the Attorney General the necessary tools to respond quickly when evidence appears that a drug is being abused. I urge my colleagues to support the bill.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 883

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''New Drugs of the 1990's Control Act''.

SEC. 2. ATTORNEY GENERAL AUTHORITY TO RESCHEDULE CERTAIN DRUGS POSING IMMINENT DANGER TO PUBLIC SAFETY.

Section 201(h) of the Controlled Substances Act (21 U.S.C. 811(h)) is amended—

(1) by striking paragraph (1) and inserting the following: ''(1) If the Attorney General determines that the scheduling of a substance, or the rescheduling of a scheduled

substance, on a temporary basis is necessary to avoid an imminent hazard to the public safety, the Attorney General may, by order and without regard to the requirements of subsection (b) relating to the Secretary of Health and Human Services, schedule the substance—

''(A) in schedule I if no exemption or approval is in effect for the substance under section 355; or

''(B) in schedule II if the substance is not listed in schedule I;''; and

(2) in paragraph (2)—

(A) by inserting ''or rescheduling'' after ''scheduling'' each place it appears; and

(B) by striking ''for up to six months'' and inserting ''until a final order becomes effective''.

SEC. 3. RESCHEDULING OF DATE-RAPE DRUG.

Notwithstanding section 201 or subsection (a) or (b) of section 202 of the Controlled Substances Act (21 U.S.C. 811; 812(a); 812(b)) respecting the scheduling of controlled substances, the Attorney General shall, by order, transfer flunitrazepam from schedule IV of such Act to schedule I of such Act.

SEC. 4. CLASSIFICATION OF THE "CLUB" DRUG "SPECIAL K".

Notwithstanding section 201 or subsection (a) or (b) of section 202 of the Controlled Substances Act (21 U.S.C. 811; 812(a); 812(b)) respecting the scheduling of controlled substances, the Attorney General shall, by order, add ketamine hydrochloride to schedule III of such Act.

By Mr. SARBANES (for himself, Mr. TORRICELLI, and Mr. HUTCHINSON):

S. 884. A bill to establish the National Military Museum Foundation, and for other purposes; to the Committee on Armed Services.

NATIONAL MILITARY MUSEUM FOUNDATION ACT

Mr. SARBANES. Mr. President, today I am introducing on behalf of myself, Mr. HUTCHINSON, and Mr. TORRICELLI, legislation to create a National Military Museum Foundation. The purpose of this legislation is to encourage and facilitate private-sector support in the effort to preserve, interpret and display the important role the military has played in the history of our nation. This legislation is, in my judgment, crucial at this particular moment in history, when we are on the verge of jeopardizing two-centuries worth of military artifacts and negating the possibility of such collections in the future.

It has been the long-standing tradition of the U.S. Department of War and its successor, the Department of Defense, to preserve our historic military artifacts. Since the days of the revolution to the conflict in Bosnia, Americans have been proud of the role that our military has had in safeguarding our democracy, and we have tried to ensure that future generations will know that role. Over the years we have accumulated a priceless collection of military artifacts from every period of American history and every technological era. The collection includes flags, uniforms, weapons, paintings and historic records as well as full-size tanks, ships and aircraft which document history and provide provenance for our nation and armed services.

In recent years, however, the dedicated individuals who identify, interpret, catalog and showcase those artifacts have found themselves shortchanged and shorthanded. With financial resources diminishing, not only are we cheating ourselves out of the military treasures currently warehoused out of public sight, but we are in danger of lacking the funds to update our collections with new items.

''A morsel of genuine history,'' wrote Thomas Jefferson to John Adams in 1817, ''is a thing so rare as to be always valuable.'' Mr. President, today, significant pieces of our military history are being lost, shoved into basements, or subject to decay. With each year also comes less funding, and our artifacts are multiplying at a pace that exceeds the capabilities of those who are trying to preserve them. Since 1990 alone, the services have closed 21 military museums and at least eight more are expected to close in the next few years.

We cannot let this proceed any further. Military museums are vital to documenting our history, educating our citizenry and advancing our technology. More than 86 museums in 31 states and the District of Columbia daily instill Americans from veterans to new recruits to elementary school students with a sense of the sacred responsibility that military servicemen bear to defend the values that have made this country great.

Military museums teach our servicemen the history of their units, enhancing their understanding both of the team of which they are a part and the significance of the service they have pledged to perform. And when a museum makes history come alive to young children, those children learn for themselves that what this country stands for and the sacrifices that have been made to preserve the freedoms we often take for granted.

Many of our servicemen have learned their military history through these artifacts rather than textbooks, and many of our technological advances have come as a direct result of these artifacts. The ship models and ordinances at U.S. Naval Academy Museum in Annapolis, MD, for example, have been used by the Academy's Departments of Gunnery and Seamanship. It has also been reported that a study of an existing missile system, preserved in an Army museum, saves the Strategic Defense Initiative $25 million in research and analysis costs. These museums serve as laboratories where engineers can learn from the lessons of the past without going through the same trial and error process as their predecessors.

Yet without adequate funding, these benefits will be lost forever. According to a 1994 study conducted by the Advisory Council on Historic Preservation entitled, ''Defense Department Compliance with the National Historic Preservation Act,'' the Department of Defense's management of these resources has been ''mediocre,'' with the cause attributed to ''inadequate staffing and funding.''

More than 80 percent of the museums studied said their survival relies heavily on outside funding. When asked about their greatest needs, the response was nearly always staff and money. And those museums that reported sufficient staffing from volunteers nevertheless said that the dearth of funds for restoration and construction paralyzed them from fully utilizing the available labor.

According to the study, money is so tight that brochures and pamphlets are often unaffordable, leaving visitors with no explanations about the objects that have come to see. A young child might be duly impressed by the sight of a stern-faced general, but the historical lesson is greatly diminished if the child is not told the significance of the event portrayed or why the general looked so grim that day.

Perhaps most distressing, the study reported ''substantial collections of rare or unique historical military vehicles and equipment that are unmaintained and largely unprotected due to lack of funds and available expertise.'' In addition, the museums were found to be struggling so much with the care of items already in house, that they were unable to accept new ones. With a new class of military artifacts from the Vietnam and Gulf Wars soon to be retired, one wonders whether those artifacts will be preserved. If we do not take action to save what we have and acquire what we don't, future generations will see these pockets of negligence as blank pages in the living history books that these museums truly are.

Only a Foundation can address these problems. The alternate solution—to press the services to devote more money to these institutions—is implausible in this budgetary climate. The Secretary of Defense must place his highest priority on the readiness of our forces. Closely allied to that priority is the effort to improve the quality of life for our citizens on active duty. And, as aging equipment faces obsolescence, the Secretary has indicated that the future will bring an increased emphasis on replacing weapons systems. By all realistic assumptions, the amount of funds appropriated for museums is likely to continue downward.

My bill recognizes the growing need for a reliable source of funding aside from federal appropriations. A National Military Museum Foundation would provide an accessible venue for individuals, corporations or other private sources to support the preservation of our priceless military artifacts and records. A National Military Museum Foundation could also play an important role in surveying those artifacts that we know to exist. Currently, these is no museum oversight or coordination of museum activities on the DOD level. A wide-ranging Foundation survey would therefore not only eliminate duplication, but would most likely discover gaps in our collections that must be filled before it is too late.

Under the proposed legislation, the Secretary of Defense would appoint the Foundation's Board of Directors and provide basic administrative support. To launch the Foundation, the legislation authorizes an initial appropriation of $1 million. It is anticipated that the Foundation would be self sufficient after the first year. This is a small price to pay to save some of our most precious treasures.

This legislation is modeled on legislation that established similar foundations, such as the National Park Foundation and the National Fish and Wildlife Foundation, both of which have succeeded in raising private-sector support for conservation programs. My bill is not intended to supplant existing Federal funding or other foundation efforts that may be underway, but rather to supplement those efforts.

The premise for establishing a national foundation is, in part, to elevate the level of fund raising beyond the local level, supplementing those efforts by seeking donations from potentially large donors. I also want to emphasize the inclusiveness of the Foundation, which will represent all the branches of our armed services.

Mr. President, statistics reveal that foundations established without the mandate of a federal statute and the backing of an established agency seldom succeed. With ever-diminishing federal funds, we cannot expect the Department to put our military museums ahead of national security. Truly, an outside source committed to sustaining our museums is imperative. I urge my colleagues to support this important legislation.

By Mr. BIDEN:

S. 885. A bill to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to provide incentives for the development of drugs for the treatment of addiction to illegal drugs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

THE NEW MEDICINES TO TREAT ADDICTION ACT OF 1999

Mr. BIDEN. Mr. President, today I am introducing the New Medicines to Treat Addiction Act of 1999, legislation that builds upon my efforts in previous Congresses to promote research into and development of new medicines to treat the ravages of hard core drug addiction.

Since the first call to arms against illegal drugs, we have learned just how insidious hard-core drug addiction is, even as the ravages of substance abuse—on both the addict and the addict's victims—have become ever more apparent. The frustration in dealing with a seemingly intractable national problem is palpable, most noticeably in the heated rhetoric as politicians blame each other for the failure to find a cure. What gets lost underneath the noise is the recognition that we have not done everything we can to fight this problem and that, like all serious ills, we must take incremental steps one at a time, and refuse to be overwhelmed by the big picture.

Throughout my tenure as chairman of the Senate Judiciary Committee, I called for a multifaceted strategy to combat drug abuse. One of the specific steps I advocated was the creation of incentives to encourage the private sector to develop medicines that treat addiction, an area where promising research has not led—as one would normally expect—to production of medicines. The bill I am introducing today, the New Medicines To Treat Addiction Act of 1999, will hopefully change that. It takes focused aim at one segment of the drug-abusing population—hardcore addicts, namely users of cocaine and heroin—in part because these addicts are so difficult to treat with traditional methods, and in part because this population commits such a large percentage of drug-related crime.

In December, 1989, I commissioned a Judiciary Committee report, ''Pharmacotherapy: A Strategy for the 1990's.'' In that report, I posed the question, ''If drug use is an epidemic, are we doing enough to find a medical 'cure' for this disease?'' The report gave the answer ''No.'' Unfortunately, now a decade later, the answer remains the same. Developing new medicines for the treatment of addiction should be among our highest medical research priorities as a nation. Until we take this modest step, we cannot claim to have done everything reasonable to address the problem, and we should not become so frustrated that we effectively throw up our hands and do nothing.

Recent medical advances have increased the possibility of developing medications to treat drug addiction. These advances include a heightened understanding of the physiologist and psychological characteristics of drug addiction and a greater base of neuroscientific research.

One example of this promising research is the recent development of a compound that has been proven to immunize laboratory animals against the effects of cocaine. The compound works like a vaccine by stimulating the immune system to develop an antibody that blocks cocaine from entering the brain. Researchers funded through the National Institute of Drug Abuse believe that this advance may open a whole new avenue for combating addiction.

Despite this progress, we still do not have a medication to treat cocaine addiction or drugs to treat many other forms of substance abuse, because the private sector is unsure of the wisdom of making the necessary investment in the production and marketing of such medicines.

Privarte industry has not aggressively developed pharmacotherapies for a variety of reasons, including a small customer base, difficulties distributing medication to the target population, and fear of being associated with substance abusers. We need to create financial incentives to encourage pharmaceutical companies to develop and market these treatments. And we need to develop a new partnership between private industry and the public sector in order to encourage the active marketing and distribution of new medicines so they are accessible to all addicts in need of treatment.

While pharmacotherapies alone are not a ''magic bullet'' that will solve our national substance abuse problem, they have the potential to fill a gap in current treatment regimens. The disease of addiction occurs for many reasons, including a variety of personal problems which pharmaco therapy cannot address. Still, by providing a treatment regimen for drug abusers who are not helped by traditional methods, pharmacotherapy holds substantial promise for reducing the crime and health crisis that drug abuse is causing in the United States.

The New Medicines To Treat Addiction Act of 1999 would encourage and support the development of medicines to treat drug addiction in three ways.

It reauthorizes and increases funding for Medications Development Program at the National Institute of Health, which for years has been at the forefront of research into drug addition.

The bill also creates two new incentives for private sector companies to undertake the difficult but important task of developing medicines to treat addiction.

First, the bill would provide additional patient protections for companies that develop drugs to treat substance abuse. Under the bill, pharmacotherapies could be designated 'orphan drugs' and qualify for an exclusive seven-year patent to treat specific addiction. These extraordinary patent rights would greatly enhance the market value of pharmacotherapies and provide a financial reward for companies that invest in the search to cure drug addiction. This provision was contained in a bill introduced by Senator Kennedy and me in 1990, but was never acted on by Congress.

Second, the bill would establish a substantial monetary reward for companies that develop drugs to treat cocaine and heroin addiction but shift the responsibility for marketing and distributing such drugs to the government. This approach would create a financial incentive for drug companies to invest in research and development but enable them to avoid any stigma associated with distributing medicine to substance abusers.

The bill would require the National Academy of Sciences to develop strict guidelines for evaluating whether a drug effectively treats cocaine or heroin addiction. If a drug meets these guidelines and is approved by the Food and Drug Administration, then the government must purchase the patent rights for the drug from the company that developed it. The purchase rights for the patent rights is established by

law: $100 million for a drug to treat cocaine addiction and $50 million for a drug to treat heroin addiction. Once the government has purchased the patent rights, then it is responsible for producing the drug and distributing it to clinics, hospitals, state and local governments, and any other entities qualified to operate drug treatment programs.

This joint public/private endeavor will correct the market inefficiencies that have thus far prevented the development of drugs to treat addiction and require the government to take on the responsibilities that industry is unwilling or unable to perform.

America's drug problems is reduced each and every time a drug abuser quits his or her habit. Fewer drug addicts mean fewer crimes, fewer hospital admissions, fewer drug-addicted babies and fewer neglected children. The benefits to our country of developing new treatment options such as pharmacotherapies are manifold. Each dollar we spend on advancing options in this area can save us ten or twenty times as much in years to come. The question isn't ''Can we afford to pursue a pharmacotherapy strategy?'' but rather, ''Can we afford not to?''

Congress has long neglected to adopt measures I have proposed to speed the approval of and encourage greater private sector interest in pharmaco therapy. We cannot let another Congress conclude without rectifying our past negligence on this issue. I urge my colleagues to join me in promoting an important, and potentially ground breaking, approach to addressing one of our Nation's most serious domestic challenges.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered printed in the RECORD, as follows:

S. 885

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''New Medications to Treat Addiction Act of 1999''.

TITLE I—PHARMACOTHERAPY RESEARCH

SEC. 101. REAUTHORIZATION FOR MEDICATION DEVELOPMENT PROGRAM.

Section 464P(e) of the Public Health Service Act (42 U.S.C. 285o–4(e)) is amended to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2000 through 2002 of which the following amount may be appropriated from the Violent Crime Reduction Trust Fund:

''(1) $100,000,000 for fiscal year 2001; and

''(2) $100,000,000 for fiscal year 2002.''.

TITLE II—PATENT PROTECTIONS FOR PHARMACOTHERAPIES

SEC. 201. RECOMMENDATION FOR INVESTIGATION OF DRUGS.

Section 525(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa(a)) is amended—

(1) in the first sentence, by striking ''States'' and inserting ''States, or for treatment of an addiction to illegal drugs,'';

(2) in the second sentence, by striking ''States'' and inserting ''States, or for treatment of an addiction to illegal drugs''; and

(3) by striking ''such disease or condition'' each place it appears and inserting ''such disease or condition, or treatment of such addiction,''.

SEC. 202. DESIGNATION OF DRUGS.

Section 526(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb(a)) is amended—

(1) in paragraph (1)—

(A) by inserting before the period in the first sentence the following: '', or for treatment of an addiction to illegal drugs'';

(B) in the third sentence, by striking ''rare disease or condition'' and inserting ''rare disease or condition, or for treatment of an addiction to illegal drugs,'';

(C) by striking ''such disease or condition,'' and inserting ''such disease or condition, or treatment of such addiction,''; and

(D) by striking ''such disease or condition.'' and inserting ''such disease or condition, or treatment of such addiction.''; and

(2) in paragraph (2)—

(A) by striking ''(2) For'' and inserting ''(2)(A) For'';

(B) by striking ''(A) affects'' and inserting ''(i) affects'';

(C) by striking ''(B) affects'' and inserting ''(ii) affects''; and

(D) by adding at the end the following:

''(B) For purposes of this subchapter, the term 'treatment of an addiction to illegal drugs' means treatment by any pharmacological agent or medication that—

''(i) reduces the craving for an illegal drug for an individual who—

''(I) habitually uses the illegal drug in a manner that endangers the public health, safety, or welfare; or

''(II) is so addicted to the use of the illegal drug that the individual is not able to control the addiction through the exercise of self-control;

''(ii) blocks the behavioral and physiological effects of an illegal drug for an individual described in clause (i);

''(iii) safely serves as a replacement therapy for the treatment of abuse of an illegal drug for an individual described in clause (i);

''(iv) moderates or eliminates the process of withdrawal from an illegal drug for an individual described in clause (i);

''(v) blocks or reverses the toxic effect of an illegal drug on an individual described in clause (i); or

''(vi) prevents, where possible, the initiation of abuse of an illegal drug in individuals at high risk.

''(C) The term 'illegal drug' means a controlled substance identified under schedules I, II, III, IV, and V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).''.

SEC. 203. PROTECTION FOR DRUGS.

Section 527 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc) is amended—

(1) in subsection (a), by striking ''rare disease or condition,'' and inserting ''rare disease or condition, or for treatment of an addiction to illegal drugs,'';

(2) in subsection (b), by striking ''rare disease or condition'' and inserting ''rare disease or condition, or for treatment of an addiction to illegal drugs,'';

(3) by striking ''such disease or condition'' each place it appears and inserting ''such disease or condition, or treatment of such addiction,''; and

(4) in subsection (b)(1), by striking ''the disease or condition'' and inserting ''the disease, condition, or addiction''.

SEC. 204. OPEN PROTOCOLS FOR INVESTIGATIONS OF DRUGS.

Section 528 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360dd) is amended—

(1) by striking ''rare disease or condition'' and inserting ''rare disease or condition, or for treatment of an addiction to illegal drugs,''; and

(2) by striking ''the disease or condition'' each place it appears and inserting ''the disease, condition, or addiction''.

SEC. 205. CONFORMING AMENDMENTS.

(a) SUBCHAPTER HEADING.—The subchapter heading of subchapter B of chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa et seq.) is amended by striking ''CONDITIONS'' and inserting ''CONDITIONS, OR FOR TREATMENT OF AN ADDICTION''.

(b) SECTION HEADINGS.—The section heading of sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa through 360dd) are amended by striking ''CONDITIONS'' and inserting ''CONDITIONS, OR FOR TREATMENT OF AN ADDICTION''.

(c) FEES.—Section 736(a)(1)(E) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379h(a)(1)(E)) is amended—

(1) in the subparagraph heading, by striking ''ORPHAN'';

(2) by striking ''for a rare disease or condition'' each place it appears and inserting ''for a rare disease or condition, or for treatment of an addiction to illegal drugs,''; and

(3) in the first sentence, by striking ''rare disease or condition.'' and inserting ''rare disease or condition, or other than for treatment of an addiction to illegal drugs, respectively.''.

TITLE III—ENCOURAGING PRIVATE SECTOR DEVELOPMENT OF PHARMACOTHERAPIES

SEC. 301. DEVELOPMENT, MANUFACTURE, AND PROCUREMENT OF DRUGS FOR THE TREATMENT OF ADDICTION TO ILLEGAL DRUGS.

Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

''Subchapter F—Drugs for Cocaine and Heroin Addictions

''SEC. 571. CRITERIA FOR AN ACCEPTABLE DRUG TREATMENT FOR COCAINE AND HEROIN ADDICTIONS.

''(a) IN GENERAL.—Subject to subsections (b) and (c), the Secretary shall, in cooperation with the Institute of Medicine of the National Academy of Sciences, establish criteria for an acceptable drug for the treatment of an addiction to cocaine and for an acceptable drug for the treatment of an addiction to heroin. The criteria shall be used by the Secretary in making a contract, or entering into a licensing agreement, under section 572.

''(b) REQUIREMENTS.—The criteria established under subsection (a) for a drug shall include requirements—

''(1) that the application to use the drug for the treatment of addiction to cocaine or heroin was filed and approved by the Secretary under this Act after the date of enactment of this section;

''(2) that a performance based test on the drug—

''(A) has been conducted through the use of a randomly selected test group that received the drug as a treatment and a randomly selected control group that received a placebo; and

''(B) has compared the long term differences in the addiction levels of control group participants and test group participants;

''(3) that the performance based test conducted under paragraph (2) demonstrates that the drug is effective through evidence that—

''(A) a significant number of the participants in the test who have an addiction to cocaine or heroin are willing to take the drug for the addiction;

''(B) a significant number of the participants in the test who have an addiction to cocaine or heroin and who were provided the drug for the addiction during the test are willing to continue taking the drug as long as necessary for the treatment of the addiction; and

''(C) a significant number of the participants in the test who were provided the drug for the period of time required for the treatment of the addiction refrained from the use of cocaine or heroin, after the date of the initial administration of the drug on the participants, for a significantly longer period than the average period of refraining from such use under currently available treatments (as of the date of the application described in paragraph (1)); and

''(4) that the drug shall have a reasonable cost of production.

''(c) REVIEW AND PUBLICATION OF CRITERIA.—The criteria established under subsection (a) shall, prior to the publication and application of such criteria, be submitted for review to the Committee on the Judiciary, and the Committee on Education and the Workplace, of the House of Representatives, and the Committee on the Judiciary, and the Committee on Health, Education, Labor, and Pensions, of the Senate. Not later than 90 days after notifying each of the committees, the Secretary shall publish the criteria in the Federal Register.

''SEC. 572. PURCHASE OF PATENT RIGHTS FOR DRUG DEVELOPMENT.

''(a) APPLICATION.—

''(1) IN GENERAL.—The patent owner of a drug to treat an addiction to cocaine or heroin, may submit an application to the Secretary—

''(A) to enter into a contract with the Secretary to sell to the Secretary the patent rights of the owner relating to the drug; or

''(B) in the case in which the drug is approved under section 505 by the Secretary for more than 1 indication, to enter into an exclusive licensing agreement with the Secretary for the manufacture and distribution of the drug to treat an addiction to cocaine or heroin.

''(2) REQUIREMENTS.—An application described in paragraph (1) shall be submitted at such time and in such manner, and accompanied by such information, as the Secretary may require.

''(b) CONTRACT AND LICENSING AGREEMENTS.—

''(1) REQUIREMENTS.—The Secretary may enter into a contract or a licensing agreement described in subsection (a) with a patent owner who has submitted an application in accordance with subsection (a) if the drug covered under the contract or licensing agreement meets the criteria established by the Secretary under section 571(a).

''(2) SPECIAL RULE.—The Secretary may, under paragraph (1), enter into—

''(A) not more than 1 contract or exclusive licensing agreement relating to a drug for the treatment of an addiction to cocaine; and

''(B) not more than 1 contract or licensing agreement relating to a drug for the treatment of an addiction to heroin.

''(3) COVERAGE.—A contract or licensing agreement described in subparagraph (A) or (B) of paragraph (2) shall cover not more than 1 drug.

''(4) PURCHASE AMOUNT.—Subject to amounts provided in advance in appropriations Acts—

''(A) the amount to be paid to a patent owner who has entered into a contract or licensing agreement under this subsection relating to a drug to treat an addiction to cocaine shall not exceed $100,000,000; and

''(B) the amount to be paid to a patent owner who has entered into a contract or licensing agreement under this subsection relating to a drug to treat an addiction to heroin shall not exceed $50,000,000.

''(c) TRANSFER OF RIGHTS UNDER CONTRACTS AND LICENSING AGREEMENT.—

''(1) CONTRACTS.—A contract under subsection (b)(1) to purchase the patent rights relating to a drug to treat cocaine or heroin addiction shall transfer to the Secretary—

''(A) the exclusive right to make, use, or sell the patented drug within the United States for the term of the patent;

''(B) any foreign patent rights held by the patent owner with respect to the drug;

''(C) any patent rights relating to the process of manufacturing the drug; and

''(D) any trade secret or confidential business information relating to the development of the drug, process for manufacturing the drug, and therapeutic effects of the drug.

''(2) LICENSING AGREEMENTS.—A licensing agreement under subsection (b)(1) to purchase an exclusive license relating to manufacture and distribution of a drug to treat an addiction to cocaine or heroin shall transfer to the Secretary—

''(A) the exclusive right to make, use, or sell the patented drug for the purpose of treating an addiction to cocaine or heroin within the United States for the term of the patent;

''(B) the right to use any patented processes relating to manufacturing the drug; and

''(C) any trade secret or confidential business information relating to the development of the drug, process for manufacturing the drug, and therapeutic effects of the drug relating to use of the drug to treat an addiction to cocaine or heroin.

''SEC. 573. PLAN FOR MANUFACTURE AND DEVELOPMENT.

''(a) IN GENERAL.—Not later than 90 days after the date on which the Secretary purchases the patent rights of a patent owner, or enters into a licensing agreement with a patent owner, under section 572, relating to a drug under section 571, the Secretary shall develop a plan for the manufacture and distribution of the drug.

''(b) PLAN REQUIREMENTS.—The plan shall set forth—

''(1) procedures for the Secretary to enter into licensing agreements with private entities for the manufacture and the distribution of the drug;

''(2) procedures for making the drug available to nonprofit entities and private entities to use in the treatment of a cocaine or heroin addiction;

''(3) a system to establish the sale price for the drug; and

''(4) policies and procedures with respect to the use of Federal funds by State and local governments or nonprofit entities to purchase the drug from the Secretary.

''(c) APPLICABILITY OF PROCUREMENT AND LICENSING LAWS.—Federal law relating to procurements and licensing agreements by the Federal Government shall be applicable to procurements and licenses covered under the plan described in subsection (a).

''(d) REVIEW OF PLAN.—

''(1) IN GENERAL.—Upon completion of the plan under subsection (a), the Secretary shall notify the Committee on the Judiciary, and the Committee on Education and the Workplace, of the House of Representatives, and the Committee on the Judiciary, and the Committee on Health, Education, Labor, and Pensions, of the Senate, of the development of the plan and publish the plan in the Federal Register. The Secretary shall provide an opportunity for public comment on the plan for a period of not more than 30 days after the date of the publication of the plan in the Federal Register.

''(2) FINAL PLAN.—Not later than 60 days after the date of the expiration of the comment period described in paragraph (1), the Secretary shall publish in the Federal Register a final plan described in subsection (a). The implementation of the plan shall begin on the date of the publication of the final plan.

''(e) CONSTRUCTION.—The development, publication, or implementation of the plan, or any other agency action with respect to the plan, shall not be considered agency action subject to judicial review. No official or court of the United States shall have power or jurisdiction to review the decision of the Secretary on any question of law or fact relating to any agency action with respect to the plan.

''(f) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.

''SEC. 574. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this subchapter, such sums as may be necessary in each of fiscal years 2000 through 2002.''.

By Mr. SHELBY:

S. 887. A bill to establish a moratorium on the Foreign Visitors Program at the Department of Energy nuclear laboratories, and for other purposes; to the Committee on Armed Services.

DEPARTMENT OF ENERGY SENSITIVE COUNTRY FOREIGN VISITORS MORATORIUM ACT OF 1999

Mr. SHELBY. Mr. President, today I am introducing a bill to impose a moratorium on the foreign visitors program at the Department of Energy's (DOE) nuclear laboratories. The bill prohibits the Secretary of Energy from admitting any person from a ''sensitive country'' to our national laboratories, unless the Secretary of Energy personally certifies to the Congress that the visit is necessary for the national security of the United States.

A ''sensitive country'' is a country that is considered dangerous to the United States and that may want to acquire our nuclear weapons secrets.

Mr. President, the Senate Intelligence Committee has been critical of the Department of Energy's counterintelligence program for nearly ten years. Beginning in 1990, we identified serious shortfalls in funding and personnel dedicated to protecting our nation's nuclear secrets. Year after year, the Committee has provided additional funds and directed many reviews and studies in an effort to persuade the Department of Energy to take action. Unfortunately, this and prior administrations failed to heed our warnings. Consequently, a serious espionage threat at our national labs has gone virtually unabated and it appears that our nuclear weapons program may have suffered extremely grave damage.

Now, the administration has finally begun to take affirmative steps to address this problem. While I welcome their efforts, I am disappointed that it took a some bad press to motivate them rather than a known threat to our national security. Nevertheless, the Department of Energy has begun the process of repairing the damage caused by years of neglect, but it will take time to make the necessary changes. In fact, it may take years.

In the interim, we must take steps to ensure the integrity of our national labs. I understand that a moratorium on the foreign visitors program may be perceived as a draconian measure. Until the Department fully implements a comprehensive and sustained counterintelligence program, however, I believe that we must err on the side of caution. The stakes are too high.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 887

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy Sensitive Country Foreign Visitors Moratorium Act of 1999''.

SEC. 2. MORATORIUM ON FOREIGN VISITORS PROGRAM.

(a) MORATORIUM.—The Secretary of Energy may not admit to any facility of a national laboratory any individual who is a citizen of a nation that is named on the current Department of Energy sensitive countries list.

(b) WAIVER AUTHORITY.—(1) The Secretary of Energy may waive the prohibition in subsection (a) on a case-by-case basis with respect to specific individuals whose admission to a national laboratory is determined by the Secretary to be necessary for the national security of the United States.

(2) Before any such waiver takes effect, the Secretary shall submit to the Committee on Armed Services and the Select Committee on Intelligence of the Senate and the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives a report in writing providing notice of the proposed waiver. The report shall identify each individual for whom such a waiver is proposed and, with respect to each such individual, provide a detailed justification for the waiver and the Secretary's certification that the admission of that individual to a national laboratory is necessary for the national security of the United States.

(3)(A) A waiver under paragraph (1) may not take effect until a period of 10 days of continuous session of Congress has expired after the date of the submission of the report under paragraph (2) providing notice of that waiver.

(B) For purposes of subparagraph (A)—

(i) the continuity of a session of Congress is broken only by an adjournment of the Congress sine die; and

(ii) there shall be excluded from the computation of the 10-day period specified in that subparagraph Saturdays, Sundays, legal public holidays, and any day on which either House of Congress in not in session because of adjournment of more than three days to a day certain.

(4) The authority of the Secretary under paragraph (1) may not be delegated.

SEC. 3. BACKGROUND CHECKS ON ALL FOREIGN VISITORS TO NATIONAL LABORATORIES.

Before an individual who is a citizen of a foreign nation is allowed to enter a national laboratory, the Secretary of Energy shall require that a security clearance investigation (known as a ''background check'') be carried out on that individual.

SEC. 4. DEFINITIONS.

In this Act:

(1) The term ''national laboratory'' means any of the following:

(A) The Lawrence Livermore National Laboratory, Livermore, California.

(B) The Los Alamos National Laboratory, Los Alamos, New Mexico.

(C) The Sandia National Laboratories, Albuquerque, New Mexico.

(2) The term ''sensitive countries list'' means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries.

By Mr. MURKOWSKI (for himself, Mr. AKAKA, Mr. STEVENS, and Mr. INOUYE):

S. 888. A bill to amend the Internal Revenue Code of 1986 to modify the air transportation tax changes made by the Taxpayer Relief Act of 1977; to the Committee on Finance.

AIR PASSENGER TAXES ON FLIGHTS TO AND FROM ALASKA AND HAWAII

Mr. MURKOWSKI. Mr. President, today, along with Mr. AKAKA, Mr. STEVENS, and Mr. INOUYE, I am introducing legislation that will provide a measure of relief to the citizens of Alaska and Hawaii who must rely on air transport far more than citizens in the lower 48.

When Congress adopted the balanced budget legislation in 1997, one of the provisions of the tax bill re-wrote the formula for calculating the air passenger tax for domestic and international flights. As part of this formula change, Congress adopted a per passenger, per segment fee which disproportionately penalizes travelers to and from Alaska and Hawaii who have no choice but to travel by air.

The legislation we are introducing today would reinstate the prior law 10 percent tax formula for flights to and from our states. In addition, the $6 international departure fees that are imposed on such flights would be retained at the current level and would not be indexed. I see no reason why passengers flying to and from our states must face a guaranteed increase in tax every year because of inflation. We don't index tobacco taxes, we don't index fuel taxes; why should government automatically gain additional revenue from air passengers simply because of inflation?

Mr. President, this legislation requires that intrastate Alaska and Hawaii flights will be subject to a flat 10 percent tax if such flights do not originate or terminate at a rural airport in our states. In addition, the definition of a rural airport is expanded to include airports within 75 miles of each other where no roads connect the communities. This provision not only benefits Alaska, but many island communities throughout the United States. In many towns in Alaska, air transport is the only viable means of transportation from one community to another. There is no reason these airports should be denied the benefit of the special rural airport tax rate simply because our state does not have the transportation infrastructure or geographic definition that exists in most of the lower 48.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 888

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

SECTION 1. MODIFICATIONS TO AIR TRANSPORTATION TAX CHANGES MADE BY TAXPAYER RELIEF ACT OF 1997.

(a) ELIMINATION OF INFLATION ADJUSTMENT FOR TAX ON CERTAIN USE OF INTERNATIONAL TRAVEL FACILITIES.—Section 4261(e)(4) of the Internal Revenue Code of 1986 (relating to inflation adjustment of dollar rates of tax) is amended—

(1) in subparagraph (A), by striking ''each dollar amount contained in subsection (c)'' and inserting ''the $12.00 amount contained in subsection (c)(1)'', and

(2) in subparagraph (B)(ii), by striking ''the dollar amounts contained in subsection (c)'' and inserting ''the $12.00 amount contained in subsection (c)(1)''.

(b) MODIFICATION OF RURAL AIRPORT DEFINITION.—Clauses (i) and (ii) of section 4261(e)(1)(B) of the Internal Revenue Code of 1986 (defining rural airport) are amended to read as follows:

''(i) there were fewer than 100,000 commercial passengers departing by air during the second preceding calendar year from such airport and such airport—

''(I) is not located within 75 miles of another airport which is not described in this clause, or

''(II) is receiving essential air service subsidies as of August 5, 1997, or

''(ii) such airport is not connected by paved roads to another airport.''

(c) IMPOSITION OF TICKET TAX ON SEGMENTS TO AND FROM ALASKA OR HAWAII OR WITHIN ALASKA OR HAWAII AT RATE IN EFFECT BEFORE THE TAXPAYER RELIEF ACT OF 1997.—Section 4261(e) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end the following:

''(6) SEGMENTS TO AND FROM ALASKA OR HAWAII OR WITHIN ALASKA OR HAWAII.—Except with respect to any domestic segment described in paragraph (1), in the case of transportation involving 1 or more domestic segments at least 1 of which begins or ends in Alaska or Hawaii or in the case of a domestic segment beginning and ending in Alaska or Hawaii—

''(A) subsection (a) shall be applied by substituting ''10 percent'' for the otherwise applicable percentage, and

''(B) the tax imposed by subsection (b)(1) shall not apply.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 7 days after the date of the enactment of this Act.

By Mrs. HUTCHISON (for herself, Mr. SANTORUM, and Mr. COCHRAN):

S. 889. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for investment necessary to revitalize communities within the United States, and for other purposes; to the Committee on Finance.

COMMERCIAL REVITALIZATION TAX ACT OF 1999

Mrs. HUTCHISON. Mr. President, today I am pleased to introduce, along with Mr. SANTORUM, and Mr. COCHRAN, the Commercial Revitalization Tax Credit Act of 1999. This bill is identical to the bipartisan and widely supported legislation I sponsored during the last session of Congress.

This measure will create jobs, expand economic activity, and revitalize the

physical structure and value of residential and commercial buildings in America's most distressed urban and rural communities.

The bill provides a targeted tax credit to businesses to help defray the cost of construction, expansion, and renovation in these areas, and in the process will generate billions in privately based economic activity in those areas that need the most help in our country.

As we continue to look for ways to combat the decay of our inner cities and to raise the standard of living in many of our rural areas, I believe, and numerous studies demonstrate, that reversing the physical deterioration in America's cities has numerous and far reaching economic benefits. Revitalization in decaying neighborhoods lifts the hopes and expectations of the residents of those areas that economic growth and opportunity is coming their way. Indeed, one of the key recommendations of a top-to-bottom review of law enforcement in this city, our Nation's Capital, was to improve the many abandoned buildings in Washington, D.C. that create an atmosphere conducive to crime and despair.

The Commercial Revitalization Tax Credit Act will build upon the empowerment zone/enterprise community program that is now unfolding over 100 communities in the United States. Texas has five of these specially designated areas: Houston, Dallas, El Paso, San Antonio, and Waco, as well as one rural zone in the Rio Grande valley covering four counties. Not only will these cities qualify for the credit under my bill, but so will the 400 communities in the United States that sought such designation but were not selected. State-established enterprise zones and other specifically designated revitalization districts established by State and local governments will also be able to participate. In all, over 1,000 areas will qualify for this credit nationwide.

Our bill contains the following principle features: A tax credit that may be applied to construction amounting to at least 25 percent of the basis of the property, in designated revitalization areas; qualified investors could choose a one-time 20-percent tax credit against the cost of new construction or rehabilitation. Alternatively, a business owner could take a five percent credit each year over a 10-year period. Tax credits would be allocated to each state, according to a formula, with States and localities determining the priority of the projects. In all, $1.5 billion in tax credits would be allocated under this tax bill.

Mr. President, with a minimum level of bureaucratic involvement and through a proven tax mechanism, this initiative will make a significant difference in the lives of thousands of families in need and for the economies of hundreds of distressed urban and rural communities across this Nation.

I hope my colleagues will join me in supporting this sound and effective pro-growth initiative.

By Mr. WELLSTONE (for himself, Mr. ROBB, and Mr. FEINGOLD):

S. 890. A bill to facilitate the naturalization of aliens who served with special guerrilla units or irregular forces in Laos; to the Committee on the Judiciary.

HMONG VETERANS' NATURALIZATION ACT OF 1999

Mr. FEINGOLD. Mr. President, I am pleased to rise today as an original cosponsor of the Hmong Veterans Naturalization Act of 1999. I commend the Senator from Minnesota [Mr. WELLSTONE] and our colleague in the House of Representatives, Congressman VENTO, for their commitment to this important issue.

I honor the service of the Lao and Hmong veterans to the United States, and appreciate the great personal risk they faced when they chose to help this country. I am pleased that many of them have chosen to make the United States, and my home state of Wisconsin, their adopted homeland.

In my view, Mr. President, this bill, which would expedite the naturalization process for 45,000 Lao and Hmong veterans and their spouses, is the least we can for the help repay the huge debt we owe these brave individuals. I have had the opportunity to meet many Lao and Hmong veterans and their families as I travel throughout Wisconsin. I am struck by the profound importance they place on becoming citizens of the United States. This bill would help them reach that goal.

By Mr. SCHUMER:

S. 891 A bill to amend section 922(x) of title 18, United States Code, to prohibit the transfer to and possession of handguns, semiautomatic assault weapons, and large capacity ammunition feeding devices by individuals who are less than 21 years of age, and for other purposes; to the Committee on the Judiciary.

THE JUVENILE GUN LOOPHOLE CLOSURE ACT

Mr. SCHUMER. Mr. President, I am introducing legislation today to close what I believe is a major loophole in our federal gun laws—a loophole which permits 18–20 year-olds to possess handguns, semiautomatic assault weapons, and large capacity ammunition feeding devices.

Firearms trace data collected as part of the Youth Crime Gun Interdiction Initiative (YCGII) paint a disturbing picture of crime gun activity by persons under 21. In the most recent YCGII Trace Analysis Report, the age of the possessor was known for 32,653, or 42.8 percent, of the 72,260 crime guns traced. Of these 32,563 guns, approximately 4,840, or 14.8 percent, were recovered from 18–20 year-olds. Indeed, the most frequent age of crime gun possession was 19 years of age, and the second most frequent was 18 years of age.

At the same time, according to the 1997 Uniform Crime Reports, the most frequent age arrested for murder was 18 years of age, and the second most frequent was 19 years of age. Those aged 18–20 accounted for 22 percent of all arrest for murder in 1997.

There are indications that the 18-year old girlfriend of one of the two gunmen involved in the tragic Littleton, Colorado school shooting purchased at least two of the firearms used in the attack. Handgun possession by persons 18 or over is not forbidden by Colorado law.

The 1968 Gun Control Act prevents federally licensed gun dealers from selling handguns to anyone under the age of 21. This ban does not apply to sales of handguns by unlicensed persons, however. Federal law only stops such persons from selling handguns to anyone under the age of 18—thus neglecting to ban sales to the 18–20 year-olds who account for such a significant portion of crime gun traces and murders. In another inexplicable oversight, federal law also fails to ban private sales of semiautomatic assault weapons and high-capacity ammunition feeding devices to persons even under the age of 18.

My bill would correct these flaws in our federal gun laws. It would ban sales by unlicensed individuals of handguns, semiautomatic assault weapons, and large capacity ammunition feeding divides to persons under the age of 21. Indeed, it would ban possession of these deadly weapons by persons under 21, with exceptions made for young persons who are members of the Armed Forces or National Guard or use these firearms in self-defense against an intruder to their residences.

This is a common-sense measure that will keep guns out of the hands of those most likely to use guns irresponsibly and dangerously. I urge the Senate to pass this bill into law soon. I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 891

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Juvenile Gun Loophole Closure Act''.

SEC. 2. PROHIBITION ON TRANSFER TO AND POSSESSION OF HANDGUNS, SEMIAUTOMATIC ASSAULT WEAPONS, AND LARGE CAPACITY AMMUNITION FEEDING DEVICES BY INDIVIDUALS LESS THAN 21 YEARS OF AGE.

Section 922(x) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(C) a semiautomatic assault weapon; or

''(D) a large capacity ammunition feeding device.'';

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(C) a semiautomatic assault weapon; or

''(D) a large capacity ammunition feeding device.'';

(3) in paragraph (3)—

(A) in subparagraph (B), by inserting '', semiautomatic assault weapon, or large capacity ammunition feeding device'' after ''handgun''; and

(B) in subparagraph (D), by striking ''or ammunition'' and inserting '', ammunition, semiautomatic assault weapon, or large capacity ammunition feeding device''; and

(4) in paragraph (5), by striking ''18'' and inserting ''21''.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. MACK, Mr. BRYAN, Mr. MURKOWSKI, and Mr. BREAUX):

S. 892. A bill to amend the Internal Revenue Code of 1986 to permanently extend the subpart F exemption for active financing income; to the Committee on Finance.

SUBPART F EXCEPTION FOR ACTIVE FINANCING

Mr. HATCH. Mr. President, I am today introducing legislation on behalf of myself, Mr. BAUCUS. Mr. MACK, Mr. BRYAN, Mr. MURKOWSKI, and Mr. BREAUX. This bill would permanently extend the exclusion from Subpart F for active financing income earned on business operations overseas. This legislation permits American financial services firms doing business abroad to defer U.S. tax on their earnings from their foreign financial services operations until such earnings are returned to the U.S. parent company.

The permanent extension of this provision is particularly important in today's global marketplace. Over the last few years the financial services industry has seen technological and global changes that have changed the very nature of the way these corporations do business both here and abroad. The U.S. financial industry is a global leader and plays a pivotal role in maintaining confidence in the international marketplace. It is essential that our tax laws adapt to the fast-paced and ever-changing business environment of today.

The bill we are introducing today would provide a consistent, equitable, and stable international tax regime for this important component of our economy. A permanent extension of this provision will give American companies much deserved stability. The current ''on-again, off-again'' system of annual extension limits the ability of U.S.-based firms to compete fully in the marketplace and interferes with their decision making and long-term planning. The activities that give rise to this income are long-range in nature, not easily stopped and started on a year-to-year basis. Permanency is the only thing that makes sense. After all, the vast majority of the provisions in the tax code are permanent; it is only a select few that are subjected to this annual cycle of extensions.

This legislation will give U.S. based financial services companies consistency and stability. The permanent extension of this exclusion from Subpart F provides tax rules that ensure that the U.S. financial services industry is on an equal competitive footing with their foreign based competitors and, just as importantly, provides tax treatment that is consistent with the tax treatment accorded most other U.S. companies.

This legislation provides the U.S. financial services industry the certainty that they will be able to compete with their foreign competitors now and into the 21st century. This is important to our future economic growth and continued global leadership of American companies in the financial services industry.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 892

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

SECTION 1. PERMANENT SUBPART F EXEMPTION FOR ACTIVE FINANCING INCOME.

(a) BANKING, FINANCING, OR SIMILAR BUSINESSES.—Subsection (h) of section 954 of the Internal Revenue Code of 1986 (relating to special rule for income derived in the active conduct of banking, financing, or similar businesses) is amended by striking paragraph (9).

(b) INSURANCE BUSINESSES.—Subsection (a) of section 953 of such Code (defining insurance income) is amended by striking paragraph (10) and by redesignating paragraph (11) as paragraph (10).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of a foreign corporation beginning after December 31, 1998, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporation end.

Mr. BAUCUS. Mr. President, today I am pleased to join my colleague Senator HATCH in introducing legislation to permanently extend the exception from Subpart F for active financing income earned on overseas business.

United States companies doing business abroad are generally allowed to pay U.S. tax on the earnings from the active operations of their foreign subsidiaries when these earnings are returned to the U.S. parent company. Until recently, U.S.-based finance companies such as insurance companies and brokers, banks, securities dealers, and other financial services firms, have not been afforded similar treatment. The current law provision that is intended to afford America's financial services industry parity with other segments of the U.S. economy expires at the end of 1999. Our legislation, intended to keep the U.S. financial services industry on an equal footing with foreign-based competitors, would make this provision permanent.

The financial services sector is the fastest growing component of the U.S. trade in services surplus (which is expected to exceed $80 billion this year). It is therefore very important that Congress act to maintain a tax structure that does not hinder the competitive efforts of the U.S. financial services industry. That would be the case if the active financing exception to Subpart F were permitted to expire.

The growing interdependence of world financial markets has highlighted the urgent need to rationalize U.S. tax rules that undermine the ability of American financial services industries to compete in the international arena. It is important to ensure that the U.S. tax treatment of worldwide income does not encourage avoidance of U.S. tax through the sheltering of income in foreign tax havens. However, I believe it is possible to adequately protect the federal fisc without jeopardizing the international expansion and competitiveness of U.S.-based financial services companies, including finance and credit entities, commercial banks, securities firms, and insurance companies.

This active financing provision is particularly important today. The U.S. financial services industry is second to none, and plays a pivotal role in maintaining confidence in the international marketplace. Through our network of tax treaties, we have made tremendous progress in negotiating new foreign markets for this industry in recent years. Our tax laws should complement, rather than undermine, this trade effort.

As is the case with other tax provisions such as the Research and Development tax credit, the temporary nature of the U.S. active financing exception denies U.S. companies the certainty enjoyed by their foreign competitors. U.S. companies need to know the tax consequences of their business operations. Over the last two years, U.S. companies have implemented numerous system changes in order to comply with two very different versions of the active financing law, and are unable to take appropriate strategic action if the tax law is not stable.

I ask my colleagues to join me in supporting this legislation, and provide a consistent, equitable, and stable international tax regime for the U.S. financial services industry.

By Mr. GORTON (for himself and Mrs. MURRAY):

S. 893. A bill to amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels; to the Committee on Commerce, Science, and Transportation.

TRANSPORTATION WORKER TAX FAIRNESS ACT

Mr. GORTON. Mr. President, I rise today to introduce the Transportation Worker Tax Fairness Act. This legislation will ensure that transportation workers who toil away on our nation's waterways receive the same tax treatment afforded their peers who work on the nation's highways, railroads, or navigate the skies.

Truck drivers, railroad personnel, and airline personnel are currently

covered by the Interstate Commerce Act, which exempts their income from double taxation. Water carriers, who work on tugboats or ships, were not included in the original legislation. This treatment is patently unfair. The Transportation Worker Tax Fairness Act will rectify this situation by extending the same tax treatment to personnel who work on the navigable waters of more than one state.

Mr. President, this legislation will have no impact on the federal treasury. This measure simply allows those who work our navigable waterways protection from double taxation.

This matter came to my attention through a series of constituent letters from Columbia River tug boat operators who are currently facing taxation from Oregon as well as Washington state. I am committed to pursuing this avenue of relief for my constituents, as well as hard working tug boat operators across the nation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 893

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

SECTION 1. AMENDMENT OF CHAPTER 111 OF TITLE 46, UNITED STATES CODE.

Section 11108 of title 46, United States Code, is amended—

(1) by inserting ''(a) WITHHOLDING.—'' before ''WAGES''; and

(2) by adding at the end the following:

''(b) LIABILITY.—

''(1) LIMITATION ON JURISDICTION TO TAX.—An individual to whom this subsection applies is not subject to the income tax laws of a State or political subdivision of a State, other than the State and political subdivision in which the individual resides, with respect to compensation for the performance of duties described in paragraph (2).

''(2) APPLICATION.—This subsection applies to an individual—

''(A) engaged on a vessel to perform assigned duties in more than one State as a pilot licensed under section 7101 of this title or licensed or authorized under the laws of a State; or

''(B) who performs regularly-assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one State.''.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. SPECTER, Mr. COCHRAN, Mr. MOYNIHAN, Mr. SESSIONS, MS. SNOWE, MR. LOTT, Ms. LANDRIEU, Ms. COLLINS, Mr. KENNEDY, Mr. SCHUMER, Mr. SHELBY, Ms. MIKULSKI, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. DODD, Mr. BREAUX, Mr. THURMOND, Mr. CHAFEE, Mr. SMITH of New Hampshire, Mr. SARBANES, Mr. COVERDELL, Mr. CLELAND, Mr. GREGG, Mr. REED, Mr. KERRY, Mr. HELMS, Mr. BYRD, Mr. TORRICELLI, Mr. EDWARDS, Mr. LIEBERMAN, Mr. ASHCROFT, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. BIDEN, Mr. FRIST, Mr. BOND, and Mr. THOMPSON):

S.J. Res. 22. A joint resolution to re-authorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact; read the first time.

RE-AUTHORIZATION OF THE NORTHEAST DAIRY COMPACT AND RATIFICATION OF THE SOUTHERN DAIRY COMPACT

Mr. JEFFORDS. Mr. President, I rise today to introduce legislation to make permanent the Northeast Interstate Dairy Compact and to ratify a Southern Dairy Compact. I am so pleased to be joined by 38 of my colleagues as original cosponsors of this important legislation.

In 1996, Senator LEAHY and I fought an uphill battle and secured eleventh hour passage of this landmark legislation. We were met with resistance in every step of the legislative process, yet we succeeded in passing the Compact as a three-year pilot program.

The Northeast Compact has a proven record of effectiveness. All eyes have been on New England since the compact became law. The Compact has been studied, audited, and sued—but has always come through with a clean bill of health. Because of the success of the Compact it has served as a model for the entire country. Since the Northeast Compact was approved by Congress as part of the 1996 Farm Bill, it has been extremely successful in balancing the interests of processors, retailers, consumers, and dairy farmers by helping to maintain milk price stability.

The 1996 Farm Bill authorized the Dairy Compact for three years and was originally due to expire in April of 1999. Senator LEAHY and I, during the 1999 Omnibus Appropriations bill, included language that extended the life of the Compact for six additional months. The Compact will expire on October 1, 1999, unless congressional action is taken.

Mr. President, in addition to the six New England states, 23 states have either passed or are considering legislation for dairy compacts that would help both farmers and consumers in their states. During the past year Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia have passed legislation to form a Southern Dairy Compact. Florida, Georgia, Missouri, Oklahoma, Texas and Kansas are also considering joining the Southern Compact. The Oregon legislature is in the process of developing a Pacific Northwest Dairy Compact as well.

New Jersey, Maryland and New York have passed state legislation enabling them to join the Northeast Dairy Compact. Delaware, Pennsylvania and Ohio may also join if passed in their states. These states have recognized how dairy compacts can help provide stability to the price paid to dairy farmers for the milk they produce, while protecting the interests of consumers and processors. The Dairy Compact Commission that was established by the 1996 Compact legislation is made up of 26 members from the six New England states. The members, which are appointed by each state's governors, consist of consumers, processors, farmers and other state representatives.

The legislation being introduced today, establishes that the dairy compacts may regulate only fluid milk, or Class I milk. It ensure that the dairy compacts compensate the Commodity Credit Corporation for the cost of any purchases of milk by the corporation that result from the operation of the compacts. In addition, the legislation exempts the Woman, Infant and Children (WIC) program from any costs related to the dairy compacts. More importantly, the Daily Compact operates at no costs to the federal government.

A 1998 report by the Office of Management and Budget (OMB) on the economic effects of the Dairy Compact illustrates the Compact's success. The OMB reported that during the first six months of the Compact, consumer prices for milk within the Compact region were five cents lower than retail store prices in the rest of the nation. OMB concluded that the Compact added no federal costs to nutrition programs during this time, and that the Compact did not adversely affect farmers outside the Compact region.

Helping farmers protect their resources and receive a fair price for their products in vital to Vermont's economic base and, indeed, its very heritage as a state. Establishing a fair price for dairy farmers has been an ongoing battle throughout my time on Capitol Hill. Few initiatives in my long memory have sparked such a vigorous policy debate as the Northeast Dairy Compact. I am so pleased and proud at how industry and government leaders from throughout Vermont and the New England region pulled together to pass the Compact. I am also impressed by the tremendous coalition of support for permanent authorization of the Northeast and Southern Dairy Compacts.

The adoption of the Northeast Compact in 1996 simply could not have happened in Congress without the help and dedicated work for the veritable army of Compact supporters from throughout Vermont and the country. This year, our legislation again is supported by Governors, State legislators, consumers and farmers from throughout the country.

Mr. President, on March 5, 1999, the Basic Formula Price (BFP) paid to farmers dropped from $16.27 to $10.27, the largest month to month drop in history, bringing the lowest milk price in about 20 years to dairy farmers. In the beginning of April the full impact to farmers was $7.07 per hundredweight loss from December of 1998's BFP. This drop in price will have a severe negative impact on dairy producers from throughout the country. In New England, the Dairy Compact that currently

exists will help cushion the price collapse, with no cost to the federal government.

Farmers from throughout Vermont and New England have praised the Compact for helping maintain a stable price. ''Without the Northeast Dairy Compact, we would be in real trouble, the price drop would put a lot of people of out business.'' Simply it's a blessing—no, that's an understatement—it's a lifesaver''.

Mr. President, earlier today, I joined several of my Senate and House colleagues on the Capitol lawn to announce the introduction of this important legislation. I was so pleased to see the support and interest for this bill. I urge my colleagues to support this legislation. Give the states their right to join together to help protect their farmers and consumers by supporting this bill.

Mr. LEAHY. Mr. President, I am proud to continue my support for dairy farmers by introducing legislation which will make permanent the Northeast Interstate Dairy Compact and will authorize the Southern Interstate Dairy Compact.

The Northeast Interstate Dairy Compact has proven itself to be a successful and enduring partnership between dairy farmers and consumers throughout New England, and we want to make sure that this partnership continues.

The Northeast Dairy Compact has done exactly what it was established to do: stabilize fluctuating dairy prices and keep New England dairy farmers in business. The Compact provides the perfect safety net for dairy farmers. When milk prices are high, dairy farmers receive no benefits. When milk prices are low, the Compact takes effect, providing temporary benefits to dairy farmers. Yet the Compact costs taxpayers nothing. I don't need to tell you that a zero cost is very unusual among farm programs.

The Compact makes a big difference in the lives of dairy farmers in New England. Since the Compact went into effect one and a half years ago, the attrition rate for farms has declined throughout New England. In fact, the Vermont Department of Agriculture recently announced that since July of last year, there has actually been an increase in farms in Vermont. Just a few years ago, an increase in the number of farms would have been unfathomable. Solid dairy prices coupled with the safety net of the Dairy Compact have caused a rebound in the dairy industry in New England. We can achieve similar success in the South with a Southern Dairy Compact.

Many of our allies from the South have watched the Northeast Dairy Compact survive several legal and political challenges. They have watched milk sales continue without interruption. They have seen the participation in the WIC nutrition program rise because of help from the compact. And, most important, they see how the compact provides a modest but crucial safety net for struggling farmers. They, too, want the same for their farmers and their farmers deserve the opportunity to create their own regional compact.

Compacts are state-initiated, state-ratified and state-supported voluntary programs. And the need for regional compacts has never been greater. Low dairy prices coupled with a disastrous decision on federal milk marketing reform have made the compact more important to us now than ever before. Our legislation is a huge step toward ensuring that the safety net of the Compact will continue.

The fight to continue the Northeast Compact and create the Southern Compact, however, will be tough. Opponents of regional compacts—large and wealthy milk manufacturers, represented by groups such as the International Dairy Foods Association—will again throw millions of dollars into an all-out campaign to stop the compacts. And they will say anything to stop it.

Some of the most common anti-Compact rhetoric that I have heard suggests that the Compact creates a barrier for trade between states within the Compact and states outside of it. On the contrary, as reported by the Office of Management and Budget, the Northeast Dairy Compact has in fact prompted an increase in interstate dairy sales—particularly for milk coming into New England.

Another common anti-Compact argument concerns the impact of the Compact on consumers. However, New England retail milk prices under the Dairy Compact continue to be lower on average than the rest of the nation.

Processor groups who are opposed to dairy compacts simply want milk as cheap as they can get it to boost their enormous profits to record levels, regardless of the impact on farmers. But at some point if a lot of dairy farmers go out of business, IDFA and others might regret what they have caused.

Make no mistake—I do believe that dairy processors deserve to make their fair share of income. However, the farmers that produce the milk deserve to make a fair living. And a fair living is what dairy compacts provide for farmers.

Compacts have been consumer tested and farmer approved, and I look forward to making them a permanent part of our dairy industry.

Mr. SPECTER. Mr. President, I join today with my colleagues from Vermont, Senators JEFFORDS and LEAHY, in introducing legislation to reauthorize the Northeast Dairy Compact and to authorize a Southern Dairy Compact.

This legislation will create a much needed safety net for dairy farmers and will bring greater stability to the prices paid monthly to these farmers. The fill authorizes an Interstate Compact Commission to take such steps as necessary to assure consumers of an adequate local supply of fresh fluid milk and to assure the continued viability of dairy farming within the compact region. Specifically, states that choose to join the compact would enter into a voluntary agreement to create a minimum price for milk within the compact region. This price would take into account the regional differences in the costs of production for milk, thereby providing dairy farmers with a fair and equitable price for their product.

This bill would authorize Pennsylvania, New Jersey, Delaware, New York, Maryland, and Ohio to join the existing Northeast Interstate Dairy Compact. New York, New Jersey, and Maryland have already agreed to join and the Pennsylvania State Legislature is currently considering compact legislation. Further, it would authorize states in the southern part of the country to form a similar compact to provide price stability in this region.

In order to ensure that this legislation does not provide a negative impact to low-income nutrition programs that use a large quantity of dairy products each year, the bill ensures that the Women, Infants and Children (WIC) program and the School Lunch program will not be required to pay higher prices for milk as a result of any action taken by the Compact Commission.

Over the past several years, I have worked closely with my colleagues in the Senate in order to provide a more equitable price for our nation's milk producers. I supported amendments to the Farm Bills of 1981 and 1985, the Emergency Supplemental Appropriations Bill of 1991, the Budget Resolution of 1995 and the most recent Farm Bill in 1996 in an effort to insure that dairy farmers receive a fair price. As a member of the U.S. Senate Agriculture Appropriations Subcommittee, I have worked to ensure that dairy programs have received the maximum possible funding. In the past four years alone, I have worked to obtain almost $1.1 million for dairy research conducted at Penn State University. I have also been a leading supporter of the Dairy Export Incentive Program which facilitates the development of an international market for United States dairy products.

In recent years, however, dairy farmers have faced the dual problems of a record high cost of feed grain and a record drop in the Basic Formula Price paid for dairy products. Prices have fluctuated greatly over the past several years, setting new record highs and lows, thereby making any long-term planning impossible for farmers. Most recently, after reaching an all time high in December of 1998, the Basic Formula Price for milk dropped $5.72 per hundredweight to a price of $11.62 for March 1999. These economic conditions have placed our nation's dairy farmers in an all but impossible position. In order to hear the problems that dairy farmers are facing first hand, I asked Secretary of Agriculture Dan Glickman to accompany me to northeastern Pennsylvania on February 10, 1997. We met a crowd of approximately 750 angry farmers who

rightfully complained about the dramatic fluctuations in the price of milk.

Upon our return to Washington, in an attempt to bring greater stability to the dairy market, I introduced a Sense of the Senate Resolution on February 13, 1997 which passed by a vote of 83–15. The Resolution stated that the Secretary of Agriculture should consider acting immediately to replace the National Cheese Exchange as a factor to be considered in setting the Basic Formula Price for Dairy. I successfully attached an amendment to the 1997 Supplemental Appropriations Act which required the Department of Agriculture to replace the National Cheese Exchange, which had proven to be an unreliable source of price information, with a systematic national survey of cheese producers. As a result of this legislation, the Basic Formula Price increased from $12.46 in February of 1997 to $13.32 in February of 1998, which represented an increase of .86¢ per hundredweight over the course of the year.

Unfortunately, this action alone was not sufficient to bring long-term stability to the dairy market. Consequently, on April 17, 1997, I introduced legislation to require the Secretary of Agriculture to use the price of feed grains and other cash expenses in determining the basic formula price for milk. Further, on September 9, 1997, I joined with Senator FEINGOLD of Wisconsin in introducing S. Res. 119, which urged the Secretary of Agriculture to set a temporary minimum milk price that was equitable to all milk procedures nationwide and provided price relief to economically stressed milk producers.

When we began to see some momentum on the national level to reform the current milk pricing system, we were stopped by a Federal District Court, which in December of 1997 ordered the USDA to scrap the price differentials in the current milk pricing formula. This change would have had a major negative impact on the dairy farmers in Pennsylvania. In reaction to this decision, on December 4, 1997, I wrote to the federal judge, asking him to stay his decision striking down the current Class I dairy pricing formula pending appellate review. Sixty-five Congressman and twenty other Senators signed onto my letter and on December 5, 1997, the Judge granted the requested stay.

After this short victory, we received further bad news earlier this year, when Secretary Glickman released a new rule for setting the Basic Formula Price for dairy. While better than the proposed rule released last year, this new pricing formula will compound the already dire economic position of dairy farmers by removing an additional $196 million each year from the dairy industry nationwide.

Our nation's farmers are some of the hardest working and most dedicated individuals in America. In the past several years, I have visited numerous small dairy farms in Pennsylvania. I have seen these hard working men and women who have dedicated their lives to their farms. The recent drop in dairy prices is an issue that directly affects all of us. We have a duty to ensure that our nation's dairy farmers receive a fair price for their milk. If we do nothing, many small dairy farmers will be forced to sell their farms and leave the agriculture industry. This will not only impact the lives of these farmers, but will also have a significant negative impact on the rural economies that depend on the dairy industry for support. Further, the large-scale departure of small dairy farmers from agriculture could place our nation's steady supply of fresh fluid milk in jeopardy, thereby affecting every American.

We must recognize the importance of this problem and take prompt action. I urge my colleagues to cosponsor this legislation as we continue to work in Congress to bring greater stability to our nation's dairy industry.

Ms. COLLINS. Mr. President, I rise today as a cosponsor of a Joint Resolution to reauthorize the Northeast Interstate Dairy Compact. I am proud to give my support to this measure and do so without hesitation because the New England Dairy Compact is a proven success that is critical to the survival of dairy farmers in Maine and New England.

First approved by Congress in the 1996 Farm Bill, the New England Dairy Compact already has a proven track record of quantifiable benefits to both consumers and farmers. The Compact works by simply evening out the peaks and valleys in fluid milk prices, providing stability to the cost of milk and ensuring a supply of fresh, wholesome, local milk.

Over the past eight months, in particular, the Compact has proven its worth. As prices climbed and farmers were receiving a sustainable price for milk, the Compact turned off, when prices dropped, the Compact was again triggered. The Compact simply softened and slowed the blow to farmers of an abrupt and dramatic drop in the volatile fluid milk market.

It is important to reiterate that consumers also benefit from the Compact. Not only does the Compact stabilize prices, thus avoiding dramatic fluctuation in the retail cost of milk, it also guarantees that the consumer is assured the availability of a supply of fresh, local milk. We've known for a long time that dairy products are an important part of a healthy diet, but recent studies are proving that dairy products provide a host of new nutritional benefits. Just as we are learning of the tremendous health benefits of dairy foods, however, milk consumption, especially among young people, is dropping. It is a crucial, commonsense, first step to reverse this trend, for milk to be available and consistently affordable for young families.

Finally, the Compact, while providing clear benefits to dairy producers and consumers in the Northeast, has proven it does not harm farmers or taxpayers from outside the region. A 1998 report by the Office of Management and Budget showed that, during the first six-months of the Compact, it did not adversely impact farmers from outside the Compact region and added no federal costs to nutrition programs. In fact, this legislation specifically excepts the Women, Infants and Children (WIC) program from any costs related to the Compact.

I would like to thank the Senators from Vermont for their leadership on this critical issue. I look forward to working with them to see this important resolution passed.

Ms. SNOWE. Mr. President, I rise today as a cosponsor of the Senate Joint Resolution not only in support of the reauthorization and modifications for the very successful Northeast Interstate Dairy Compact, but also to grant the consent of Congress for the formation of the Southern Dairy Compact. This issue is really a state rights issue more than anything else, Mr. President. Quite simply, it addresses the needs of states in two different areas of the country, one in the North and one in the South, who wish to work together within their regions for two different and totally independent dairy compacts—in the Northeast to continue and modify their current Compact, and in the Southeast where 10 states wish to work closely together—to form a compact for determining fair prices for locally produced supplies of fresh milk.

As recently as last September, the Congress sanctioned another interstate compact, one that allows states to set regional prices for a commodity. In passing the Texas Compact for the storage of low-level radioactive waste, the states of Texas, Maine and Vermont were given permission to jointly manage and dispose of their low level waste—and are free to set any price they wish for the disposal of the waste. Congress has now approved ten such compacts involving 45 states.

All we are doing here is continuing another states rights activity—dairy compacting, an idea whose time has now come throughout different regions of the country. Currently, New Jersey and Maryland have passed Dairy Compact legislation seeking to join the Northeast Compact. In addition. Delaware, New York, Pennsylvania, and Ohio have expressed interest in joining. A state may join the Compact if they are contiguous to a participating state and Congress approves its entry, and we are asking for Congressional approval to extend this right also to New York, New Jersey, and Maryland.

The Northeast Dairy Compact currently encompasses all New England states and builds on the existing Federal milk marketing order program for Class I, or fluid, milk, and only applies to fluid milk sold on grocery store shelves. As you may know, a federal milk marketing order is a regulation that already sets a minimum milk price in different areas around the

country, of which the Northeast region is one, and is voluntarily initiated and approved by a majority of producers in each milk marketing order area, which places requirements on the first buyers or handlers of milk from dairy farmers.

Currently, the Northeast Interstate Dairy Compact allows the New England milk marketing order region to add a small increment to the Federal order price for that region, which is the floor price, so only the consumers and the processors in the New England region pay to support the minimum price to provide for a fairer return to the area's family dairy farms and to protect a way of life important to the people of the Northeast.

Mr. President, the Northeast Interstate Dairy Compact has provided the very safety net that we had hoped for when the Compact passed as part of the Freedom to Farm Act, the omnibus farm bill, of 1996. The Dairy Compact has helped farmers maintain a stable price for fluid milk during times of volatile swings in farm milk prices. In the spring and summer months of 1997 and 1998, for instance, when milk prices throughout most U.S. markets dropped at least 20 cents a gallon while consumer prices remained constant, the payments to Northeast Interstate Compact dairy farmers remained above the federal milk marketing prices for Class I fluid milk because of the Dairy Compact—and, I might add, at no expense to the federal government. The costs to operate the Dairy Compact are borne entirely by the farmers and processors of the Compact region.

Also, in considering what has happened to the number of dairy farms staying in business since the formation of the Dairy Compact, it is now known that throughout New England, there has been a decline in the loss of dairy farmers since the Compact started. This is a clear demonstration that, with the Northeast Interstate Dairy Compact, the dairy producers were provided a safety net—and when there has been a rise in the federal milk marketing prices for Class I fluid milk, the Compact has automatically shut itself off from the pricing process.

Mr. President, over ninety seven percent of the fluid milk market in New England is self contained within the area, and fluid milk markets are local due to the demand for freshness and because of high transportation costs, so any complaints raised in other areas about unfair competition are a bit disingenuous. In addition, the Compact requires the compact commission to take such action as necessary to ensure that a minimum price set by the commission for the region does not create an incentive for producers to generate additional supplies of milk. No other region should feel threatened by our Northeast Dairy Compact for fluid milk produced and sold mainly at home.

It should be noted that, in the farm bill conference in 1996, the U.S. Secretary of Agriculture was required to review the dairy compact legislation before implementation to determine if there was ''compelling public interest'' for the Compact within the Compact region. On August 9, 1996, and only after a public comment period, Secretary Glickman authorized the implementation of the Northeast Interstate Dairy Compact, finding that it was indeed in the compelling public interest to do so.

In addition, the Agriculture Appropriations Act for FY1998 directed the Office of Management and Budget (OMB) to study the economic effects of the Compact and especially its effects on the federal food and nutrition programs, such as the Womens, Infants and Children program. Key findings of the OMB study released in February of 1998, showed that, for the first six months of the Compact, New England retail milk prices were five cents per gallon lower than retail milk prices nationally. Also, the Compact did not add any costs to federal nutrition programs like the WIC program and the school breakfast and lunch programs. The GAO study also stated that the Compact economically benefitted the dairy producers, increasing their income from milk sales by about six percent, with no adverse affects to dairy farmers outside the Compact region.

Mr. President, the consumers in the Northeast Compact area, and now other areas around the country, are showing their willingness to pay more for their milk if the additional money is going directly to the dairy farmer. Environmental organizations have also supported dairy compacting as compacts help to preserve dwindling agricultural land and open spaces that help combat urban sprawl.

I ask for the support of my colleagues for the reauthorization of the Northeast Compact and the ratification of the Southern Compact.

Mr. SCHUMER. Mr. President, I am proud to join with 35 of my fellow Senators to introduce legislation to re-authorize the Northeast Dairy Compact and extend it to New York State. This legislation is vital to the Northeast Region and it will strengthen the economy of upstate New York.

The Compact may add a couple of cents to the consumer price of milk during months when the retail price of milk falls below a federally set minimum price, but it is a small price to pay to preserve the family dairy farm in rural New York.

The purpose of the Compact is to stabilize dairy prices and therefore enable small dairy farmers to budget their expenditures and plan for the future. The Northeastern Dairy Compact works by ensuring a minimum retail price for milk producers. The price paid to farmers for milk has fallen from $2.77 in 1960 to $1.36 in 1997. These low milk prices have forced many small farmers into insolvency over the years and have put the entire concept of family farms in peril.

The Northeast Dairy Compact will preserve the American tradition of local family farms in every region. I believe that this is a tiny price to pay to keep local farmers in business, and keep New York State's rural identity intact.

ADDITIONAL COSPONSORS

S. 38

At the request of Mr. CAMPBELL, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Georgia (Mr. COVERDELL) were added as cosponsors of S. 38, a bill to amend the Internal Revenue Code of 1986 to phase out the estate and gift taxes over a 10-year period.

S. 51

At the request of Mr. BIDEN, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 51, a bill to reauthorize the Federal programs to prevent violence against women, and for other purposes.

S. 98

At the request of Mr. MCCAIN, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 98, a bill to authorize appropriations for the Surface Transportation Board for fiscal years 1999, 2000, 2001, and 2002, and for other purposes.

S. 296

At the request of Mr. FRIST, the name of the Senator from Georgia (Mr. COVERDELL) was added as a cosponsor of S. 296, a bill to provide for continuation of the Federal research investment in a fiscally sustainable way, and for other purposes.

S. 333

At the request of Mr. LEAHY, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 333, a bill to amend the Federal Agriculture Improvement and Reform Act of 1996 to improve the farmland protection program.

S. 395

At the request of Mr. ROCKEFELLER, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 395, a bill to ensure that the volume of steel imports does not exceed the average monthly volume of such imports during the 36-month period preceding July 1997.

S. 434

At the request of Mr. BREAUX, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

S. 459

At the request of Mr. BREAUX, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 459, a bill to amend the Internal Revenue Code of 1986 to increase the State ceiling on private activity bonds.

S. 472

At the request of Mr. GRASSLEY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 472, a bill to amend title XVIII of the Social Security Act to provide certain medicare beneficiaries with an exemption to the financial limitations imposed on physical, speech-language pathology, and occupational therapy services under part B of the medicare program, and for other purposes.

S. 487

At the request of Mr. GRAMS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 487, a bill to amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

S. 540

At the request of Mr. JOHNSON, the names of the Senator from Utah (Mr. HATCH) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 540, a bill to amend the Internal Revenue Code of 1986 to provide that housing assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 be treated for purposes of the low-income housing credit in the same manner as comparable assistance.

S. 704

At the request of Mr. KYL, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 704, a bill to amend title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs.

S. 746

At the request of Mr. THOMPSON, the name of the Senator from Georgia (Mr. COVERDELL) was added as a cosponsor of S. 746, a bill to provide for analysis of major rules, to promote the public's right to know the costs and benefits of major rules, and to increase the accountability of quality of Government.

S. 763

At the request of Mr. THURMOND, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 763, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, and for other purposes.

S. 791

At the request of Mr. KERRY, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 791, a bill to amend the Small Business Act with respect to the women's business center program.

S. 795

At the request of Mr. MCCAIN, the name of the Senator from Michigan (Mr. ABRAHAM) was added as a cosponsor of S. 795, a bill to amend the Fastener Quality Act to strengthen the protection against the sale of mismarked, misrepresented, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes.

At the request of Mr. ROBB, his name was added as a cosponsor of S. 795, supra.

S. 823

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 823, a bill to establish a program to assure the safety of processed produce intended for human consumption, and for other purposes.

S. 836

At the request of Mr. SPECTER, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 836, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group health plans and health insurance issuers provide women with adequate access to providers of obstetric and gynecological services.

S. 873

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 873, a bill to close the United States Army School of the Americas.

S. 876

At the request of Mr. HOLLINGS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 876, a bill to amend the Communications Act of 1934 to require that the broadcast of violent video programming be limited to hours when children are not reasonably likely to comprise a substantial portion of the audience.

SENATE JOINT RESOLUTION 21

At the request of Ms. SNOWE, the names of the Senator from Michigan (Mr. ABRAHAM) and the Senator from Nevada (Mr. REID) were added as cosponsors of Senate Joint Resolution 21, a joint resolution to designate September 29, 1999, as ''Veterans of Foreign Wars of the United States Day.''

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. DODD, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Virginia (Mr. ROBB) were added as cosponsors of Senate Concurrent Resolution 22, a concurrent resolution expressing the sense of the Congress with respect to promoting coverage of individuals under long-term care insurance.

SENATE CONCURRENT RESOLUTION 30—RECOGNIZING THE SACRIFICE AND DEDICATION OF MEMBERS OF AMERICA'S NON-GOVERNMENTAL ORGANIZATIONS AND PRIVATE VOLUNTEER ORGANIZATIONS THROUGHOUT THEIR HISTORY AND SPECIFICALLY IN ANSWER TO THEIR COURAGEOUS RESPONSE TO RECENT DISASTERS IN CENTRAL AMERICA AND KOSOVO

Mr. SMITH of Oregon (for himself, Mr. WELLSTONE, Mr. THOMAS, Mr. SARBANES, and Mr. BROWNBACK) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations.

S. CON. RES. 30

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress—

(1) recognizes and commends the sacrifice, dedication, and commitment of those serving with, and those who have served with, American non-governmental organizations (NGO's) and private volunteer organizations (PVO's) that provide humanitarian relief to millions of the world's poor and displaced;

(2) urges all Americans to join in commemorating and honoring those serving in, and those who have served in, America's NGO and PVO community for their sacrifice, dedication and commitment; and

(3) calls upon the people of the United States to appreciate and reflect upon the commitment and dedication of relief workers, that they often serve in harm's way with threats to their own health and safety, and their organizations who have responded to recent tragedies in Central America and Kosovo with great care, skill and speed, and to take appropriate steps to recognize and encourage awareness of the contributions that these relief workers and their organizations have made in helping ease human suffering.

Mr. SMITH of Oregon. Mr. President, I rise today to submit S. Con. Res. 30, in order to recognize the sacrifice and dedication of members of America's non-governmental organizations and private volunteer organizations throughout their history and specifically in answer to their courageous response to recent disasters in Central America and Kosovo. I am pleased to be joined by Senators WELLSTONE, THOMAS, SARBANES and BROWNBACK as original cosponsors.

While much time on the Senate floor has been devoted to America's response to the natural disaster wrought by Hurricane Mitch in Central America and the human disaster wrought by the horrifying aggression in the Balkans, little has been devoted to those organizations conducting humanitarian relief efforts in those areas.

I am proud to note that several Oregon humanitarian organizations have been on the front lines in both Central America and the Balkans—particularly in Kosovo. Mercy Corps International based in Portland, Oregon, is one of the largest humanitarian agencies helping Kosovar Albanian refugees and first began work in that area in 1993. Over the past six years, the agency has provided more than $30 million in relief and development aid to 250,000 people in the area.

Whether it be providing food, blankets, clothing, hygiene and cooking utensils to the first onslaught of refugees, or managing refugee camps in Senekos, Mercy Corps International has made humanitarian aid a priority in a desperate situation.

In Central America, Mercy Corps' Hurricane Mitch relief efforts included evacuating thousands of children and families, delivering housing materials for tents and temporary shelter, and providing more than 200,000 pounds of

food to the hungry and 60 tons of clothing and blankets to the homeless. I am truly proud of Oregon's Mercy Corps International.

Mercy Corps is not alone as a humanitarian presence in Oregon. Portland's Northwest Medical Team International has provided disaster response and emergency relief to refugees of wars and to victims of hurricanes, floods and famines. Each year, Northwest Medical Teams International recruits, equips and dispatches volunteer surgical, medical and redevelopment teams to areas of the world in need of this type of humanitarian aid and assistance.

Northwest Medical Teams International ships more than $50 million in humanitarian assistance to over 50 countries each year. Currently, Northwest Medical Teams International is helping to manage the flow of humanitarian aid and to assist refugees in the Balkans and is collecting donations for humanitarian aid in the region through its Kosovo Relief Fund.

These two Oregon humanitarian organizations embody what is good in America—the noble effort to reach out and help a neighbor in need, regardless of geography, cultural or linguistic differences. This outreach from non-governmental organizations deserves far more than this resolution, it deserves the sincere acknowledgment and thanks from each citizen of this country.

SENATE RESOLUTION 86—SUPPORTING THE NATIONAL RAILROAD HALL OF FAME, INC. OF GALESBURG, ILLINOIS

Mr. DURBAN (for himself, and Mr. FITZGERALD) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 86

Whereas Galesburg, Illinois, has a profound link to the history of railroading beginning in 1849 when the Peoria and Oquawka Railroad organized;

Whereas the citizens of Galesburg supported a railroad to Chicago which was chartered as the Central Military Tract Railroad in 1851;

Whereas Galesburg and Chicago were joined by rail in 1854; as a result of this union, the Northern Cross Railroad joined the Central Military Tract Railroad at Galesburg;

Whereas in 1886 Galesburg secured the Atchison, Topeka, and Santa Fe Railway and became one of the few places in the world to possess 2 mega-powers of the railroad industry;

Whereas the National Railroad Hall of Fame, Inc. has been established in Galesburg and has reserved the name ''National Railroad Hall of Fame'' with the Secretary of the State of Illinois;

Whereas the National Railroad Hall of Fame, Inc. is organized and incorporated as a not-for-profit organization under the laws of Illinois;

Whereas the National Railroad Hall of Fame, Inc. filed a service mark registration with the Commissioner of Patents and Trademarks of the United States, covering the name and logo of the organization;

Whereas the National Railroad Hall of Fame, Inc. has applied for a charter under the State of Illinois;

Whereas the objectives of the National Railroad Hall of Fame, Inc. include—

(1) perpetuating the memory of leaders and innovators in the railroad industry;

(2) fostering, promoting, and encouraging a better understanding of the origins and growth of railroads, especially in the United States; and

(3) establishing and maintaining a library and collection of documents, reports, and other items of value to contribute to the education of future railroad students; and

Whereas the National Railroad Hall of Fame, Inc. has resolved to erect a monument known as the National Railroad Hall of Fame to honor men and women who actively participated in the founding and development of the railroad industry in the United States: Now, therefore, be it

Resolved, That the Senate supports the National Railroad Hall of Fame, Inc., of Galesburg, Illinois, in its endeavor to erect a monument known as the National Railroad Hall of Fame.

Mr. DURBIN. Mr. President, I rise today on behalf of myself and my colleague, Senator PETER FITZGERALD, to submit a resolution in support of the establishment of the National Railroad Hall of Fame in Galesburg, Illinois.

The state of Illinois has played a pioneering role in the growth of the railroad industry. In 1849, the Peoria and Oquawka Railroad was organized. The city of Galesburg joined Chicago by rail six years later in 1854. In addition, the Carl Sandburg College of Galesburg was one of the first colleges to establish an educational curriculum in railroading.

This privately-funded museum will help promote and encourage a better understanding of the origins and growth of the railroad industry. It will also highlight the efforts of men and women whose hard work and resourcefulness helped build one of the nation's best modes of transportation.

Already, the Illinois General Assembly, with the unqualified support of our state's new governor, George Ryan, has passed a resolution similar to the one I am introducing today. This resolution is also supported by major railways, railroad organizations, and rail employee organizations. Nineteen members of the House of Representatives have cosponsored an identical measure in the House. Approval by the Senate will be one more step toward establishing this museum.

Mr. President, I urge the Senate to pass this resolution in a timely fashion so that we can properly honor the railroad industry and its many pioneers.

SENATE RESOLUTION 87—TO COMMEMORATE THE 60TH ANNIVERSARY OF THE INTERNATIONAL VISITORS PROGRAM

By Mr. DURBIN (for himself, Mr. BOND, and Mr. MOYNIHAN) submitted the following resolution; which was referred to the committee on foreign relations:

S. RES. 87

Whereas the year 2000 marks the 60th Anniversary of the International Visitors Program.

Whereas the International Visitors Program is the public diplomacy initiative of the United States Department of State that brings distinguished foreign leaders to the United States for short-term professional programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961.

Whereas the purposes of the International Visitors Program include—

(1) increasing mutual understanding and strengthening bilateral relations between the United States and other nations;

(2) developing the web of human connections essential for successful economic and commercial relations, security arrangements, and diplomatic agreements with other nations; and

(3) building cooperation among nations to solve global problems and to achieve a more peaceful world;

Whereas during 6 decades more than 122,000 emerging leaders and specialists from around the world have experienced American democratic institutions, cultural diversity, and core values firsthand as participants in the International Visitors Program;

Whereas thousands of participants in the International Visitors Program rise to influential leadership positions in their countries each year;

Whereas among the International Visitors Program alumni are 185 current and former Chiefs-of-State or Heads of Government, and more than 600 alumni have served as cabinet level ministers;

Whereas prominent alumni of the International Visitors Program include Margaret Thatcher, Anwar Sadat, F.W. de Klerk, Indira Gandhi, and Tony Blair;

Whereas a new configuration of domestic forces has emerged which is shaping global policy and empowering private citizens to an unprecedented degree;

Whereas each year more than 80,000 volunteers affiliated with 97 community-based member organizations and 7 program agency members of the National Council for International Visitors across the United States are actively serving as ''citizen diplomats'' organizing programs and welcoming International Visitors Program participants into their homes, schools, and workplaces;

Whereas all of the funds appropriated for the International Visitors Program are spent in the United States, and such spending leverages private contributions at a ratio of 1 to 12;

Whereas the International Visitors Program corrects distorted images of the United States, effectively countering misperceptions, underscoring common human aspirations, advancing United States democratic values, and building a foundation for national and economic security;

Whereas the International Visitors Program provides valuable educational opportunities for United States citizens through special ''Back to School With International Visitor'' programs and events that increase the knowledge of Americans about foreign societies and cultures, and bring attention to international issues crucial to interests of the United States;

Whereas the International Visitors Program offers emerging foreign leaders a unique view of America, highlighting its vibrant private sector, including both businesses and non-profit organizations, through farm stays, home hospitality, and meetings with their professional counterparts; and

Whereas the International Visitors Program introduces foreign leaders, specialists,

and scholars to the American tradition of volunteerism through exposure to the daily work of thousands of ''citizen diplomats'' who share the best of America with those foreign leaders, specialists, and scholars: Now, therefore, be it

Resolved, That the Senate—

(1) commemorates the 60th Anniversary of the International Visitors Program and the remarkable public-private sector partnership that sustains it; and

(2) commends the achievements of the thousands of volunteers who are part of the National Council for International Visitors ''citizen diplomats'' who for 6 decades have daily worked to share the best of America with foreign leaders, specialists, and scholars.

Mr. DURBIN. Mr. President, today, Senator BOND and I are joining together in submitting a resolution commemorating the 60th anniversary of the International Visitors Program next year. The International Visitors Program is the State Department's public diplomacy initiative that brings distinguished foreign leaders to the United States for short-term professional programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961.

The International Visitor Program has been wonderfully successful in meeting its public diplomacy mission. Thousands of rising leaders from other countries in government, business, labor, academia, and the arts have come to this country and met with their counterparts and with everyday Americans from all walks of life. They have learned about our democratic values and institutions, our entrepreneurial skills, and our culture.

Future foreign leaders have learned much about this country that has helped them shape their own, or that simply helped them understand this country's point of view. I wonder how many people in this country know the story of F.W. de Klerk's visit to the United States under the International Visitor Program, and how influential that visit was in his realization that apartheid in South Africa had to end. Perhaps more well known, at least in my part of the country, were the visits of Polish Solidarity Labor leaders who played a pivotal role in transforming Poland to the democratic country it is today. I am sure there are many more stories—most not so dramatic—but with tangible results all over the world. We will never know how many problems have been prevented because rising leaders had a better understanding of democracy, of our policies, and our culture.

Many up-and-coming political leaders come to visit Members of Congress and Senators while they're here. These meetings take a few minutes of my time, and I learn as much from my visitor as I hope he or she does from me. Volunteers always tell me that they, too, have learned much from their visitors, and we should not underestimate the value of this program as a two-way street that helps educate the volunteers, their children, and other people in their communities.

But I want to commend and thank those thousands of Americans who have opened their homes, their businesses, and their hearts to international visitors with such a tremendous impact on furthering international understanding. I deeply appreciate it that international visitors do not just come to Washington, but that the program takes them into our country's heartland so they can get a real education about our country, outside the Beltway, as they say. That means that volunteers from all over the country are critical for the success of the program.

I know in my own State of Illinois, there are six such volunteer groups in Chicago, Freeport, Geneseo, Paris, Sterling, and Springfield. I have heard first-hand the deep commitment many Illinoisans have to this program, because I know many enthusiastic volunteers. Because of the commitment of Illinois volunteers, our State is among the most active in the Nation in hosting international visitors, along with the much larger States of California and Texas.

But when we commemorate this anniversary I want to be sure that we're celebrating the contribution and commitment of the thousands of volunteers that make the program meaningful and successful.

AMENDMENTS SUBMITTED

Y2K ACT

McCAIN (AND OTHERS) AMENDMENT NO. 267

Mr. McCAIN (for himself, Mr. WYDEN, Mr. GORTON, Mr. ABRAHAM, Mr. LOTT, Mr. FRIST, and Mr. BURNS) proposed an amendment to the bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of that year's date; as follows:

Strike all after the word ''section'' and insert the following:

1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:'

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to

avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which

paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose

regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MATERIAL DEFECT REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(ii) the primary defendants are citizens of that State; and

(iii) the claims asserted will be governed primarily by the law of that State, or

(B) the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(d) EFFECT ON RULES OF CIVIL PROCEDURES.—Except as otherwise provided in this section, nothing in this section supersedes any rule of Federal or State civil procedure applicable to class actions.

LOTT AMENDMENT NO. 268

Mr. LOTT proposed an amendment to amendment No. 267 proposed by him to the bill, S. 96, supra; as follows:

Strike all after the word ''section'' and insert the following:

1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:'

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any

microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendent knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendent.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share

in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as

to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective two days after the date of enactment.

LOTT AMENDMENT NO. 269

Mr. LOTT proposed an amendment to amendment No. 268 proposed by him to the bill, S. 96, supra; as follows:

Strike all after the word ''section'' and insert the following:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K

failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K

action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the

parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective six days after the date of enactment.

LOTT AMENDMENT NO. 270

Mr. LOTT proposed an amendment to amendment No. 267 proposed by him to the bill, S. 96, supra; as follows:

In the language proposed to be striken, strike all after the word ''Section'' and insert the following:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential

to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective three days after the date of enactment.

LOTT AMENDMENT NO. 271

Mr. LOTT proposed an amendment to amendment No. 270 proposed by him to the bill, S. 96, supra; as follows:

In the language proposed to be striken, strike all after the word ''1'' and add the following:

SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the

plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a

legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of

the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective one day after the date of enactment.

INHOFE AMENDMENT NO. 272

(Ordered to lie on the table.)

Mr. INHOFE submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

At the appropriate place, insert the following:

SEC. ___. Y2K REGULATORY AMNESTY ACT OF 1999.

(a) SHORT TITLE.—This section may be cited as the ''Y2K Regulatory Amnesty Act of 1999''.

(b) DEFINITIONS.—In this section:

(1) DEFENDANT.—

(A) IN GENERAL.—The term ''defendant'' includes a State or local government.

(B) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(C) LOCAL GOVERNMENT.—The term ''local government'' means—

(i) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(ii) any combination of political subdivisions described in clause (i) recognized by the Secretary of Housing and Urban Development.

(2) Y2K FAILURE.—The term ''Y2K failure'' means any failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions, however constructed, in processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving date-related data, including—

(A) the failure to accurately administer or account for transitions or comparisons from, into, and between the 20th and 21st centuries, and between 1999 and 2000; or

(B) the failure to recognize or accurately process any specific date, and the failure accurately to account for the status of the year 2000 as a leap year.

(3) Y2K UPSET.—The term ''Y2K upset''—

(A) means an exceptional incident involving temporary noncompliance with applicable federally enforceable requirements because of factors related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(B) does not include—

(i) noncompliance with applicable federally enforceable requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(ii) noncompliance with applicable federally enforceable requirements that provide for the safety and soundness of the banking or monetary system, including the protection of depositors;

(iii) noncompliance to the extent caused by operational error or negligence;

(iv) lack of reasonable preventative maintenance; or

(v) lack of preparedness for Y2K.

(c) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET.—A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(1) the defendant previously made a good faith effort to effectively remediate Y2K problems;

(2) a Y2K upset occurred as a result of a Y2K system failure or other Y2K emergency;

(3) noncompliance with the applicable federally enforceable requirement was unavoidable in the face of a Y2K emergency or was intended to prevent the disruption of critical functions or services that could result in the harm of life or property;

(4) upon identification of noncompliance the defendant invoking the defense began immediate actions to remediate any violation of federally enforceable requirements; and

(5) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that it became aware of the upset.

(d) GRANT OF A Y2K UPSET DEFENSE.—Subject to the other provisions of this section, the Y2K upset defense shall be a complete defense to any action brought as a result of noncompliance with federally enforceable requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in subsection (c) are met.

(e) LENGTH OF Y2K UPSET.—The maximum allowable length of the Y2K upset shall be not more than 30 days beginning on the date of the upset unless granted specific relief by the appropriate regulatory authority.

(f) VIOLATION OF A Y2K UPSET.—Fraudulent use of the Y2K upset defense provided for in this section shall be subject to penalties provided in section 1001 of title 18, United States Code.

(g) EXPIRATION OF DEFENSE.—The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet during the session of the Senate on Tuesday, May 4, 1999 at 9:30 a.m. to conduct an oversight hearing on Census 2000, Implementation in Indian Country. The hearing will be held in room 485, Russell Senate Building.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet during the session of the Senate on Wednesday, May 5, 1999 at 9:30 a.m. to conduct an oversight hearing on Tribal Priority Allocations. The hearing will be held in room 485, Russell Senate Building.

SUBCOMMITTEE ON ENERGY, RESEARCH, DEVELOPMENT, PRODUCTION AND RESOLUTION

Mr. NICKLES. Mr. President, I would like to announce for the information of the Senate and the public that a joint hearing has been scheduled before the Subcommittee on Energy Research, Development, Production and Regulation of the Senate Energy and Natural Resources Committee and the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform.

The hearing will take place on Thursday, May 20, 1999 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony and conduct oversight on the Administration's FY2000 budget request for climate change programs and compliance with various statutory provisions in FY1999 appropriations acts requiring detailed accounting of climate change spending and performance measures for each requested increase in funding.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Energy Research, Development, Production and Regulation, Committee on Energy and Natural Resources, United States Senate, 364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please call Colleen Deegan, Counsel, or Julia McCaul, Staff Assistant at (202) 224–8115 in the Senate. In the House, please contact Marlo Lewis, Staff Director, or Barbara Kahlow, Professional Staff Member at (202) 225–4407.

SUBCOMMITTEE ON ENERGY RESEARCH, DEVELOPMENT, PRODUCTION AND REGULATION

Mr. NICKLES. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy Research, Development, Production and Regulation.

The hearing will take place on Thursday, May 20, 1999 at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 348, to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Energy Research, Development, Production and Regulation, Committee on Energy and Natural Resources, United States Senate, 364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please call Colleen Deegan, Counsel, or Julia McCaul, Staff Assistant at (202) 224–8115.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, April 27, 1999, at 9:30 a.m. in open session, to consider the nominations of Mr. Brian E. Sheridan, to be Assistant Secretary of Defense for Special Operations and Low Intensity Conflict; and Dr. Lawrence J. Delaney, to be Assistant Secretary of the Air Force for Acquisition.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet on Tuesday, April 27, 1999, at 9:30 a.m. on OMC/Truck Safety.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during session of the Senate on Tuesday, April 27, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 25, the Conservation and Reinvestment Act of 1999; S. 446, the Resources 2000 Act; S. 532, the Public Land and Recreation Investment Act of 1999; S. 819, the National Park Preservation Act; and the Administration's Lands Legacy proposal.

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

COMMITTEE ON FINANCE

Mr. MCCAIN. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Tuesday, April 27, 1999 beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 27, 1999 at 2:30 p.m. to hold a hearing.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''Medical Records Privacy'' during the session of the Senate on Tuesday, April 27, 1999, at 9:30 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Tuesday, April 27, 1999, at 10 a.m., in room 226 of the Senate Dirksen Office Building.

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

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services be authorized to meet at 2:30 p.m. on Tuesday, April 27, 1999, in open session, to receive testimony on the threat of international narcotics-trafficking and the role of the Department of Defense in the Nation's war on drugs.

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

SUBCOMMITTEE ON IMMIGRATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, April 27, 1999 at 2:15 p.m. to hold a hearing in room 226, Senate Dirksen Office Building, on: ''The Need for Additional Border Patrol at the Northern and Southern Borders.''

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

ADDITIONAL STATEMENTS

THE BUILDING OF SISSETON FIRE HALL

● Mr. JOHNSON. Mr. President, I want to take this opportunity to recognize an extraordinary group of citizens who came together to address their community needs in building a new fire hall. The old facility, which has served so faithfully for so many decades, had reached the limits of its productivity in February 1997, when the record snowfall created great stress on the roof. The need for action was immediate, and the Sisseton Community responded quickly. Members of the Sisseton Fire Department and Roberts County Rescue mounted a financial campaign to raise the additional money needed above what national, state, tribal, and local governments were able to provide. Fire fighters and rescue volunteers donated extra time by holding fundraising activities in addition to their fire and rescue responsibilities. Local businesses and individuals responded generously. The new fire hall is now a reality. It has become a true emergency operating center that the entire Sisseton community can look toward with pride.

I commend the entire community for this exemplary effort, and hold it up as a shining example of the sense of community which still exists in places like Sisseton, SD.●

MAESTRO COLMAN PEARCE

● Mr. COCHRAN. Mr. President, when the Mississippi Symphony Orchestra concludes its 54th season with its traditional ''Pops Concert'' in Jackson on May 7, Maestro Colman Pearce will retire after twelve years as music director and principal conductor. During his tenure, Pearce has brought life and vigor to the mission of the Mississippi Symphony Orchestra. He has projected

enormous energy into the task of developing audiences from preschoolers to senior citizens, and all ages in between.

Maestro Pearce is a gifted conductor of international renown with a brilliant knowledge of musical styles and repertoire. He is an equally gifted pianist and composer. His keen Irish wit, personal charm, enthusiasm, and intellect, combined with a willingness to spread the joy of music whenever and wherever, and special gifts.

When Colman came to Mississippi in 1987, he found a group of superb players, an enthusiastic Board of Governors, and a loyal army of volunteers known as the Symphony League. He was aware of a financial deficit, of unrest among the musicians, and of declining audience support. Quickly garnering the support of the board, league and the musicians, Maestro Pearce forged ahead. After a few successful seasons, he led the orchestra into statewide status and it became the Mississippi Symphony.

Colman's musicianship, intellect, vision, and savoir faire have made him an appealing stage presence in venues beyond the formal concert halls. He has taken the MSO everywhere audiences can be found—ball parks, schools, city streets, shopping malls, theaters, lakesides, and beaches. Thousands of Mississippians have come to recognize Colman and the musicians by name and by instrument. They have identified with the Symphony as a Mississippi ''product'' of which they are proud. The Symphony has become an accessible commodity across the State.

Upgrading the quality of musical offerings, especially in formal concert halls, has been his major focus. However, he has expanded the goals and outreach to include programs at all levels:

Chamber Orchestra.—Twenty-eight core musicians present concerts within the regular season at Millsaps College Recital Hall and the Briarwood Presbyterian Church sanctuary. These concerts are viewed as ''learning experiences'' since the programs are always sprinkled with biographical data and interesting anecdotes about the composers whose works are being performed. Programming is innovative, often including contemporary music. Colman plays twentieth century music with flair, challenging the understanding and enjoyment of both the musicians and their audiences.

Children's Concerts.—More than 4,000 children in grades three, four, and five literally pack Jackson's city auditorium annually when Colman directs the special concerts. He assists teachers in area schools in the preparation of study materials to acquaint students with the program they will hear.

Kinderconcerts.—Programs are planned according to the attention span of pre-school children with emphasis on short classical and new music. Colman has featured the work of Mississippi composer Luigi Zananelli (''The Steadfast Tin Soldier''), and an adaptation of the Dr. Seuss classic, ''Green Eggs and Ham'', to the delight of the young audiences.

Academic and Performing Arts Complex.—This branch of the Jackson Public School system has been supported by Colman through lectures, by allowing students to attend orchestra rehearsals, and through invitations to music and dance students to actually perform with the Symphony.

Young Artist Competition.—In addition to showcasing young talent whenever possible, Colman has judged competitions, offering insightful feedback to contestants. Winners have often been invited to perform with the Chamber Orchestra.

Family Fun Concerts.—In addition to enjoyable and easy listening music performed by the Symphony, the concerts have featured other attractions, such as mimes, dancers, and storytellers, in a casual setting. Colman's final Family Fun Concert featured a performance of Walter Anderson's ''Robinson the Cat,'' a work composed by Maestro Pearce in collaboration with mezzo-soprano Lester Senter Wilson.

Pops Concerts.—Old Trace Park at the Reservoir has been the scene of the Symphony Pops for many years, with residents of a five county area gathering on the shore (and in the water) for an early summer evening concert of semi-classical and popular music.

The Messiah.—Under the direction of Maestro Pearce, the Mississippi Symphony Orchestra has presented the ''definitive'' performance of Handel's Christmas classic in Thalia Mara Hall each December. Soloists are chosen from throughout the state, and choirs from the state's colleges and universities have been showcased. In recent years, the famed Mississippi Chorus has been featured.

A native of Ireland with an honors degree from the National University of Ireland, Dublin, Colman Pearce studied conducting with Franco Ferrara in Hilversum and Hans Swarowsky in Vienna. In 1965, he began a long association with the Irish National Broadcasting Organization, serving as Co-principal, Principal, and now Conductor Laureate of the Irish Radio and Television Symphony Orchestra (now called the National Symphony Orchestra.) In the years prior to accepting his position with the Mississippi Symphony Orchestra and since, he has maintained a busy schedule as a guest conductor in other parts of the United States, and in Brazil, Canada, Argentina, Germany, France, Belgium, Sweden, Spain, Iceland, Israel, Hungary, and in the United Kingdom.

Maestro Pearce will now concentrate upon his activities as a pianist, arranger and composer, his recordings of contemporary works, and upon guest conducting from his home in Dublin.

Colman leaves the Mississippi Symphony Orchestra financially sound, having established record setting season ticket sales and significantly broadened the orchestra's constituency.

When Colman came to Mississippi twelve years ago, he immediately accepted and embraced the best in Mississippians and set about adding value to the state through his development of the orchestra. With his Irish charm, good humor, talent, artistic commitment, and resourceful programming, he has also won the hearts of many Mississippians who now bid him ''Goodbye, and Godspeed.''●

TRIBUTE TO MR. GEORGE RING

● Mr. TORRICELLI. Mr. President, I rise today to recognize George Ring who is being honored by Catholic Community Services, the largest non-profit social service agency in the state of New Jersey. Headquartered in Newark, CCS serves more than 200,000 poor and disadvantaged citizens throughout northern New Jersey. George has been an ardent supporter of this organization and is most deserving of this honor.

George has served New Jersey and the nation in many capacities. After graduating from Seton Hall University, George joined the United States Army and served from 1966–1969 as a Platoon Leader, Company Commander, and General's Aide. He received multiple awards and citations for his service, including the Distinguished Service Cross, the Silver Star, Oak Leaf Cluster, and a Presidential Unit Citation.

After working several years in the banking industry, George co-founded Cross Country Cable, Ltd. This firm was involved in the ownership, construction and operation of cable television and microwave systems inside the United States and around the world. In 1995, he sold this company and formed a new company, Wireless Cable International Inc. George is the president and CEO of this new company.

George has been active at his alma mater and in his community. At Seton Hall University, he is a member of the Executive and Finance Committees of the Board of Regents and is a member of the Board of Trustees. He is also a recipient of the ''Distinguished Alumnus Award'' from Seton Hall University and Union High School.

In addition, George has served on the boards of several visual arts programs and symphony orchestras as well as New Jersey Public Broadcasting. He is a past President of the Watchung-Warren Rotary Club and has been active with local youth sports leagues. He has given his financial support to numerous schools and charities. Catholic Community Services has been one of the grateful recipients of George's generosity. He has spent countless hours fundraising on behalf of CCS. For his acts of philanthropy and his visible role in the community, I am proud to recognize George Ring as he is honored by CCS.●

HONORING PROFESSOR M. CHERIF BASSIOUNI

● Mr. DURBIN. Mr. President, as reports come in detailing the events in Kosovo, the ''ethnic cleansing'' and terror that has forced over a million people from their homes, sadness fills our hearts. Less than two weeks ago I traveled to the Balkans and visited a refugee camp, filled with thousands of people, that had been an empty field just weeks before. We are often so immersed in the accounts of those survivors who have lived through the suffering that we forget about the men and women who have dedicated their lives to ease this pain, and to bringing those who abuse human rights to justice.

Today, I rise to recognize M. Cherif Bassiouni of Chicago, Illinois for his selflessness and dedication to bringing those who commit crimes against humanity to justice. Professor Bassiouni, facing great personal risk and many obstacles, has visited many war-torn sections of Bosnia and Croatia, documenting the atrocities and crimes that have been committed there. His 3,500 pages of analysis, backed by 300 hours of videotape and 65,000 documents served as the foundation for the International Criminal Tribunal for the former Yugoslavia. Professor Bassiouni has also played a key role in the UN Convention against Torture.

Professor Bassiouni has often been a powerful voice insisting that violators of human rights be brought to justice. Professor Bassiouni is a Professor of Law and President of the International Human Rights Law Institute at DePaul University in Chicago. The global impact of his work, dating back to 1964, has led to the creation of the International Criminal Court. A citizen of both the United States and Egypt, Professor Bassiouni is known and respected around the world for his accomplishments. He is the President of the Association Internationale de Troit Penal and President of the International Institute of Higher Studies in Criminal Science.

Professor Bassiouni has accomplished a great deal in his effort to see that human rights are respected. In 1977, Bassiouni co-chaired the committee that drafted the U.N. Convention Against Torture. He was appointed the independent expert by the U.N. Commission on Human Rights to draft the statute establishing international jurisdiction over the implementation of the Apartheid Convention of 1981. Bassiouni was the Chairman of the U.N. Commission investigating international humanitarian law violations in the former Yugoslavia, work that led to the Ad-Hoc Tribunal on the Former Yugoslavia in the Hague. His many accomplishments led to his election in 1995 as Vice-Chairman of the U.N. General Assembly Committee for the establishment of the International Criminal Tribunal for the former Yugoslavia.

For his work leading to the establishment of the International Criminal Court, and for his dedication to protecting human rights, Professor Bassiouni has been nominated for the 1999 Nobel Peace Prize. The nominating organization, the International and Scientific Professional Advisory Council of the UN has said that Professor Bassiouni was the ''single most driving force behind the global decision to establish the International Criminal Court.'' This court prosecutes and brings to justice internationally, those who have committed crimes against humanity. His accomplishments in this field have caused Professor Bassiouni to be known as the ''father of the International Criminal Court.''

Professor Bassiouni has been a great asset to the people of all nations. It was his dedication and perseverance, in the face of great odds, that helped create an institution that holds accountable those who choose to commit human rights abuses. The vision of Professor Bassiouni has culminated in a system that ensures that those who commit crimes against humanity do not go unpunished.

Mr. President, M. Cherif Bassiouni has made an important difference in the battle against human rights abuses. It is my pleasure to rise today to pay tribute to his extraordinary work and to congratulate him on his Nobel Peace Prize nomination.●

TRIBUTE TO DOUGLAS MANSHIP, SR.

● Mr. BREAUX. Mr. President, Louisiana is today mourning the loss of a giant in the news media, Douglas Manship, Sr., the chairman emeritus of the Baton Rouge Advocate and the founder of WBRZ-TV in Baton Rouge.

Douglas Manship devoted nearly all of his 80 years to providing the citizens of Louisiana with timely, objective and thorough coverage of the day-to-day events of our state. In the process, he and his family have always set the standard for excellence in news reporting in Louisiana, winning dozens of statewide, regional and national journalism awards.

For most of this century, the Manship name has been synonymous with journalism in Louisiana. In fact, the school of mass communications at our state's flagship institution of higher learning, Louisiana State University, bears the Manship name and has already trained a generation of young journalists to follow the example of journalistic excellence set by Douglas Manship and his family.

Those of us who knew Douglas Manship knew him as someone totally committed to his community and just as dedicated to the daily dissemination of fair and objective news. In almost every way, Douglas Manship was what a journalist should be. He believed that a public given the facts on a particular issue would invariably make the right decision. And he fought tirelessly through his newspaper to throw open the closed doors of public bodies all over Louisiana so that citizens could become better informed about the important business that was being conducted in their behalf.

Of course, Douglas Manship's imminent fairness and objectivity didn't stop him from expressing his opinion and using his newspaper to champion a cause when he believed his state and his community could do better. In the early 1960s, long before other southern media leaders recognized the need for racial integration, Douglas Manship used his position at WBRZ-TV to bring Baton Rouge community leaders together to discuss ways to peacefully achieve racial integration. WBRZ's courageous advocacy on behalf of desegregation resulted in threats of violence against Manship and his station. But he never backed down. And I believe that Baton Rouge made great strides because of principled leaders like Douglas Manship who put the well-being of his community ahead of his economic interests.

Nothing distinguished Douglas Manship more than the strength of his character and his strong sense, as he put it, of who he was. ''If there is any attribute that I have that has any meaning,'' he once said, ''it is that I know exactly who I am. That's where you get into trouble . . . when you think you are something you are not. I believe that after all these years I have learned who I am, what my limitations are.''

Mr. President, today we remember Douglas Manship as a principled community leader, a courageous and fair-minded journalist and a loving father and husband. I know that I join with the entire journalistic community of my state in saying that his presence and leadership will be sorely missed.●

HONORING THE ARMENIAN VICTIMS OF THE OTTOMAN EMPIRE

● Mr. FEINGOLD. Mr. President, I rise today to honor the memory of the 1.5 million ethnic Armenians that were systematically murdered at the hands of the Ottoman Empire from 1915–1923. The 84th anniversary of the beginning of this brutal annihilation was marked on April 24.

During this nine year period, another 250,000 ethnic Armenians were forced to flee their homes to escape the certain death that awaited them at the hands of a government-sanctioned force determined to extinguish their existence. A total of 1.75 million ethnic Armenians were either slaughtered or forced to flee, leaving fewer than 80,000 in what is present-day Turkey.

I have come to the floor to commemorate this horrific chapter in human history each year I have been a member of this body, both to honor those who died and to remind the American people of the chilling capacity for violence that, unfortunately, still exists in the world. It is all too clear from the current ethnically and religiously motivated conflicts in such

places as Kosovo, Sierra Leone, and Sudan that we have not learned the lessons of the past.

The ongoing campaign of violence and hate perpetrated by Slobodan Milosevic and his thugs against the Kosovar Albanians is but the latest example of the campaigns of terror carried out against innocent civilians simply because of who they are. These people are not combatants and they have committed no crimes—they are simply ethnic Albanians who wish to live in peace in their homes in Kosovo. But, because they are ethnic Albanians, they have been murdered or driven out, their possessions have been looted, and their homes have been burned. Many more are hiding in the mountains of Kosovo, caught in a dangerous limbo, afraid to try to flee across the border to safety and unable to go home.

On April 13, we marked Yom Hashoah, the annual remembrance of the 6 million Jews who were exterminated by Nazi Germany. People around the world gathered to light candles and read the names of those who died. Today, let us take a moment to remember the victims of the 1915–1923 Armenian genocide, and all the other innocent people who have died in the course of human history at the hands of people who hated them simply for who they were.●

HOLOCAUST REMEMBRANCE AT TEMPLE BETH AMI

● Mr. SARBANES. Mr. President, I call to the attention of my colleagues the recent Community-Wide Memorial Observance of Yom HaShoah V'Hagvurah held at Temple Beth Ami in Rockville, Maryland. I had the privilege of participating in this Holocaust remembrance ceremony sponsored by the Jewish Community Council of Greater Washington. I commend Temple Beth Ami for hosting this annual event and the Jewish Community Council for providing the community in Maryland and the Washington, D.C. area with so many valuable services year-round.

The Holocaust represents the most tragic human chapter of the 20th century when six million Jews perished as the result of a systematic and deliberate policy of annihilation. Holocaust remembrance is an effort to pay homage to the victims and educate the public about the painful lessons of this horrible tragedy.

As my colleagues are aware, this month marks the 54th year since the beginning of the liberation of the Nazi death camps in Europe and the 56th anniversary of the Warsaw Ghetto Uprising. The occasion also is an opportunity to remember the plight of the passengers aboard the S.S. *St. Louis* who sought to rebuild their shattered lives outside Europe. Most of the 937 men, women and children who fled Germany on the *St. Louis* on May 13, 1939 were seeking refuge from Nazi persecution but were turned back months before the outbreak of World War II.

In his moving remarks at Temple Beth Ami, Benjamin Meed, the President of the American Gathering of Holocaust Survivors and a survivor himself of the Warsaw Ghetto Uprising, spoke eloquently before this assembly of the importance of overcoming indifference to genocide. Ben Meed has dedicated himself to working hard along with many other survivors to ensure that the memory of millions is still with us, and I believe that the United States Holocaust Memorial Museum is a fitting and exceptional tribute to his efforts. In his words, the Holocaust Museum is ''the culmination of our devotion to Remembrance.''

Mr. President, I ask unanimous consent that Benjamin Meed's remarks at Temple Beth Ami be entered into the RECORD at this point.

REMARKS BY BENJAMIN MEED

It is a special honor to be among such distinguished colleagues, especially Rabbi Jack Luxemburg, vice chairman of the Washington Jewish Community Council and the Rabbi here at Temple Beth Ami; and Manny (Emmanuel) Mandel, chairman of the Jewish Community Council's Holocaust Remembrance Committee.

In this lovely new sanctuary that in itself demonstrates the vibrancy of the Jewish community in our nation's capital, we unite with Jewish people everywhere to remember those who were robbed and murdered by the German Nazis and their collaborators—only because they were born as Jews.

Tonight, as we come together, we remember the people, places and events that shaped our memories: Memories of our ''childhood,'' of our parents and siblings, of the world which is now so far away. We remember the laughter of children at play, the murmur of prayers at Shul, the warm love of our family gathered for Shabbos meals. That world was shattered by the German Nazis' war against the Jews, while the world of bystanders around us was indifferent.

Our memories are full of sorrow. Our dreams are not dreams, but nightmares of final separation from those we loved. Parading before us, when we sleep, are the experiences we endured—the endless years of ghettoes, labor camps, death camps, hiding places where betrayal was always imminent; the forests and caves of the partisans where life was always on the line. And no matter where we were, we were always hungry.

Each of us has our own story. Fifty-five years ago, during the Warsaw Ghetto Uprising, I was in Krasinski Square, just outside of the walls of the Ghetto. I usually spent my days in the zoo because I knew that the animals could not denounce me to the German Nazis or to their collaborators. To the animals, I was just another human being. But on this Sunday, as an ''Aryan'' member of the Polish community, I went to church together with the Poles.

As we came out of church into the Square, I heard the thunder of guns and the explosion of grenades and I could see that the Jewish Ghetto was on fire. It may have been a warm Spring day, but I stood frozen. In front of us in the Square, a carousel was turning around and around. The music attracted my Polish neighbors and their children. I watched in disbelief as they flocked to the merry-go-round, indifferent to the tragedy so nearby. With every cry for help from my Jewish people, tears swelled in my eyes. But the faces of those around me showed no concern, no compassion, not even any interest.

The memory of this scene haunts and enrages me. How was it possible for these people to act ''normally'' while Jews, their neighbors for hundreds of years, burned and died inside the Ghetto walls? But they were not the only ones to ignore our plight. Indeed, the entire world stood by. No doors were opened, no policies were changed to make rescue possible. Why? The question cries out for an answer across the decades.

If only there had been a State of Israel sixty years ago, how different this story could have been.

Tonight, we especially remember the passengers on the S.S. *St. Louis*—more than nine hundred men, women and children. Robbed of their possessions, stunned and hurt during Kristallnacht, and threatened with their lives, many of them were forced to sign agreements never to return to Germany. Out on the high seas, powerless to affect their outcome, these nine hundred people floated between political infighting and immigration quarrels, both in Cuba and the United States. Their fates were in the hands of others whom they did not know and with whom they had no influence. Finally accepted by four European nations, many of these passengers were swept into ''the Final Solution'' when Western Europe fell to Nazi Germany. Why were these nine hundred denied entry into this country? Why was this tragedy allowed to happen?

If only there had been a State of Israel sixty years ago!

This year our commemoration falls within the anniversaries of the discovery of Buchenwald concentration camp. On April 11, the troops of the United States 6th Armored Division rolled into the camp, just one mile outside Weimer, the birthplace of German democracy. They were followed by the 80th Infantry Division on April 12, just 54 years ago tonight. These were war-weary, war-hardened soldiers, but none of their fierce combat had prepared them for Buchenwald—nor for the hundreds of other such camps that American and Allied soldiers came across in their march to end the war in Europe.

We will always be grateful to these soldiers for their kindness and generosity, and we will always remember those young soldiers who sacrificed their lives to bring us liberty.

Many American GIs who saw the camps join with us in declaring that genocide must not be allowed to happen again. But despite the echoes from the Holocaust, it has—in Cambodia, in Rwanda, in Bosnia, and now in Kosovo.

We remember and our hearts go out to those who are caught in the web of destruction.

For many years, we survivors were alone in our memories. We spoke among ourselves about the Holocaust, because no one else wanted to hear our stories. Still, we believed that the world must be told—must come to understand the significance of our experiences.

Slowly, acceptance of our memories began—at first, only by our fellow Jews, who realized that what we had witnessed was vitally important to them. In time, other people began to understand the meaning and consequences of our experiences. They listened. We survivors were no longer silent presences. We became the bearers of tales—at once painful and precious.

We survivors are now publicly bearing witness. We are offering challenges to the indifference of Western governments, to the complicity of the Church, to the anti-Semitism of Christianity, and to the evil of the perpetrators, collaborators and—not the least—to the bystanders. The movement to remember and to record is being led by survivors who accept the burden that history placed upon us.

But whatever we know now, there is still so much that we do not know, we cannot

know. There were the Six Million whose voices were silenced forever. We the few who survived must speak about them even though we cannot truly speak for them.

Although living in almost every state of this Union and following many professions, survivors are united by a common memory. We walk the byways of this great country, appreciative of its blessings of freedom and possibilities. We try to express our gratitude for life by the quality of our lives, offering hope and solace, and teaching the mystery of starting anew.

And now, over fifty years later, the world has come to Remember with us. In Germany, France, Austria, and England; in Colombia, Brazil, and Argentina; in Australia and New Zealand, as well as Canada, in Israel, and in our own beloved country, Yom Hashoah is on the calendar and commemorations are held in halls of honor. This is how memory is preserved—by determined, directed, dedication to remembering—by telling and retelling the stories of the holocaust.

You who live in this city are privileged to have the United States Holocaust Memorial Museum—the culmination of our devotion to Remembrance—to visit at your convenience. This extraordinary institution, the largest Holocaust Museum outside of Yad Vashem, has had more than twelve million visitors in just five years. People come from near and far, both within the United States and from around the world. This Museum represents the fulfillment of our pledge and more. It contains many documents and artifacts that testify about our experiences as well as photographs and notes from our loved ones. But more—it is an expression of the hope of every survivor—that no one anywhere in the world will ever have to endure what we did.

And what lessons did we derive from these horrible experiences? The most important lesson is obvious—it can happen again, the impossible is possible again. Ethnic cleansing, genocide, is happening as I speak. It can happen to any one or any group of people. *The slaughter in Kosovo and in other places must be brought to an end.*

Should there be another Holocaust, it may be on a cosmic scale. How can we prevent it? All of us must remain vigilant—always aware, always on guard against those who are determined to destroy innocent human life for no other reason than birthright.

Just as we survivors have dedicated ourselves to preserving memory and bearing witness, we are now equally determined to make certain, in the little time we have left, that all survivors live out their years in security and dignity. Most of us have accomplished a great deal, but there are those who have been less fortunate. As you know, some live in distressing circumstances. Many are forsaken, afflicted by illness, and, perhaps worst of all, they carry the nightmares of the Holocaust with them.

Although the government of Germany has acknowledged to some degree its responsibility for the robbery and murder of our people, the greatest in history, it has not fully assumed its obligations. Recently, some German companies admitted their use of Jewish slave labor during the Holocaust. The government and these companies have offered what they call reparations. But how can they ever provide compensation for our stolen real property, savings accounts, art, jewelry, and personal belongings—the gold in our teeth, the use of our skills and bodies, the pain and suffering inflicted upon each and every one of us? How can there ever be enough money to pay for the wrongful imprisonment, torture, starvation and murder of six million Jews—in their homes, on the streets, in fields and forests, in the gas chambers? Is there a way that they can restore our families, our youth, our health, our sense of personal security? Absolutely not!

Germany wants to project a new image to the world, but it cannot be allowed to buy the honor it deserted during the Holocaust. It must account for the horrible atrocities of its past. We must not permit Germany to shift the focus away from its moral and financial responsibility for the slaughter of our people, acts for which there is no statute of limitations. Germany will be eternally responsible for the murder of the Six Million.

At the least, Germany must provide appropriate care for the survivors of their atrocities who need help. More than anything, this is a moral issue. It is not welfare. It is not a business deal. It is a ''debt of honor,'' as Chancellor Adenauer said many years ago.

Maybe the claims of Holocaust survivors are unprecedented; but so was the robbery and murder. We will not stop until Germany and all the other nations who participated in the extermination process fulfill their obligations. It is the right thing to do—for them and for us.

Let us Remember!

Thank you.●

MEASURE READ THE FIRST TIME—S.J. RES. 22

Mr. MCCAIN. I understand S.J. Res. 22 introduced earlier by Senator JEFFORDS for himself and others is at the desk, and I ask that it be read the first time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 22) to reauthorize and modify conditions for the consent of Congress to the Northeast Interstate Dairy Compact, and to grant the consent of Congress to the Southern Dairy Compact.

Mr. MCCAIN. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

ORDERS FOR WEDNESDAY, APRIL 28, 1999

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. on Wednesday, April 28. I further ask that on Wednesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day. I also ask that at 10:30 a.m. the Senate begin a period of morning business until 12 noon with Senators permitted to speak for up to 10 minutes with the following exceptions: Senator LOTT, or his designee, 30 minutes; Senator DURBIN, 30 minutes; and Senator KERRY for 15 minutes.

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

PROGRAM

Mr. MCCAIN. For the information of all Senators, the Senate will convene at 10:30 a.m. and be in a period of morning business until 12 noon. Following morning business, the Senate will immediately resume debate on the Y2K legislation. I encourage my colleagues to come to the floor to debate this important issue. Further, the Senate may consider any other legislative or executive items cleared for action during today's session of the Senate.

ORDER FOR ADJOURNMENT

Mr. MCCAIN. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of the Senator from Louisiana.

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

LITTLETON

Ms. LANDRIEU. Mr. President, I am happy to note the overwhelming vote that just occurred to try, in some small way, to express the feeling of this body about the recent tragedy in Littleton, CO. It is a first step of perhaps many that will be taken to properly address this tragedy.

The massacre that occurred makes us all want to jump to action, because we are action-oriented individuals and an action-oriented body. That is why we are here—to do things. I think the tendency in a situation like this is to want to jump out and do things so we can prevent another tragedy in the future. The problem is, with that approach, this situation has actually raised more questions than it has provided answers.

I will share with Members some of the leading news articles this week. ''Why?'' Newsweek asks. ''Why?'' U.S. News & World Report asks. Again, a very important question that should be answered.

Time Magazine asked, What can schools do? Where were the parents?

These are all very, very important questions that should be answered.

It is important at this time in the Senate and in the House and within the leadership of this country to perhaps do a little bit more listening than talking, so we can help find answers as to why this tragedy happened in order to attempt to prevent it from happening in the future. This is not the first such tragedy. This is, unfortunately, a long line of recent incidents.

It may prompt some parents or some lawmakers to say ban all video games and movies. It could prompt some people to say ban all guns and bomb-making equipment everywhere in every instance. It could prompt others to either call for severe censure of the Internet or the abolition of the Internet.

I suggest, as respectfully as possible, that now may not be the time to push through laws or initiatives, either at the Federal or State level, before we can get some answers to these very troubling questions.

I am not suggesting that nothing be done—absolutely the opposite, that we

do some things, but after we understand a little bit better why some of these things in these schools actually took place.

As an example, let me point out that when TWA Flight 800 exploded over Long Island, the Federal Aviation Administration and the National Transportation Safety Board spent over 2 years working around the clock, hauling wreckage from the ocean and methodically rebuilding this airplane, and an exhaustive investigation determined the cause. The FBI assigned 600 agents to the case and conducted 4,000 interviews with eyewitnesses, mechanics, people at the airport—anyone they could find who might be able to provide answers.

As a nation, we gladly undertook this massive effort so that millions of people who step on airplanes every day, who pack their suitcases and their briefcases and board airplanes, can feel secure that their Government is trying to keep them safe.

I suggest we undertake a similar effort, that we most certainly should spend the time and the resources to find out what happened in Colorado, in Mississippi, in Oregon, in Arkansas, so that these parents and children and other children can have some answers as to what happened and how we can prevent this before it spreads to more places in more States.

I am hopeful that as we talk among ourselves and hear from the public at home and listen more carefully, we think about the possibility of creating a strong bipartisan commission that is given the resources and the time to ask these questions and to find answers. Hopefully, a commission such as this could be led by some of the strongest Members on both sides of the aisle, to come up with the answers so we can craft the proper solutions. Some of them will be government solutions as in a Federal law; some will be government solutions at a State and local level; others will be solutions that can happen through our churches, our nonprofit organizations, our communities, and in every home in America.

I suggest now is not the time to rush into action, even though that is a natural tendency, but now is a time to listen. If we can spend millions of dollars and thousands of manhours to find out why airplanes explode, why can't we match that effort to find out why some children explode?

I look forward to working with the Members of this body to find the proper solutions to this critical challenge before our Nation.

APPOINTMENT

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic leader, pursuant to Public Law 101–509, the appointment of Elizabeth Scott of South Dakota to the Advisory Committee on the Records of Congress.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 10:30 a.m., Wednesday, April 28, 1999.

Thereupon, the Senate, at 5:47 p.m., adjourned until Wednesday, April 28, 1999, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 27, 1999:

FOREIGN SERVICE

JOYCE E. LEADER, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GUINEA.