SENATE—*Thursday, April 29, 1999*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. Thomas A. Erickson, Valley Presbyterian Church, Scottsdale, AZ.

We are pleased to have you with us.

PRAYER

The guest Chaplain, Dr. Thomas A. Erickson, Valley Presbyterian Church, Scottsdale, AZ, offered the following prayer:

Let us pray.

Gracious and ever-living God, You promised through the Psalmist, ''I will instruct you and teach you the way you should go, I will counsel you with my eye upon you.''—Psalm 32:8. In response, we open our minds to You, asking that in all the business before us we may clearly see Your will and courageously do Your work.

O God, when world events threaten to crush our hope, reassure us that peace is possible, for Your will shall yet be done in all the Earth. Then help us to do what we can, individually and together, to achieve that peace for all people everywhere.

At the end of this day, let every Senator know, let every staff member and aide know, that they have done their duty to You, to their Nation, and to one another. Give them satisfaction in knowing that they have moved our Nation a step further in its unrelenting quest to be ''one Nation under God, with liberty and justice for all.'' Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. GRAMS. I thank the Chair.

SCHEDULE

Mr. GRAMS. Mr. President, today the Senate will immediately begin 1 hour of debate relating to the cloture motion to the MCCAIN amendment to the Y2K legislation. At approximately 10:30 a.m., following that debate, the Senate will proceed to a cloture vote on the pending MCCAIN amendment.

As a reminder, by a previous agreement, second-degree amendments to the McCain amendment must be filed by 10 a.m. today.

Following the cloture vote, the Senate may continue debate on the Y2K bill, the lockbox issue, or any other legislative or executive items cleared for action.

Also, as a further reminder, a cloture motion was filed on Wednesday to the pending amendment to S. 557 regarding the Social Security lockbox legislation. That vote will take place on Friday at a time to be determined by the two leaders.

For the remainder of the week, it is possible that the Senate may begin debate on the situation in Kosovo.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The able Senator from Arizona is recognized.

Mr. KYL. I thank the Chair.

GUEST CHAPLAIN THOMAS ERICKSON

Mr. KYL. Mr. President, it is an honor for me this morning to have in the Senate Chamber both of my ministers—of course, the Chaplain of the Senate, Lloyd Ogilvie, and the individual who gave our prayer this morning, who is Thomas Erickson, minister of the Valley Presbyterian Church in Scottsdale, AZ. This is the church in which I am a member in my home State of Arizona. His wife Carol joins him today in the Nation's Capital, and as I said, it is my honor to be with them today and certainly an honor for my church to have its minister deliver the opening of the Senate.

Valley Presbyterian Church is a dynamic congregation of some 2,400 members and growing. Reverend Erickson has been with the church now for almost 13 years.

Mr. President, you perhaps noticed that as he was delivering the morning prayer, if you closed your eyes just a little bit, it almost sounded like our Chaplain, Lloyd Ogilvie. I frequently do that when I am in church here or I am in the Senate Chamber. I close my eyes and I can almost hear the other speaking, because they have the same resonant voice, especially when delivering a prayer.

So I am honored, as I said, to be able to present Dr. Erickson to my fellow Senators this morning and all of those who observed the morning prayer on television.

I thank you, Mr. President. I yield the floor.

Y2K ACT—CLOTURE MOTION

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

Mr. WYDEN. I thank the Chair.

To begin the hour of debate that we have on the Y2K measure, I would like to discuss the agreement entered into late yesterday, the special effort that was led by Senator DODD of Connecticut. Senator DODD has been the leader on our side on the Y2K issue. The agreement that was entered into last night involved Senator MCCAIN, myself, Chairman HATCH, Senator FEINSTEIN, Chairman BENNETT; a number of colleagues were involved. It seems to me that this effort, which was led by Senator DODD, has directly responded to a number of the concerns outlined by the White House in the statement that was delivered yesterday to the Senate. I would like to briefly outline the proposals which are going to be offered by the Senator from Connecticut in conjunction with the group of us that has been working on a bipartisan basis for this legislation.

Under the changes made yesterday, there would be punitive damage caps for small businesses. We ensure that there is fairness to both sides. We would eliminate punitive damage caps for the large businesses, those over 50 employees. We would protect municipalities and governmental entities from punitive damages. And we would also ensure that State evidentiary standards for claims involving fraud were kept in place.

The legislation would continue to do the following. There would have to be a 30-day notice. The plaintiff would have to submit a 30-day notice to the defendant on the plaintiff's intentions to sue, with a description of the Y2K problem. If the defendant responded with a plan to remediate, then an additional 60 days would be allowed to resolve the problem. If the defendant didn't agree to fix the problem, the plaintiff would be in a position to sue on the 31st day. We would establish—and this was of great concern to a number of Members of the Senate—liability proportionality. We would ensure that defendants don't pay more than the damage they are responsible for but exceptions would include plaintiffs with a modest net worth who were not able to collect from one or more defendants and defendants who had intentionally injured plaintiffs.

I think this is especially important because, clearly, if you have a defendant who has engaged in intentionally abusive conduct, you want to send the strongest possible message, and we do establish liability proportionality under the agreement led by Senator DODD.

We would also preserve contract rights so as to not interfere with parties who have already agreed on Y2K terms and conditions. We would also confirm the duty to mitigate. This is an effort to essentially confirm existing law that plaintiffs have to limit

damages and can't collect damages that could have been avoided. This is an opportunity for potential defendants to provide widespread information on Y2K solutions to assist potential plaintiffs.

Finally, our proposal would encourage alternative dispute resolution, and it also keeps, as a number of Democrats have discussed with us, all personal injury and wrongful death claims with every opportunity to use existing law to ensure protection for the consumer and for injured parties.

I commend my colleague from Connecticut, Senator DODD. He is the Democratic leader on the Y2K issue. Let me also say that what Senator DODD has done, in conjunction with myself and Senator MCCAIN, is he has essentially taken a lot of what we have done in the securities litigation area, a lot of what we have done in the earlier Y2K legislation, and used that as a model. So Senator DODD's proposal, in my view, is very constructive. We now have an agreement that has been entered into by Senator DODD, Chairman MCCAIN, myself, Chairman HATCH, who has been exceptionally helpful on this effort, our colleague from California, Senator FEINSTEIN, and Senator BENNETT, who chairs the Y2K committee.

So I am very pleased about this effort that was entered into late yesterday. I say to my colleagues—especially Democrats who were concerned about the statement issued earlier by the White House—this compromise effort that I have outlined—and we also issued a statement on it—responds directly to a number of the concerns that were outlined by the White House, especially the two perhaps most important, which are protection for injured parties as it relates to the opportunity to seek punitive damages where appropriate, and also to ensure that with respect to evidentiary standards, no one could say that this was now raising somehow for all time a change through Federal law. We specifically preserve State evidentiary standards for important claims involving fraud.

But I would say, Mr. President and colleagues, this legislation is not going to be a change for all time in our laws. It is essentially a bill, and it has a strong sunset provision that is going to last for 3 years or so. We are trying to make sure, through that sunset provision, that we deal just with those concerns raised by Y2K. Y2K is not a partisan issue. It affects every computer system that uses date information. It was essentially an engineering tradeoff which brought us to this predicament; to get more space on a disk and in memory, the idea of century indicators was abandoned. It is hard for us to believe today that disk and memory space at a premium, but it was at one time. So in an effort to try to make sure during those earlier days there were standards by which programs and systems could exchange information, there was this engineering tradeoff.

Now, some say you could just solve the Y2K problem by dumping all the old layers of computer code accumulated over the last few decades. That is not realistic. So what we ought to be trying to do is to make sure that information technology systems are brought into Y2K compliance as soon as possible. That is what the substitute that Senator MCCAIN and I have offered seeks to do, and I believe that substitute has been vastly improved now by the leadership of the Senator from Connecticut, Mr. DODD.

I think as this discussion goes forward in the next hour, it is also important to recognize just how dramatic the implications are for this issue. I would like to cite one example which I know a number of my colleagues on the Democratic side can identify with very easily. A lot of my colleagues, led by Senator KENNEDY, have been very concerned about making sure that there is a good prescription drug benefit for seniors under Medicare. It is the view of a lot of us that billions of dollars are wasted. Billions of dollars are wasted every single year as a result of seniors not taking prescriptions in a way so as to limit some adverse interaction. We waste billions of dollars and millions of seniors suffer as a result of not taking these prescriptions properly. And the best single antidotes that we have today are some of the new online computer systems which keep track of seniors' prescriptions and are in a position to help limit these adverse drug interactions.

Well, the fact of the matter is, if we have, next January, chaos in the marketplace with our pharmacies and our health care systems and programs that help us limit these problems involving drug interactions, we are going to waste billions of dollars which could be used to get senior citizens decent prescription drug benefits, and we are going to hurt older people needlessly.

Now, that has been a problem documented by the General Accounting Office. I raise it primarily because there has been a discussion in the Senate about how this legislation is just sort of a high-tech bill, and maybe some folks care about it in the State of Oregon where we care passionately about technology, or Silicon Valley, or another part of the country. I think we all know that technology is important in every State in our Nation. But I think it is very clear that these issues dramatically affect our entire Nation. It doesn't just involve a handful of high-tech companies; it involves millions and millions of Americans. The reason I have taken the Senate's time to discuss particularly how this would affect older people with their prescription drugs is that I think this is just a microcosm of this debate. I think this is just one small example of what this discussion is all about.

Now, the Congressional Budget Office and other experts have estimated that Y2K-related litigation could cost consumers and businesses twice as much as fixing the Y2K problem itself. Now, I think those predictions may, in fact, be exaggerated; maybe they are wildly exaggerated. But I would much prefer to see the Senate craft responsible legislation now rather than to delay. And should the Senate not act on this legislation in an expeditious way, I believe there is a very real possibility that the Senate could be back here in January having a special session to deal with this issue.

So I am very hopeful that we can go forward on it. I know that the minority leader, Senator DASCHLE, has worked very hard to be fair and to ensure that there is opportunity for colleagues to raise amendments. He has been working closely with the majority leader, Senator LOTT. Those procedural issues are still to be resolved.

I happen to agree with Senator KENNEDY on this matter of raising the minimum wage. I think he is absolutely correct that we ought to raise the minimum wage. But I am very hopeful that we will not see these issues pitted against each other. It is extremely important to raise the minimum wage. I also think it is extremely important to deal with this Y2K issue in a responsible fashion.

I know there are other Members of the Senate who wish to speak on this issue. They haven't arrived on the floor quite yet. I think I will just take an additional couple of minutes, as we await them, to outline some of the changes that have been made since the legislation left the Commerce Committee. At that time, regrettably, it was a partisan bill and did not yet have the constructive changes made by the Senator from Connecticut, Mr. DODD, and did not at that point include the eight major changes that Chairman MCCAIN and I negotiated. I would like to wrap up my initial comments by taking a minute or two to talk about those changes that have been made in the legislation. For example, Mr. President and colleagues, early on none of the bills had a sunset provision in the legislation. There was a great concern that somehow some change in tort law and contract law would be for all time, establishing new Federal standards in this area. It was a feeling on my part and upon the part of other colleagues that it was absolutely critical to have a sunset provision to ensure that we were talking just about problems relating to the Y2K and not creating massive changes in Federal tort law or contract law that would last for all time.

None of the original bills contained a sunset date. We now have a 3-year sunset date making it very clear that any Y2K failure must occur before January 1, 2003, in order to be eligible to be covered by the legislation. Most industry

analysts agree that Y2K failures are likely to follow a bell curve, a peaking on approximately January 1, 2000, and trailing off in 1 to 3 years. The sunset date that has been added tracks the very best professional analysis we have about the problem.

I thank Chairman MCCAIN for adding that in our initial negotiations. It is extremely important to me. I felt a lot of the Members of the Senate on the Democratic side felt that it was critical that this be a set of changes that was limited to a short period of time. That 3-year sunset addition, I think, sends a very powerful message that this is not changing tort and contract law for all time. I am very pleased that it has been added.

Second, in the committee there were some vague, essentially new Federal defenses that I and others felt unfairly biased this process in favor of the defendant. Those were removed. Essentially what those original provisions said was that if defendants engaged in what was called a ''reasonable effort'' that they would be protected advocates. Consumers felt strongly that this language was mushy and vague.

I agree completely with them on it. In fact, we originally had it in committee, and I opposed it at that time. But at the request of the consumer groups, this mushy, vague language that protects defendants who engaged in something called a ''reasonable effort'' was dropped.

We also made changes to keep the principle of joint liability. After the legislation left the committee, we thought it was important to make sure that for cases involving fraud and egregious conduct we kept the traditional principle of joint and several liability. It was also extended to involve insolvent defendants.

Senator DODD has continued to help us in this area to ensure there is fairness for injured parties while at the same time making it clear that the defendants don't pay more than the damage for which they are responsible.

The legislation continues to have in place what we negotiated after the legislation left the committee. This is incorporated into the announcements we made last night about the important efforts made by Senator DODD.

Finally, we thought it was important to make sure contract rights were paramount in this area. This legislation does not involve any changes whatever in personal injury rights. If, for example, an individual is in an elevator and that elevator falls 10 floors to the bottom of a building, and that individual is tragically injured, or dies, all of the personal injury remedies are kept in place. That is not something that would be affected by this legislation. This legislation involves contractual rights between private business parties. I and others felt that it was not adequately laid out in the committee legislation, that the contract rights were paramount in this area. As a result of the negotiations we had after the legislation left the committee, those rights were kept in place. I and others felt that was essential.

I see my good friend from the State of Connecticut on the floor. I am going to yield in just one second. But first I want to take a minute and tell him how much I appreciate what he has done. He is, of course, the Democratic leader on the Y2K issue.

I am essentially still a rookie in the Senate, and the Senator from Connecticut has been so helpful as we have tried to take this legislation that passed the committee unfortunately on a partisan vote and tried to make it responsive to the many legitimate issues that have been raised by our colleagues on this side of the aisle. The colleagues on this side of the aisle have been absolutely right about saying that the original bill was not adequate with respect to punitive damages. It wasn't adequate with respect to evidentiary standards. It didn't do enough to address the issues that we heard about from the White House late yesterday.

As a result of an agreement led by the Senator from Connecticut, we have been responsive to those issues. We have essentially had nine major changes made after the bill came out of committee. The Senator from Connecticut has led the bipartisan effort. I discussed that bipartisan effort earlier involving Senator FEINSTEIN, Senator HATCH, and Senator BENNETT.

I want to yield the floor now to the Senator from Connecticut, and thank him for all he has done to make this a bill that I believe can get the support of a significant number of Democrats, because it responds to what we heard from the White House. I thank him as well personally for all of the good counsel and help that he has given me. He is the leader on this issue. He is the one who navigated the securities litigation legislation. I pointed out how he took much of what the Senate learned on the securities litigation in the earlier Y2K bill and made that part of his compromise. I thank the Senator from Connecticut.

Mr. President, I yield the floor. I look forward to hearing from the Senator from Connecticut.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I will be very brief.

Let me begin by thanking our colleague from Oregon. He is very effusive and gracious in his compliments. He describes himself as a rookie. But he is anything than a rookie when it comes to the legislative process. He served with great distinction in the other body, and has been here now several years proving the value of his experience as a seasoned legislator in the Senate.

Let me just say I am very hopeful. I was very pleased yesterday that we were able to reach an agreement on three proposals that I felt, and many others felt, were essential if this Y2K litigation legislation was going to succeed. One of these proposals was to deal with the punitive damages cap issue with the exception of municipalities, government entities, and smaller businesses, which are described as businesses that employ 50 people or less. This number is more than the 25 employees which usually defines a small business. I realize that one might make a very strong case that even more than 50 employees would still constitute a small business. But with a country that is growing all the time, I think most of us would agree that a small business today would still be one that employed 50 people or less.

We also eliminated the caps on the director and officer liability because under the disclosure bill passed last year we crafted a safe harbor for forward-looking statements by directors and officers and managers. We felt that this safe harbor would suffice, along with the normal business judgment rule which protects managers to some degree. As a result, we didn't think a cap on director and officer liability was necessary.

I am pleased that Senator MCCAIN and Senator HATCH, as well as my good colleague and friend, Senator BENNETT—who really has been the leader on the Y2K issue for so many years—agreed with both of those provisions, as well as with the state of mind provisions. It gets rather arcane when you start talking about some of these legal terms, but they are important matters.

What we are doing with the claims involving state of mind is leaving the status quo with respect to the evidentiary standard. That is, each State determines what that standard is, instead of having a national standard. There was some effort to have clear and convincing evidence be used as the evidentiary standard you would have to reach, but 34 States already have that standard. Many other States do not have that standard, so we thought the best result on a compromise was to leave it to the States to decide what that standard ought to be, rather than incorporating it in this bill.

Again, I thank Senator MCCAIN, Senator HATCH, Senator BENNETT, and others who have agreed to and supported these changes.

As I understand it, there are other outstanding issues. The Senator from Oregon is absolutely correct. There are colleagues who have other amendments. They would not support this bill even with these additions. I know Senator KERRY of Massachusetts has a strong interest in proportional liability issues. I am confident that Senator HOLLINGS and Senator EDWARDS have some suggestions they might want to make to this bill.

My hope is that our leaders can work this out. I know Senator DASCHLE is more than prepared to sit down and work with our distinguished majority leader to allow for a series of amendments to be considered, as we normally do here, on this bill and to allow them to come up, to debate them, to vote on them, and to try and get this bill completed. I think we could complete it by this weekend, by tomorrow, if we began to work.

I do not know what the schedule is. There may be other matters that are more pressing in the minds of the leadership. But it seems to me now that agreeing on a package of amendments that can be offered is the way to go. We are going to have a cloture vote here shortly. I am going to oppose invoking cloture because we have not yet agreed on a process and I do not want to deny an opportunity to any of my colleagues. I know there may be some on the majority side who do not yet agree with this bill. There are several who have strong reservations about this bill even with the additions we have made to it by this agreement, and they may have some amendments they may want to offer. That is how we do business in the Senate. The Presiding Officer knows of what I speak. We both served in the other body, the House of Representatives, where you have strict rules and whoever is in the majority controls this exactly, determining if any amendments are to be considered.

In the Senate we are a different institution. Here we allow the free flow of debate and we do not deny Members the opportunity to bring up issues that they believe are critically important, even issues that are not germane to the matter before us. Although we do not encourage that in every instance, that can be done here. That is what makes the Senate of the United States different from the Chamber down the hall. We are, in a sense, counterweights to each other. In the House of Representatives the rule of the majority prevails, as it should. In a sense, in the Senate we protect the rights of a minority to be heard.

That is what we are hoping the leaders will allow to happen today. We hope an agreement is reached on a series of amendments that will allow them to be debated and discussed and voted on. If that is the case, I am very confident that we will be able to pass this important piece of legislation and send it to the House, where they are considering similar legislation. I am also very confident that we can secure a signature from the President, who I know cares very much about this issue, as does the Vice President, and we can accomplish what many have sought here—to protect against the dangers of massive litigation over this year 2000 computer bug which is looming on the horizon.

Two hundred and forty days from now, when the millenium clock turns, I do not think that any of us here wants to be looking back and saying we lost an opportunity here in April to try to at least limit the kind of financial hardship and economic disruption that could occur if we do not address the threat of a Y2K litigation explosion. So I am very hopeful that we can come together, as we have already come so far.

Again, I express my thanks to the chairman of the committee who has the thankless job of trying to move a complicated bill along. Senator HATCH has also been tremendously helpful and supportive on this. Again, Senator BENNETT of Utah, with whom I work on the Y2K committee, has done just an astounding job, I think, of bringing to the attention of all of us here, as well as to the people across this country, the importance of this issue. And, of course, the efforts of the distinguished Senator from Oregon and Senator FEINSTEIN of California. My colleague from Connecticut, Senator LIEBERMAN, who cares very much about litigation reform issues generally, has also been very helpful on this. I fear I am leaving some people out here. I hope I am not. But at this juncture I know these are people who have been involved in this issue and care about it. Again, my plea to the majority leader, and I know Senator DASCHLE cares about this, too, is to see if we can now come to some agreement.

The PRESIDING OFFICER (Mr. CRAPO). The time of the proponents has expired.

Mr. DODD. I ask unanimous consent for an additional minute.

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

Mr. WYDEN. Will the Senator yield?

Mr. DODD. I do.

Mr. WYDEN. I will be brief. I concur completely with what the Senator from Connecticut has said. I want to ask him one question about the very helpful punitive damages agreement he negotiated with us last night.

My understanding is, this agreement tracks very closely with what the Clinton administration has agreed to in the past with respect to product liability. In fact, our agreement seems to be more generous to plaintiffs than what the administration has agreed to in the past.

In the past, they seemed to have said we ought to look at something that would have two times compensatory damages. This legislation has three times the damages, to make sure there is a fair shake for the consumer. Is that the understanding of the Senator from Connecticut? I ask because he has been involved in this issue involving punitive damage questions for quite some time. I think he has been very fair to plaintiffs in this area. It seems to me, actually, the Senator has gone beyond what has been talked about in various other discussions that we had.

In just this minute I would like to take one more moment to hear the Senator's opinion on that issue which is a key issue for Democrats.

Mr. DODD. I think I ought to ask unanimous consent for an additional minute.

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

Mr. DODD. In response to my colleague—and I thank him for raising the issue—I do not claim great expertise in the product liability area. We have done some work, and I appreciate his comments, on the securities bill, the standards reform bill, and here on the Y2K area. So going back and revisiting this, while I do not recall the point the Senator raises, I do not question what he has said. I presume, in fact, that he is correct. I simply do not bring any personal recollection of how we crafted that.

I know the administration cares about the Y2K issue. I negotiated with the White House on securities litigation, and there were some difficult issues to resolve. The Senator may recall that in that case the President vetoed the bill and the Congress overrode the veto. That is how that piece of legislation became law.

On uniform standards, President Clinton and Vice President GORE were tremendously helpful and supportive, and I suspect they will be here as well. I want to be careful. I think it is fine to go back and use previous examples on punitive damages and on director and officer liability and on state of mind issues. However, there are differences in the application of law when you are dealing with bodily injury and other questions where product liability issues can come in, and even more differences when contract law comes into play. Contract law is basically what we are talking about here.

Let me just say this, because the Senator has raised a very important point. I know there are going to be Members—there always are—who think that we are going too far in the punitive damage area and with director and officer liability, and who think we are giving away too much. I think there are people who care about the trial bar and think we have not done enough in this area and that there is too much here against the trial bar.

This bill really does provide a balance at this point. We have not adopted this amendment, but on the assumption it is adopted, we have removed the caps on punitive damages in most instances, removed the caps on director and officer liability, and kept the status quo on state of mind issues. Those are issues the trial bar said were very important to them.

Is it everything they want? No. Does it give away more than some who care about these issues want? It does. But traditionally, when you are trying to craft a piece of legislation with as many different points of view as 100

Senators can bring to the debate, clearly no side is going to prevail with everything it would like. What we have done here, I think, is struck a sound, good balance that is a good bill and one I hope will attract the broad support of Republicans and Democrats, and to move on.

I see the chairman of the committee has arrived on the floor here. In his absence I was praising him. I would do so in his presence as well, but I realize he may want to go on to other matters here. I have already been taking advantage of the Presiding Officer's presence here by extending the time by unanimous consent, and I do not want to abuse the graciousness he has already demonstrated to me any more than that, so I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent to speak for an additional 7 minutes.

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

Mr. MCCAIN. Mr. President, before the Senator from Connecticut leaves the floor, I thank him for all of his efforts. We have engaged in intensive and sometimes emotional negotiation, and we have had a long relationship for many years. His contribution, no matter how this cloture vote comes out today, has been critical in moving this process forward. It has given me optimism that we will be able to resolve this issue. Without his involvement, we would not have the opportunities that I believe we will have in the future.

In my prepared statement, which I will make in just a minute, this issue is too important to just go away. I think the Senator from Connecticut knows that and the Senator from Oregon, who has played such a critical role, along with Senator FEINSTEIN, Senator HATCH, and others on this issue, know that. It is not going to go away.

What the Senator from Connecticut has done and the Senator from Oregon has done is move this process forward to where I believe we will be able to get it done, because it is too important for us to just say we cannot agree on it. I thank both my colleagues for all their efforts.

Mr. President, we are now at a critical time if we are to pass this bill. We have been attempting to debate and act on this matter for a week. We are about to have our second cloture vote as we crawl through the morass of Senate procedure. We have endured hours of quorum calls waiting for substantive discussion. We have heard at length the views of the ranking member, Senator HOLLINGS, in opposition to this bill. We have detoured from the bill to hear the minority's complaints about scheduling unrelated matters of interest to them. But now, Mr. President, we are about to have a critical vote.

This is a vote to allow us to complete action on this critical bill. This is a vote to cast aside the partisan procedural games and get on with the business of the nation. Important business, as the thousands of CEO's and business people from all segments of industry: high tech, accounting, insurance, retail, wholesale, large and small, who are actively supporting this bill will attest. The Y2K problem is not going away, nor is it going to be postponed by petty, partisan procedural wrangling.

The cost of solving the Y2K problem is staggering. Experts have estimated that the businesses in the United States alone will spend $50 billion in fixing affected computers, products and systems. But experts have also predicted that the potential litigation costs could reach $1 trillion—more than the legal costs associated with asbestos, breast implants, tobacco, and Superfund litigation combined—more than three times the total annual estimated cost of all civil litigation in the United States. This is not just my opinion, but are facts supported by a panel of experts on an American Bar Association panel last August. These costs represent resources and energy that will not be directed toward innovation, new technology, or new productivity for our nation's economy. This litigation could overwhelm and paralyze the industries driving the best economy in our history.

The Y2K phenomenon, while anticipated for years, presents nevertheless, a one-time, unique problem. Our legal system is neither designed, nor adequately equipped, to handle the flood of litigation which we can expect when law firms across the country are laying in wait, in eager anticipation of a golden opportunity. More to the point, the vast majority of our Nation's citizens do not want to sue. They want their computers, their equipment, their systems to work. They want solutions to problems, and a healthy economy, not a trial lawyers' full employment act.

S. 96 presents a solution, a reasonable practical, balanced, and most important, bi-partisan solution. Since it passed out of committee, with the help of my colleagues especially Senator WYDEN, Senator DODD, Senator FEINSTEIN, and others it has been improved, narrowed, and more carefully crafted to ensure a fair and practical result to the Y2K situation.

The Public Policy Institute of the Democratic Leadership Council published a Y2K background paper in March which has been widely circulated and quoted on the Senate floor in the past several days. The authors state:

> In order to diminish the threat of burdensome and unwarranted litigation, it is essential that any legislation addressing Y2K liability:
>
> 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
>
> Discourage frivolous lawsuits while protecting avenues of redress for parties that suffer real injuries.

S. 96 does all of those things.

It provides 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;

It eliminates punitive damage limits for egregious conduct, while providing some protection against runaway punitive damage awards; and

It provides protection for those not directly involved in a Y2K failure;

It is a temporary measure. It sunsets January 1, 2003;

And it does not deny the right of anyone to redress their legitimate grievances in court.

I have spent hours working with several of my colleagues, including the distinguished Senator from Connecticut, Mr. DODD, to resolve specific concerns. We have arrived at an agreement to further modify the substitute amendment my friend Mr. WYDEN and I earlier agreed upon. There may still be others, such as Mr. KERRY of Massachusetts, with ideas, suggestions, or a different perspective on solving the problem.

I welcome hearing other ideas. My colleagues may want to offer amendments. I am willing to enter into consent agreements to allow the opportunity for debate on other ideas. We can then vote and the best idea will win. That is the way of the Senate. But, that cannot take place unless we vote yes now on cloture.

The clock is ticking. Mr. President, 246 days plus a few hours remain until January 1. This bill cannot wait. Its purpose is to provide incentives for proaction—to encourage remediation and solution and to prevent Y2K problems from occurring. It will not serve its purpose unless it passes now.

This vote is a simple vote. It is a critical vote. This is a vote as to whether we want to solve and prevent the Y2K litigation problem, which has already begun, or whether we will let partisan ''politics as usual'' be an obstacle to our nation's well-being. It is a vote to either help the American economy or to show your willingness to do

the bidding of the Trial Lawyers Association. Make no mistake, I hope companies across America are paying attention. Senators will vote to help protect small and large business, the high tech industry, and others, or they will choose to protect the trial lawyers' stream of income. That is the choice. I ask my colleagues to consider carefully the message they send with their vote today. Are you part of the solution? Or part of the problem?

Mr. President, I believe it is time for the vote. I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina has 22 minutes remaining.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, we have a cloture vote set at a specific time; is that correct?

The PRESIDING OFFICER. The cloture motion vote was scheduled to occur at the end of 1 hour of debate. We have had unanimous consent agreements extending the time. There are 22 minutes remaining in the debate. This time is under the control of the Senator from South Carolina.

Mr. HOLLINGS. I yield whatever time the Senator needs.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I will address the question of the Y2K for just a moment, if I may, and then I was going to ask unanimous consent just to make a couple comments as in morning business for the purpose of introducing a bill.

Prior to doing that—do I understand the Senator from Arizona would object to that taking place at this point?

Mr. McCAIN. I would object to going to morning business at this time. The Senator from South Carolina has 22 minutes left, and I am glad to listen on that time, but it is getting time for us to vote on cloture.

Mr. KERRY. All right.

Mr. President, let me just say a few words on the issue of the Y2K. I have been working quietly with a number of colleagues in order to try to see if we cannot come to some sort of compromise.

I heard the Senator from Arizona assert that the principal reason that we are where we are right now is because the revenue stream for lawyers, for trial counsel, might be somehow impacted, and that is the sort of overbearing consideration that has brought us to this point of impasse. Let me just say as directly and as forcefully as I possibly can that there really are public policy considerations that extend beyond that.

I have tried cases previously as a trial attorney. I understand the motivations and needs to certainly have a client base which allows you to survive. I have seen some ugly practices out there, and I have joined in condemning them as a Member of the Senate and also as a member of the bar.

I do not think any of us who are members of the bar take pride in the practices of some attorneys who have obviously given the profession a bad name at times and have abused what ought to be a more respected and sacrosanct relationship in the country.

But at the same time, just as with any business—whether it is Wall Street and brokers or businesspeople who are manufacturers who somehow put a product on the marketplace that cost lives—there are always exceptions to fundamental rules. There are also a lot of lawyers out there who work for nothing, who do pro bono work, who give their energies to fighting for the environment or for civil rights or a whole lot of other things. I think it is a mistake to sweep everybody into one basket and suggest that that is all this issue is about.

We have some time-honored traditions in this country about access to our court system. We have some deep-rooted principles which allow victims of certain kinds of abuses, and sometimes even arrogance, to be able to get redress for that. That is one of the beauties of the American judicial system. And I could show—and I do not have time now—countless examples of life being made better for millions of Americans because some lawyer took a case to court and was willing to fight for a particular principle.

I happened to bump into Ralph Nader a little while ago going into a Banking hearing related to an issue on privacy on the House side. I recall, obviously, his landmark efforts with respect to automobiles and safety, and millions of American lives have been saved because of those kinds of challenges.

Sometimes the pendulum sweeps too far, and I well recognize that. In fact, there is a great tendency within the Congress for us to react to a particular problem, and, kaboom, we wind up with unintended consequences, and then we sort of have to pull the pendulum back. I have done that.

I have joined with colleagues here to change the law on liability with respect to aircraft manufacturing because we found that there was a particular problem for small, light plane manufacturing in the country. We also changed the law with respect to securities reform, and I joined in that effort. And I joined in overriding the veto of a President with respect to those things because I thought the reform was important and legitimate. No one here ought to condone the capacity of individual lawyers to simply trigger a lawsuit with the hopes of walking into a company and then holding them up for settlement because it is too expensive to litigate.

I believe that in the compromise we have on the table, as well as in other efforts that have been offered, there are legitimate restraints on the capacity of lawyers to abuse the system. There are increased specificity requirements with respect to the pleadings so that you cannot just go in on a fishing expedition. There is a 90-day period for cure; i.e., once a company is noticed that they are in fact in a particular possible breach with respect to the contract that extends for the sale of a particular computer or software program, they are given 90 days within which time they can cure the problem and there is no lawsuit. In addition to that, there are a series of other restraints which I think are entirely appropriate, and I would vote for those.

Let's say somebody's mother or father is at home and you have a bank account and a bank loses your entire bank account, for whatever reason, or there is some doctor's appointment that is lost by somebody that was critical to the provision of some serum or antibiotic. Who knows what might be occurring that has been computerized and expected on a particular schedule that might be affected. There is a requirement in their legislation, the legislation currently about to be voted on, which would deny any consumer access to remedy for 90 days.

You get a 90-day stay period. What is the rationale for that? That was supposed to apply to the companies, not to individuals. But we don't have a legitimate carve-out for consumers, for the average consumer, for Joe ''Six-Pack'' who might be affected by this. They are somehow going to be plunked into a basket with all of the other companies.

In addition to that, there is a legitimate problem with respect to access to the system. If you have a company that does business abroad, does not have a home base here, you have no capacity to reach them with respect to service of process. We are going to say that we are going to deny somebody the capacity to have full redress or remedy, and they are going to have to go chase that other person somehow, no matter what the level of that person's responsibility is. To do that is effectively to say to people, Sorry, folks. No lawyer in the country is going to take that case. We're effectively stripping you of the rights to be able to have access to the court system.

I am for a fair balance here. I have a lot of companies in Massachusetts that are high-tech companies, a lot of companies that are impacted by this. I know a lot of people in the industry whom I respect enormously who deserve to be protected against greedy, voracious sorts of wrongful, totally predatory efforts to try to hold them up in the system. I am for stopping that.

I would, in our effort, put restraints on the capacity to bring class actions

wrongly. And I think we have an increased standard with respect to materiality that would make it much tougher for people to put a class together without a showing of injury.

So the real issue here before us in the Senate is, What is really trying to be achieved here? If we are trying to simply achieve a balanced, fair approach to protecting companies from unfair lawsuits and being balanced about the average citizen's approach to the court system there is a way to do that. But if what we are doing is a larger tort reform agenda, because of the bad name that lawyers in general have, and some lawyers in particular have earned for them, if that is the effort, in order to seek some broader change in the legal system that denies people access to the courts, then I think we have a different kind of problem.

There are many people in this Chamber who have practiced law before, some on the other side of the fence, on the Republican side, who do not believe any legislation is necessary, that this is a one-time problem, that the greatest incentive you can have to avoid a problem is for people to fix it ahead of time, and the greatest way in which you will get the best and biggest and fastest fix ahead of time is to have people required to be open to the possibilities of redress if they did not do that.

But if we limit people's potential liability, there is a great likelihood that a lot of people will say, Well, I'm not going to fix this. I'm not liable. I don't need to do anything about it. They can't bring suit against me. And you may, in fact, have taken away the very incentive you are trying to create.

Mr. President, there are very real and legitimate substantive arguments: Access to our court system. What is the best incentive? How do you approach this fairly? How are you going to wind up with a system that is balanced? All of those issues are really at stake in this. I hope colleagues will remember that as they approach the question of what is the best compromise here which would give us the kind of balance that we need.

Mr. President, I yield the remainder of my time to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina has 11 minutes remaining.

Mr. HOLLINGS. Mr. President, I thank my distinguished friend from Massachusetts. He has summed it up.

I will only point out again this morning's news, the Wall Street Journal. I quote from page B4:

> [By now] the year 2000 bug was supposed to have played havoc with corporate computer spending, with companies supposedly too worried about their mainframes to think of anything else. A cautious attitude about the issue was the theme in comments by big technology companies that released first-quarter results in the past few weeks.
>
> But with one notable exception, the technology industry has so far escaped any broad year 2000 slowdown.

Mr. President, I ask unanimous consent to print in the RECORD an editorial from this morning's Washington Post about Y2K liability.

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

[From the Washington Post, Apr. 29, 1999]

Y2K LIABILITY

The Senate is considering a bill to limit litigation stemming from the Year 2000 computer problem. The current version, a compromise reached by Sens. John McCain (R–Ariz.) and Ron Wyden (D–Ore.), would cap punitive damages for Y2K-related lawsuits and require that they be preceded by a period during which defendants could fix the problems that otherwise would give rise to the litigation. Cutting down on frivolous lawsuits is certainly a worthy goal, and we are sympathetic to litigation reform proposals. But this bill, though better than earlier versions, still has fundamental flaws. Specifically, it removes a key incentive for companies to fix problems before the turn of the year, and it also responds to a problem whose scope is at this stage unknown.

Nobody knows just how bad the Y2K problem is going to be or how many suits it will provoke. Also unclear is to what extent these suits will be merely high-tech ambulance chasing or, conversely, how many will respond to serious failures by businesses to ensure their own readiness. In light of all this uncertainty, it seems premature to give relief to potential defendants.

The bill is partly intended to prevent resources that should be used to cure Y2K problems from being diverted to litigation. But giving companies prospective relief could end up discouraging them from fixing those problems. The fear of significant liability is a powerful incentive for companies to make sure that their products are Y2K compliant and that they can meet the terms of the contracts they have entered. To cap damages in this one area would encourage risk-taking, rather than costly remedial work, buy companies that might or might not be vulnerable to suits. The better approach would be to wait until the implications of the problem for the legal system are better understood. Liability legislation for the Y2K problem can await the Y2K.

Mr. HOLLINGS. I thank the distinguished Chair.

''Liability legislation for the Y2K problem can await the Y2K.'' What we are talking about is an instrument, a computer. The average cost for a small business and otherwise is $2,000. They are not going to buy a $2,000 instrument in 1999 that is not going to last past January 1.

It is quite obvious that it is not the poor, but it is the economically advantaged, the small businesses, and the doctors in America that use this instrument now. And all they have to do is go into Circuit City and say: Now, put it up, let me see that it works, that it is Y2K compliant.

Why do away with the entire law system, the 10th amendment to the Constitution, the habitual and constitutional control of torts at the State level under article 10 over the 200 years of history? Do you know why? Because they put in this amendment to amendment to amendment. When they put in the first one, even chambers of commerce objected to it. What you had in the McCain bill was still a bad bill. The McCain-Wyden bill is still a bad bill. The McCain-Wyden amendment to the McCain-Wyden amendment is still bad, as evidenced by this editorial here this morning.

Again, Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Kaiser Permanente Executive Offices, dated April 27.

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

KAISER PERMANENTE,
Oakland, CA, April 27, 1999.

Hon. Barbara Boxer,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On behalf of Kaiser Permanente, we would like to address a number of serious concerns regarding S. 96, a bill introduced by Senator John McCain, which addresses disputes arising out of year 2000 computer based problems (Y2K).

In brief, S. 96 as currently drafted:

Threatens the ability of the health care industry to maintain rates;

Severely limits the rights of small businesses, consumers and non-profit organizations like ours to recover the often excessive costs of Y2K fixes, purchases and upgrades;

Unfairly prejudices (or completely bars) the ability of the health care community to recover the costs associated with any potential personal injury or wrongful death award from the entity primarily at fault for the defect that caused the injury. S. 96 permits the manufacturers, vendors and sellers of non-compliant Y2K equipment and products to profit at the expense of their customers and leaves the health care industry (and ultimately our employer groups and patients) responsible to bear the costs of their negligence.

The four provisions in S. 96 that cause us the most concern are as follows:

The Act would not prohibit a patient injured in a hospital by a Y2K defective product from suing the hospital or health plan providing the medical service in which the defect arose. The Act would, however, limit or bar a claim brought by the hospital or health plan against the manufacturer or vendor of the defective product, leaving the health care providers solely responsible for the damages.

The 90 day waiting period requirement will impair the ability of the health care industry to complete its Y2K compliance efforts. The health care providers must remedy their Y2K problems quickly to be compliant with internal and external (including state and federal regulatory) timeliness. For a considerable length of time, Kaiser Permanente has been diligently identifying, mediating, validating, and testing equipment and software with respect to Y2K issues. A key component of this process has been demanding information, assistance, and corrective action from manufacturers and vendors, who often have control of the source codes and other information that is necessary to achieve compliance. Vendors who at this late date have still not adequately addressed their Y2K defects in their products, despite repeated requests by us, should not be afforded a 90 day period in which to respond to such requests. Such a delay in pursuing legal

remedies could prejudice our ability to complete our Y2K efforts by the year 2000.

While the Act limits the liability of manufacturers and sellers of defective equipment and software, it does not require that they fix the problems that they created for a reasonable price. Some manufacturers and vendors sold Y2K defective products in recent years knowing that their products would not be usable past the year 2000. Yet S.96 would allow such tortfeasors to charge exorbitant rates for fixes which should be provided at a discounted or nominal fee. In other words, the Act allows tortfeasors to increase their ill-gained profits at the health care purchaser's expense.

The Act does not carefully limit the use of the powerful defenses it creates. Rather, it permits a defendant to assert defenses in any action related ''directly or indirectly to an actual or potential Y2K failure''. Manufacturers and vendors will find it useful to assert that there are Y2K issues in cases where a Y2K problem is not alleged, lengthening and confusing litigation and potentially barring claims for other defects.

The above provisions in S.96 are of the greatest concern to us. However, there are other unfair provisions in the Act which inequitably limit liability, including the abrogation of joint liability, the mandate of proportionate liability, the limitation to economic loss, the increase in the standard of proof for the plaintiff, and the addition of new defenses for the defendant. Please carefully review S.96 again in light of our concerns. We would be happy to discuss this with you further, please do not hesitate to call Wendy Weil at 510–271–2630 or Laird Burnett at 202–296–1314.

Sincerely,

MARY ANN THODE,
Senior Vice President,
Chief Operating Officer.

Mr. HOLLINGS. Quoting from the letter:

In brief, S. 96 [as currently drafted] threatens the ability of the health care industry to maintain rates; severely limits the rights of small businesses, consumers and non-profit organizations like ours to recover the often excessive costs of Y2K fixes, purchases and upgrades; unfairly prejudices (or completely bars) the ability of the health care community to recover the costs associated with any personal injury or wrongful death award from the entity primarily at fault for the defect that caused the injury. S. 96 permits the manufacturers, vendors and sellers of noncompliant Y2K equipment and products to profit at the expense of their customers and leaves the health care industry (and ultimately our employer groups and patients) responsible to bear the costs of their negligence.

Mr. President, I could read on and on, but when different industries—the automobile industry, the grocer industry, and otherwise—come to the attention of this 36-page document to change around the 200-year experience of the enforcement of torts, the Uniform Commercial Code nationally, and do away with it and the so-called privilege it required. To come in here and cap punitive damages, describe a small business as any 50 or less—I notice in this most recent amendment, Mr. President, on page 2, a defendant is described as an unincorporated business, a partnership, corporation, association, or organization with fewer than 50 full-time employees. It used to be smaller, 25. But they are going in the wrong direction, all with this so reasonable, so bipartisan, so studied, so compromising, so interested—come on. Give me a break.

Look at the next sentence: ''No cap with injury specifically intended.'' Paragraph 1 does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff. So there go the class actions. Each plaintiff has got to come in and prove by clear and convincing, not by the greater weight of the preponderance of evidence, but by clear and convincing, that it is specifically intended for that particular plaintiff to be injured.

Mr. President, what we really have is a fixed jury. We could talk sense, but I notice in the morning paper that Kenneth Starr, the independent prosecutor, is asking the judge down there in Arkansas to go and interview the jurors after the verdict. He ought to come to Washington where they interview the jurors before the verdict.

That is my problem on the floor of the Senate here this morning; I can tell you that right now. They run around this Chamber, the Chamber of Commerce is in here, the Business Roundtable, this conference board, get all those organizations going. I am tending to my business down home. And you are for tort reform. You know this Y2K liability, $1 trillion for the trial lawyers and all that.

Yes, I am against that. I am against a trillion dollars for the trial lawyers. Everybody says that, running for office. Sure, the idea of tort reform.

So they have Kosovo, they have the balanced budget, and the lockbox charade going on, and right in the middle of this they come with all the fixed votes, the jurors, before we even get to debate and show that there is a nonproblem.

I am getting there. I can see the Parliamentarian blinking his eyes, so I am running out of time here. We are going to have to vote. But here is the biggest fix I have ever seen. We had a difficult time trying to get the truth around to our colleagues about S. 96 here this morning, but I hope we can withhold and get some time to vote against this cloture motion so we will have time to really show what is going on.

We have problems in this country, but I can tell Senators, it is not the tort system. It is not how the tort system affects business. Business is going through the roof financially in New York. Everybody is making money, particularly in the computer business. Of all the people to ask for special legislation here in the Congress as well as special protections and the revision of all the tort practices, is the computer industry, the richest in the entire world.

I appreciate the indulgence of the Chair, and I yield the floor.

Mr. LIEBERMAN. Mr. President, I would like to add my strong support to the bill we are currently considering, the Y2K Act. Although I plan to join my colleagues on this side of the aisle in voting against cloture, I don't want anyone to construe that vote as an indication that I have any doubts about the need for, and the wisdom of, this legislation.

Congress needs to act to address the probable explosion of litigation over the Y2K problem, and it needs to act now. We are all familiar with the problem caused by the Y2K bug. Although no one can predict with certainty what will happen next year, there is little doubt that there will be computer program failures, possibly on a large scale, and that those failures could bring both minor inconveniences and significant disruptions in our lives. This could pose a serious challenge to our economy, and if there are wide spread failures, American businesses will need to focus on how they can continue providing the goods and services we all rely on in the face of disruptions.

Just as importantly, the Y2K problem will present a unique challenge to our court system—unique because of the likely massive volume of litigation that will result and because of the fact that that litigation will commence within a span of a few months, potentially flooding the courts with cases and inundating American companies with lawsuits at the precise time they need to devote their resources to fixing the problem. I think it is appropriate for Congress to act now to ensure that our legal system is prepared to deal efficiently, fairly and effectively with the Y2K problem—to make sure that those problems that can be solved short of litigation will be, to make sure that companies that should be held liable for their actions will be held liable, but to also make sure that the Y2K problem does not just become an opportunity for a few enterprising individuals to profit from frivolous litigation, unfairly wasting the resources of companies that have done nothing wrong or diverting the resources of companies that should be devoting themselves to fixing the problem.

To that end, I have worked extensively with the sponsors of this legislation—with Senators MCCAIN, GORTON, WYDEN, DODD, HATCH, FEINSTEIN and others—to try to craft targeted legislation that will address the Y2K problem. Like many others here, I was uncomfortable with the breadth of the initial draft of this legislation. I took those concerns to the bill's sponsors, and together, we worked out my concerns. I thank them for that. With the addition of the amendment just agreed to by Senators DODD, MCCAIN and others, I think we have a package of which we all can be proud, one which will help us

fairly manage Y2K litigation. Provisions like the one requiring notice before filing a lawsuit will help save the resources of our court system while giving parties the opportunity to work out their problems before incurring the cost of litigation and the hardening of positions the filing of a lawsuit often brings. The requirement that defects be material for a class action to be brought will allow recovery for those defects that are of consequence while keeping those with no real injury from using the court system to extort settlements out of companies that have done them no real harm. And the provision keeping plaintiffs with contractual relationships with defendants from seeking through tort actions damages that their contracts don't allow them to get will make sure that settled business expectations are honored and that plaintiffs get precisely—but not more than—the damages they are entitled to.

I think it is critical for everyone to recognize that the bill we have before us today is not the bill that Senator MCCAIN first introduced or that was reported out of the Commerce Committee. Because of the efforts of the many of us interested in seeing legislation move, the bill has been significantly narrowed. For example, a number of the provisions changing substantive state tort law have been dropped. Provisions offering a new ''reasonable efforts'' defense have been dropped. The punitive damages section has been altered. And, instead of a complete elimination of joint liability, we now have a bill that holds those who committed intentional fraud fully jointly liable, that offers full compensation to plaintiffs with small net worths and that allows partial joint liability against a defendant when its codefendants are judgment proof—precisely what most of us voted for in the context of securities litigation reform.

I understand that there are those who still have concerns about some of the remaining provisions in the bill. To them and to the bill's supporters, I offer what has become a cliche around here, but has done so because it is truly a wise piece of advice: let us not make the perfect the enemy of the good. Y2K liability reform is necessary—in fact critical—legislation that we must enact. Those of us supporting the legislation must be open to reasonable changes necessary to make the bill move, and those with legitimate concerns about the bill need to work with us to help address them. I hope we can all work together to get this done.

CLOTURE MOTION

The PRESIDING OFFICER. All time for debate has expired. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant 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.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on amendment No. 267 to S. 96, the Y2K legislation, shall be brought to a close?

The yeas and nays are required under the rule. 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 ''no.''

The PRESIDING OFFICER (Mr. ALLARD). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 47, as follows:

[Rollcall Vote No. 95 Leg.]

YEAS—52

Abraham	Frist	McConnell
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Chafee	Hutchinson	Snowe
Collins	Hutchison	Stevens
Coverdell	Inhofe	Thomas
Craig	Jeffords	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Domenici	Lugar	Warner
Enzi	Mack	
Fitzgerald	McCain	

NAYS—47

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham	Murray
Bingaman	Harkin	Reed
Boxer	Hollings	Reid
Breaux	Inouye	Robb
Bryan	Johnson	Rockefeller
Byrd	Kennedy	Sarbanes
Cleland	Kerrey	Schumer
Cochran	Kerry	Shelby
Conrad	Kohl	Specter
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NOT VOTING—1

Moynihan

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT REQUEST

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now resume consideration of S. 96, and the last amendment pending to S. 96 be modified with the changes proposed by Senators DODD, WYDEN, HATCH, FEINSTEIN, BENNETT, and Senator MCCAIN which I now send to the desk. And I send a cloture motion to the desk to the compromise amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Most respectfully, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, for the information of all Senators, this cloture vote would have occurred, if consent had been granted, on Monday on the so-called compromise worked out among the chairman and Senator DODD, Senator FEINSTEIN, and others as mentioned above.

Let me say, I appreciate the effort of the chairman. I appreciate the effort, the work, and the willingness to try to find an adequate solution by Senator WYDEN. And Senator FEINSTEIN has been involved, and a number of others, Senator DODD, obviously.

But in light of this objection, I do not intend to bring this bill back before the Senate until consent can be granted by the Democrats. And if it is predicated on agreement that we open this up for every amendment in the kitchen, then it is over. Or until we get a commitment that we are going to get the votes for cloture and get a reasonable solution to this problem, I think it would be unreasonable for me to waste the Senate's time with any further debate or action on this amendment.

We need to do this. We can do it. But I am prepared now—if everybody is ready, we will just say it is over, the trial lawyers won, and we will move on to the next bill. But I am willing to be supportive of Members on both sides of the aisle who, acting in good faith, want to get this done.

We should do it. This is a reasonable approach. There is no reason we should use the Y2K computer glitch as an opportunity for a litigation bonanza. I am a lawyer, and everybody in this Chamber knows I have relatives who would be very interested in this. But I am interested in what is fair and what is right. We need to do this. The negotiations have happened. Concessions have been made. But, frankly, I am ready to move on to something else, unless we can get this done. So I do not intend to do anything else until we hear some solution to this problem.

I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democrat leader.

Mr. DASCHLE. Mr. President, I am disappointed with the announcement just made by the majority leader. I