

concerns of mine that have been a part of me for a long time. I believe it is something our Nation has to consider, and I hope and pray we will.

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

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MEASURE PLACED ON CALENDAR—S.J. RES. 22

Mr. MCCAIN. Mr. President, I understand there is a joint resolution at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will read.

The legislative assistant read as follows:

A joint resolution (S.J. Res. 22) to reauthorize, 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.

Mr. MCCAIN. Mr. President, I object to further proceedings on this matter at this time.

KOSOVO

Mr. MCCAIN. Mr. President, first I will discuss an issue that is going to come before the Senate either late this week or next week. I am not sure. That is the issue of Kosovo. I believe it is important we address the issue. I believe it is important we address the issue as we have previous foreign policy issues.

In the case of our resolution supporting United States involvement in Bosnia, we had a Dole resolution and we had a couple of others that were voted on. In the case of the Persian Gulf resolution, we had a resolution that was proposed by then-Senator Dole, who was then the minority leader, and one that was proposed by Senator Mitchell. I hope we will proceed in a fashion where more than one resolution is considered and voted on at the time. That is our responsibility, and I hope we intend to do it.

I strongly urge the majority leader to accept a vote on a resolution that I have already introduced.

THE Y2K ACT

Mr. MCCAIN. Mr. President, let me say we are ready to move forward on the bill. We have a couple of amendments that can be accepted by both sides. I would like to move forward with that and hope that both supporters and opponents of the bill will come to the floor.

Today I see a Statement of Administration Policy:

The Administration strongly opposes S. 96 as reported by the Commerce Committee, as well as the amendment intended to be proposed by Senators McCain and Wyden as a substitute. If S. 96 were presented to the President, either as reported or in the form of the proposed McCain-Wyden amendment, the Attorney General would recommend a veto.

Let me say, I am glad to see the administration's position on this. I think it makes it very clear as to whose side they are on. I hope all the manufacturers, the small businesses, the medium size businesses and the large businesses in America will take careful note of the administration's absolute opposition to an effort that would solve this very, very serious issue.

Of course, they support amendments that are proposed by the trial lawyers which would gut this legislation. I have no doubt that if we accepted the amendments that are going to be proposed, it would gut it. But let us come to the floor and debate these amendments and move forward.

We have been on this bill now for 3 days. We still haven't had a single amendment. I say to the opponents of this legislation and the substitute that Senator WYDEN and I proposed, come to the floor. Let us debate your amendments and let us move forward. There is a cloture petition that will be voted on tomorrow. We may have to move forward in that fashion.

In USA Today, Mr. President, there is an interesting column under Technology by Kevin Maney: "Lawyers Find Slim Pickings at Y2K Lawsuit Buffet."

Y2K lawyers must be getting desperate, in much the way an overpopulation of squirrels gets desperate when there aren't enough nuts to go around.

So far, there's been a beguiling absence of breakdowns and mishaps because of the Y2K computer problem. The ever-multiplying number of lawyers chasing Y2K lawsuits apparently have had to scrounge for something to do. At least that's the picture Sen. John McCain [R-Ariz.] painted on the Senate floor Tuesday.

McCain, who is sponsoring legislation to limit Y2K lawsuits, told the story of Tom Johnson. It seems that Johnson has filed a class action against retailers, including Circuit City, Office Depot and Good Guys. The suit charges that salespeople at the stores have not warned consumers about products that might have Y2K problems.

For one thing, that's like suing a Chrysler dealership because the sales guy didn't tell you a minivan might break down when you're 500 miles from home on a family vacation. Or suing a TV network for failing to announce that its shows might stink.

Beyond that, Johnson doesn't claim in the suit that he has been harmed. He's just doing it for the good of humanity—and "relief in the amount of all the defendants' profits from 1995 to date from selling these products."

* * * * *
Think Johnson's case is an anomaly? We haven't even hit seersucker season, and the

lawsuits focusing on Jan. 1 are flying. More than 80 have been filed so far. If you sift through the individual suits, a few seem understandable. The rest seem like Rocco Chillelli v. Intuit.

Chillelli's suit says older versions of Intuit's Quicken checkbook software are not Y2K ready and alleges that Intuit refuses to provide free upgrades. Filed in New York, the suit is a class action on behalf of "thousands of customers (who) will be forced to spend even more money to acquire the latest Quicken version and may be required to spend time acquainting themselves with the updated program and possibly re-inputting financial information."

After much legal wrangling, the Supreme Court of the State of New York, County of Nassau, found that—duh!—no damage had yet happened, as the calendar hasn't yet flipped to 2000. The case was dismissed.

Mr. President, the column goes on to talk about the frivolous suits that have been filed already. We need to act.

I note the presence of the Senator from South Carolina. I ask if he is ready to consider two Murkowski amendments at this time, which have been agreed to by both sides.

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. HOLLINGS. 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. HOLLINGS. Mr. President, my distinguished chairman continues to say let's talk, let's vote, let's move along. He thinks it is a procedural question. I guess, in a way, it is when it comes to joint and several.

Mr. President, there is an old story told about the days when they used to block minorities from voting down in Mississippi. A gentlemen presented himself at the poll and the poll watcher showed him a Chinese newspaper. These were the days of the literacy tests in order to be able to vote. He presented him with a Chinese newspaper and he said, "Read that." The poor voter takes it and turns it around different ways and says, "I reads it." The poll watcher said, "What does it say?" The poor minority says, "It says: Ain't no minority going to vote in Mississippi today."

Now, Mr. President, in a similar vein, when you have been in this 20 years, like Victor Schwartz down there at the NAM, when you have been in speaking panels before the manufacturers groups, when you have seen every trick of the trade that they have had to repeal the 10th amendment and take away from the States the administration of the tort system, and you know that there are the strong States righters but they are willing to do this, and when you know there is a non-problem—I emphasize "nonproblem"—in the sense that there have only been

44 cases brought and over half have already been disposed of—some 10 others have been settled, and only 8 or 9 are pending—and you know that here we have a contract case, not a tort case, and you have to have privity of contract under joint and several in contract cases.

But you know this extreme strain about punitive, about joint and several, and all of these other hurdles they put in there to discourage anybody bringing a suit, setting precedence, if you please, in the tort field, then like the poor voter that “can read” the Chinese newspaper, I can read S. 96. That is right. I can read the McCain-Wyden amendment. What that says is, we don’t care about Y2K, but we do care about reforming torts and federalizing it and taking the richest, most capable crowd in the world and giving them all kinds of rights and defenses and privileges and take away from middle sector, the small businessman, the small doctor.

We put into the RECORD, Mr. President, where an individual doctor up in New Jersey—he came before the committee—bought this particular computer in 1996. He talked about the salesman who bragged in terms that it would last 10 years. Like the old adage regarding the Packard, he said, “Ask the man who owns one. Go and see these. They will last for years. This will take you into the next century.” And then he finds, of course, that this past year it broke down. It didn’t work and he could not get his surgical appointments straight, and otherwise. So he called the salesman and the company, and they absolutely refused.

After several weeks he writes a letter and demands, and they still refuse. A couple of months pass and he gets an attorney. When he gets the attorney, at first they don’t respond. But somehow the attorney, or others, had the smarts to put it on the Internet. The next thing you know, they had 17,000 doctors who were similarly situated, and the computer company immediately settled and replaced them free.

When the demands were first made, they said, “Yes, we can fix it for you for \$25,000,” when the instrument itself, the computer, only cost \$13,000 in 1996. But to fix it was \$25,000. He didn’t, of course, have the \$25,000. So all of those cases were settled to the satisfaction of both parties, the computer company, and everything else.

So these are not bad back cases, or some that are indeterminate with respect to injury, pain, and suffering, and a sentimental kind of case of a person having lost his job, in that sense, and all that, where you get poor people injured in a wreck; but, on the contrary, responsible business people who operate by way of contract with the company. You see all of these tort things superimposed and you hear them in the conferences say it is nonnegotiable,

there is a nonnegotiable item here, joint and several; it is nonnegotiable because under the chairman’s onslaught here, it is, “Let’s move, let’s vote, let’s vote.”

I responded to him yesterday. I am a minority of a minority. I am trying to make sense out of a bum’s rush. They have all the organizations. I have been talking to the trial lawyers about this thing. I know all of them, and they have been big friends of mine, and they did respond handsomely last year in the campaign. But I have been in it 20 years. In the early eighties, in the Presidential race and everything else, I still pleaded the cause and I got no help. So I have a track record of not just taking a position to help good friends in the trial business, but I have the greatest respect for all those friends, because they are there for the injured parties. They are the ones setting the record on health. These trial lawyers have done more to save people from cancer than Koop and Kessler put together. I have been on the floor 33 years now, and we could not get anything moving on cancer and smoking.

Now we have it. Not only on account of dollars, not only on account of the Cancer Institute, not only on account of the American Cancer Society, all leaders that they are with concerns in this field, but on account of trial lawyers. I see them institute the Environmental Protection Agency and institute the Consumer Product Safety Commission.

When you see those cars recalled, yes. That trial lawyer, Mark Robinson, out there in San Diego, back in 1978 got a \$128 million verdict. It was \$3.5 million actual, but \$125 million punitive. He never has collected a red cent of the \$125 million punitive. But he has brought to the automobile manufacturers a conscience rather than a cost-benefit study to just write it off and let them pay and pay the lawyers, and pay the doctors, and pay for the injuries, or beat the case on a cost-benefit study. On the contrary, there was one company just last week that recalled another million cars. You see these car recalls. That is my trial lawyer friends. I am very proud of them.

But in this particular case I am trying to protect on the one hand that small doctor, that small businessman, or, on the other hand, what we are trying to do is protect the States and the administration of tort law.

They talk about the “glitches”—the “glitches” and “deep pockets” and “deep pockets.” We have at this minute, as I speak, on the floor of the Senate, glitches. Everybody has a computer. It comes up again and again with a glitch. You learn how to get it fixed. Nobody is running down to the courthouse. There were only 40 more cases this past year. Deep pockets—you have people running around here. They had a gentleman come in here from

America Online. I saw in the USA Today his income last year—just annual—income \$325 million. He has deep pockets. But nobody is suing him. He is a wonderful, brilliant individual who deserves every dollar he makes. I am for him. That is the American way.

But there are deep pockets in this technology computerization industry. And there are glitches.

Don’t give me this stuff about January 1 glitches, glitches all of a sudden, and that we have to change the whole tort system. You can go ahead and get your computer now. As Business Week shows, they are demanding that the small businessmen come about with the changes in their equipment and become Y2K compliant, or else they are going to run out of suppliers and other distributors that will be Y2K compliant. They are in business. They are not in the law game that the Chamber of Commerce is in downtown. That is their political gain—to get them, pile on, find a nonproblem, but find the organizations, go tell all of them, and say, “Do you believe in tort?” “Yes. I believe in tort reform.” “Write your letters to the Senators and talk about \$1 trillion”—outrageous estimations. There is not going to be any such thing. Everybody knows it.

I am happy today to receive from the White House a “Statement of Administration Policy.” “This statement has been coordinated by OMB with the concerned agencies.”

Mr. President, I ask unanimous consent to have it printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY—S.
96—Y2K ACT

[McCain (R-AZ) and Frist (R-TN)]

The Administration strongly opposes S. 96 as reported by the Commerce Committee, as well as the amendment intended to be proposed by Senators McCain and Wyden as a substitute. If S. 96 were presented to the President, either as reported or in the form of the proposed McCain-Wyden amendment, the Attorney General would recommend a veto. The Administration, however, understands that Senators Kerry and Robb and others are working on an amendment in the nature of a substitute that would address its primary concerns and which the Administration can support.

The Administration’s main goal is to ensure that all organizations—private, public, and governmental—do everything they can between now and the end of this year to ensure that their systems and those of their customers and suppliers are made Year 2000 compliant. The Administration also recognizes both the importance of discouraging frivolous litigation and the need to keep the courts open for legitimate claims, especially those brought by small businesses and consumers with limited resources to press their cause.

The Administration’s overriding concern is that S. 96, as amended by the McCain-Wyden amendment, will not enhance readiness and may, in fact, decrease the incentives organizations have to be ready and assist customers and business partners to be ready for

the transition to the next century. This measure would protect defendants in Y2K actions by capping punitive damages and by limiting the extent of their liability to their proportional share of damages, but would not link these benefits to those defendants' efforts to solve their customers' Y2K problems now. As a result, S. 96 would reduce the liability these defendants may face, even if they do nothing, and accordingly undermine their incentives to act now—when the damage due to Y2K failures can still be averted or minimized.

S. 96 also would substantially modify the procedural law of the 50 States by imposing new pleading requirements and by effectively requiring nearly all Y2K class actions to use Federal certification standards. While the Administration could support the adoption of certain federal rules that would, in some meaningful way, help identify and bar frivolous Y2K lawsuits, the broad and intrusive provisions of S. 96 sweep far beyond this purpose and accordingly raise federalism concerns.

The Administration has been working with the Senate on alternatives that would more closely achieve the goals S. 96 purports to serve—creating incentives for organizations to be Y2K compliant, weeding out frivolous Y2K lawsuits, and encouraging alternatives to litigation. In that regard, the Administration would support provisions encouraging alternative dispute resolution, and carefully drawn modifications to pleading rules and substantive law that encourage Y2K readiness. The Administration would support Senators Kerry and Robb's amendment because it satisfactorily addresses many of the previously mentioned concerns (although we are working with the Senators to address drafting issues raised by the Department of Justice).

Mr. HOLLINGS. Mr. President, I thank the Chair.

There it is, Mr. President. We are trying to mushroom a nonproblem into a crisis with \$1 trillion worth of lawsuits all on the political juggernaut of the Chamber of Commerce downtown for greed, and taking away rights to protect the group that is not only protectable—God knows they have the money—but they know it. They can bring in their instrument right now and make it compliant.

Those who are purchasing are being told, like that doctor in New Jersey, that it is compliant. But they are being taken advantage of. You find out it is not, and it is not until they have everybody ready to go that, "Oh, no. We are ready to give you a new computer free." Not \$25,000, as they charged for months, but they would have to be paid before they get any results. "We are glad to give you this free, and even to pay your attorney fees." Right or wrong? Is this a frivolous lawsuit, some kind of bad back, injured party case coming across trying to go after deep pockets? It is legitimate small businesses that can work right now. They will be like an automobile dealer trying to offload their old year models, with misleading purchases sometimes. But they find out that hasn't paid, so they have gotten very competitive.

This market this minute is very, very competitive. Read Business Week.

The market is working. But there is a political agenda here on course, not really to look out for the small businessman, but change the rights of the States under the 10th amendment to administer tort cases. Here with the administration, do you see any States coming up and saying that they are totally inadequate, that they can't handle it, that what they really need is the Federal Government to interpose and change the rules of jurisprudence?

Does any State come up here? Does any legitimate legal organization come up here? Not at all.

I heard what the distinguished Senator from Oregon read about the American Bar Association, but give us hearings before the American Bar and give us the legal folks—they understand law. That is one of the difficulties we have in the Commerce Committee. We don't necessarily have profound legal talent, so they don't want to study it. They look at a business cost-profit standpoint and then it is the bum's rush for S. 96.

I am glad the rush now has stopped with the policy of the administration and the recommended veto of S. 96 and the McCain-Wyden amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, as always, the Senator from South Carolina has raised a number of important issues. I will take a minute or two to respond.

First, it needs to be understood by the Senate that, under the substitute offered by the chairman and myself, a plaintiff can file suit immediately for injunctive relief should they choose to go that route.

There have been all kinds of discussion raised and I gather it is always raised by the administration that somehow the rights of plaintiffs are being cut off. The fact of the matter is, under the substitute being offered by the Senator from Arizona and myself, it is possible for a plaintiff to move for injunctive relief immediately.

What we are saying is, we ought to look at ways to try to bring about corrections in the private sector by private parties coming together, trying to encourage the alternative dispute resolution, a process which is clearly laid out in our legislation.

Our substitute makes it very clear that if a plaintiff wants to file a suit on day one, they can. If they believe they are being jerked around in the marketplace, they can go out on that very first day and seek injunctive relief. We think it would be preferable and avoids causing this bedlam with everybody rushing to court. We think a lot of those approaches can be resolved by the parties coming together.

Second, it seems to me those who will look at the substitute will understand in the vast majority of instances

private contract law is going to govern. In most other instances it will be State law. In this administration statement, the notion is that somehow we are federalizing everything, where the substitute clearly lays out in the vast majority of cases contract law is going to take the lead in this area. That, regrettably, is a part of the administration's position that simply is not accurate.

In fact, I and others raised that issue in the committee. We felt there wasn't a strong enough bias in favor of protecting private contract law. That was a change made after the bill left committee, because a number of consumer and other organizations thought it was very important.

I think what is especially troubling about the policy statement that has now been offered by the administration—and this Senator and others are going to continue to work with them—is that they are essentially telling the Senate that over in the Justice Department they know more about the technical issues of running computers and the software businesses than do those businesses that have to do it every single day.

The administration statement says this legislation is going to decrease the incentives, that these computer and software and other technology organizations have to be ready to assist customers to be ready for the transition of the next century.

The fact of the matter is, all of these groups that have to actually work with computers and software every single day believe this legislation is absolutely critical to their being ready for the transition to the next century. Essentially what we have is folks at the Justice Department on this issue saying they know a whole lot more about the technical issues of the computer business than the folks who actually have to work with these systems every single day.

I raise this issue again with respect to defendants who engage in truly outrageous, egregious action. There have been statements made on the floor by others and raised in the administration's letter as well with respect to the question of proportional liability and particularly what you are going to do about those defendants who engage in fraudulent activity.

Under the substitute before the Senate, if a defendant is engaged in fraud, it is very clear that joint and several liability stays in place. There are no changes whatever with respect to joint and several liability if, in fact, a defendant is engaged in an egregious type of conduct. We also ensure that joint and several liability is kept when a defendant is insolvent. We felt it was important to make sure the plaintiff would have an opportunity to be made whole in instances where there was an injured party who badly needed a remedy.

The fact is that there have been many, many changes made in this legislation since it left the committee. In order to be responsive to the consumer, the chairman of the committee reached out to a variety of parties—myself and others—in order to make those changes. I will take a minute or two to outline a couple of those.

Perhaps the most important is the fact that this is a bill with a strong sunset provision. Neither the original McCain legislation nor the Hatch-Feinstein legislation, which has many, many good features, nor the legislation that our colleague, Senator DODD of Connecticut, offered, which also has many good features in it—none of those bills had a sunset provision originally.

We felt it was important to make sure that this legislation was not producing a set of changes for all time but it was going to be legislation that specifically targets problems directly related to Y2K so we don't have an open-ended onslaught with respect to product liability issues.

I happen to think the Senator from South Carolina made a number of important points with respect to tobacco. I also happen to think there were other issues that were relevant on this debate. I and others in the other body were able to get the tobacco executives under oath to say that nicotine was addictive which certainly helped to open up this issue in order to protect consumers and injured parties. I think the Senator from South Carolina makes a number of important points with respect to the issue of lawyers who stand up for injured parties and consumers.

Make no mistake, colleagues, this is not an open-ended tort reform bill. It is not an open-ended product liability bill. It is essentially a 3-year bill to deal directly with a problem that, frankly, could not have been envisaged at the time. At the time many of these decisions were made, there was a real question as to whether there would be adequate space for disks and for memory, so there was an engineering trade-off adopted a number of years ago to get more space for disks and memory. We find it hard today to believe that at one point disk and memory space was at a premium. It was at that time.

Now we are in a position where we have to come up with ways to ensure we make our computer and technology systems ready for the next century while at the same time providing a safety net when, in fact, there are real problems such as frivolous suits.

I hope our colleagues will look at the many changes that have been made: The fact that there is joint liability when a defendant knowingly commits fraud, there is joint liability when you have an insolvent defendant in order to make a plaintiff whole, that there are punitive damages when an individual acts in bad faith, that there are not

new preemptive Federal standards for establishing punitive damages, that there has been an elimination of the vague Federal defenses for reasonable efforts.

I hope our colleagues will look at those changes that have been made. I, for one, am going to continue to work with the administration. I think there are many in the administration who realize this is a very, very serious problem. But I really have to say to the Senate today, with respect to the policy statement issued today, that there simply are a number of statements in there that, to be charitable, are inaccurate. The fact is, this idea that under our substitute injured persons are having their rights to sue cut off is simply wrong. Under our substitute, a plaintiff, an injured consumer, can go out and file a suit immediately on the very first day.

Under the McCain-Wyden substitute, if you feel that you are a wronged party, you can file a suit the first day. We just do not think, as a matter of public policy, that is a particularly good idea. We would like to encourage parties to work together in the private sector. That is what we seek to do through the 90-day period. That is what we seek to do through the alternative dispute resolution system. But for those who think it is important to basically have the right to sue immediately, our legislation does that. We do it in a way that protects, first and foremost, contract law rather than writing whole new Federal standards to govern in this area.

Finally, and this is perhaps the area where I have the strongest disagreement with what the administration has offered today, I find it very, very far-fetched to believe that there are folks in the Justice Department who know more about the technical issues of helping those in the technology sector get ready for the 21st century; that those folks would know more about this technical job we have in front of us than people who have to do it every single day in my home State of Oregon and across the country. Those are folks who right now, every single day, come to work saying, What are we going to do about working with our suppliers? What are we going to do about individuals overseas who may have been slow to get ready for Y2K? Those folks know a whole lot more about the challenge of getting ready for the 21st century than do the folks in the Justice Department.

I hope we listen to those folks across the country in the small businesses, in the grocery stores and hardware stores, who, by the way, overwhelmingly support this substitute. We have had discussions about somehow the grocery stores and the hardware stores and others are ones that are not supportive of this legislation, who feel their rights are being cut off. The fact is they are overwhelmingly in support of this legislation.

A lot of my colleagues, I guess, are saying: Where do we go from here? Is it just going to be impossible to move forward? I am not one who shares that view. I think there is a centrist coalition in the Senate that very much wants to get a responsible bill that meets the needs of consumers and injured parties, and is also concerned about preventing bedlam in the private marketplace next January. We have been meeting on an ongoing basis for several days now. We have had some very thoughtful ideas presented. Senator DODD has some important suggestions; Senator HATCH, Senator FEINSTEIN, and others have made real contributions. I understand our colleague from Massachusetts, Senator KERRY, continues to negotiate on several of the issues that are outstanding.

So I am very hopeful that with the continued leadership of TOM DASCHLE and TRENT LOTT on this issue that we can continue to work through some of the outstanding issues. I have tried to respond this morning to areas where I think the administration is simply off base with respect to what the McCain-Wyden substitute is all about, but I want to make it clear I remain open to working with them.

But I would say now is the time for the Senate to deal with this issue. If we let this go on, if we just let it fester and take months and months and months and arrive at no resolution of this problem, I happen to think we may well be back here early next January for a special session of the Senate having to deal with this problem. There is not a Member of this body who wants that result. Let us continue to work together.

I plan to continue to negotiate with all the Senators I have mentioned this morning, and will continue to try to be responsive to the concerns raised by the distinguished Senator from South Carolina, although I think in the end it is quite clear we have a difference of opinion on this legislation. But this bill is too important to just say: This is it, the end, the administration has given its opinion and let's move on.

I think we have an opportunity to proceed under the McCain-Wyden substitute. We have made nine major changes that were requested by various organizations to be responsive to areas where they thought the committee bill was inadequate. We have made it clear we are open to a variety of other suggestions. Senator DODD, in particular, has offered several which I think are very important and ought to be addressed. I hope the Senate will continue to work in a bipartisan way to deal with this issue, because the time to deal with it is now and not next January.

I yield the floor.