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, that 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 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, Chairman BENT; 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.

There 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 information and system could exchange information, there was this engineering tradeoff. Now, solved 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 on prescriptions that are never taken. Hundreds of billions of dollars are not taken 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 example 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 see the same thing which would 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 are nationwide and very important to all Americans. 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 billions of dollars, much as fixing the Y2K problem itself.

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 bipartisan bill and now we 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 work would be lost. It was 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 work closely with the majority leader, Senator LOTT. Those procedural issues are still to be resolved.

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analysts agree that Y2K failures are likely to follow a bell curve, a peaking on approximately January 1, 2000, and trailing off 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 made by Senator Dodd. The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I will be very brief. Let me begin by thanking our colleagues 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 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 this 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 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 very strong cap on officer and director liability in Y2K. As a result of an agreement led by 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 bill that 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 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.

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As I understand the bill, 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 with these additions. I know Senator Kerr 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.
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My hope is that our leaders can work this out. I know Senator DASCHLE is more than prepared to sit down and work with the administration and the 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 by the end of the week. 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 package that will allow any 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 the time. 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 can 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 by the end of the year 2000 when the millennium 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 avoid the hard work 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 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 what the President of the Senate 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 was said 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 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.

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 enter the middle 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 game we go through, 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 total annual estimated cost of 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, 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 defendant’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. 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. Manufacturers will vote to 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 agreement for an extension of 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. KERRY. Mr. President, 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 have seen some 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 millions of dollars—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 cause we found in it. 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 courts. 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 some lawyer took a case to court and was willing to fight for a particular principle.

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 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 some restraint 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 that is lost by somebody that was critical to the provision of some serum or antibiotic.

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.

The PRESIDING OFFICER. The Senator needs time.

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 asking 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....
The technology industry has so far escaped any broad scrutiny. The big spending, with companies supposedly too optimistic about Y2K, is a 90 day waiting period. 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 unknown. Nobody knows just how bad the Y2K problem is going to be or how many suites it will provoke. Also unclear is to what extent these suits will be merely high-tech ambush chasers or, conversely, how many will respond to serious failures by businesses to ensure their own readiness. In light of all this uncertainty, theuenta offers a 90 day period in which to respond to our Y2K defects in their products, despite knowing 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, 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 remove 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, 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 the necessary code changes 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
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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 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, in the problem. I hope that it will 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 devote their resources to fixing those problems that can be solved efficiently, fairly and effectively with 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 finding that those failures could bring.

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
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UNANIMOUS-CONSENT REQUEST

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now resume consideration of S. 96, and the amendment reported from the Committee of the Whole that 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 this 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, 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 vote, the yeas are 52, the nays are 47.

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

fairly manage Y2K litigation. Provisions like the one requiring notice before filing a lawsuit would help save the resources of our court system while giving parties the opportunity to sort out their problems before incurring the cost of litigation and the hardening of positions the filing of a lawsuit often brings. The requirement that defendants prove that the materials 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 their contracts will be enforceable, just as the floor debate before us has stated.

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 co-defendants 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 reasonable. The Y2K liability reform is not perfect—indeed 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.

The 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:

Abraham
Allard
Ashcroft
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Collins
Cupp
Crus
Cropo
DeWine
Domenici
Enzi
Fitzgerald
FITZGERALD, McCaIN

YEAS—52

McConnell
Markowski
Nickles
Roberts
Roth
Sanatorium
Sessions
Smith (NH)
Smith (OK)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT VOTING—1

MOYNIHAN

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin

NOT VOTING—1

Lieberman
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Shelby
Specter
Torricelli
Wellstone
Wyden

NAYS—47

Baucus
Baucus
Bayh
Fengold
Feinstein
Graham
Harkin
Hollings
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin

NAYS—47

Lieberman
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Shelby
Specter
Torricelli
Wellstone
Wyden

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.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The President pro tempore.

The PRESIDING OFFICER. The majority leader.

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