Idaho; jointly, to the Committees on the Judiciary and Resources.

DISCHARGE PETITIONS

Under clause 3, rule XXVII the following discharge petitions were filed:

Petition 4, May 3, 1995, by Mr. Bryant of Texas on House Resolution 127 has been signed by the following Member: John Bryant.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

SENATE—*Wednesday, May 3, 1995*

(Legislative day of Monday, May 1, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The Chaplain will now deliver the morning prayer.

PRAYER

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

Let us pray:

Commit your way to the Lord, trust also in Him and He shall bring it to pass . . . Rest in the Lord, and wait patiently for Him.—Psalm 37:5, 7.

Gracious Lord, Your spirit is impinging on us, hovering all around us, ready to enter into us and give us power to live this day to the fullest. You have shown us that commitment is the key to open the floodgate and receive the inflow of Your incredible resources for living with peak performance today. Remind us that there is enough time and You will provide enough strength to do what You have called us to accomplish today. You never intended that we carry either the burdens or the opportunities of leadership alone.

May this day be one of constant conversation with You. Lord, help us to listen to You as You give us Your insight, discernment, wisdom, and vision. Help us to picture and claim Your best for our lives, the people around us and our Nation. Focus our attention on Your solutions to our problems. We commit this day to be a day in which we work with freedom and with joy. Thank You in advance for supernatural power.

In the name that is above every name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. INHOFE. Mr. President, this morning, the leader time has been reserved, and there will now be a period for the transaction of morning business, not to extend beyond the hour of 10:15 a.m., with Senators permitted to speak for up to 5 minutes each.

At 10:15 a.m., the Senate will resume consideration of H.R. 956, the product liability bill.

At that time, there will be 60 minutes of debate to be equally divided between the two managers. At the hour of 11:15, the Senate will begin a series of stacked votes on or in relation to second-degree amendments to the Dole amendment. Further rollcall votes can be expected today, and the Senate may be in session into the evening to make progress on the product liability bill.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business with Senators permitted to speak therein.

THE AGENDA AND OPPORTUNITIES

Mr. THOMAS. Mr. President, I would like to continue our dialog that we, the freshmen, have had seeking to talk about the agenda, to talk about the opportunities that we have for the first time in 40 years to have a real opportunity to take a look at the programs that have been in place, programs that have simply been added to over a period of time, programs, obviously that had merit in the beginning, have some merit yet. But we have an opportunity to look at them, to look at ways to make them more effective and more efficient.

We have an opportunity to respond to voters who, I think, in November said we want change, we need to make a change in Government. I think one of the measures of good Government is whether or not Government is responsive to the kinds of messages that we receive from voters.

We want to take an opportunity to make Government programs work better. I think, unfortunately, there sometimes is a perception when you talk about change that those who want change simply want to toss out the programs and do nothing. That is not the case. The case is how do we do a better job of providing services to people? How do we be more effective?

Welfare is an excellent example. No one is talking about throwing women and children and welfare fathers out on the street. What we are talking about is helping people to help themselves, find a way to be more efficient, and to put people back into the workplace. That is what we are talking about.

So we are talking about bringing the Government closer to the people—block grants to the States, moving more responsibilities to the States—so people can participate more in their Government.

I do not think there is any question but what the voters in November said we want less Government and it should be less costly, that Government is too big and Government is too expensive.

So, Mr. President, that is the kind of agenda that the 11 of us who are new to this body would like to pursue. Those are the kinds of things that we believe should be considered and should be changed.

All of us have had a 2-week recess. I was in Wyoming for that entire 2 weeks and, I must tell you, I come back reinforced and rededicated to the idea that we need change. I heard from nearly everyone there: "We are pleased with what has begun in Washington. We are pleased with the ideas." Certainly, not everybody agrees with every detail. But the fact is that at least in my experience, people want us to move forward.

To do that we are going to have to continue to make clear, I think, the perception of what we are seeking to do. And the opposition, those who are opposed to change, and obviously the direction and the agenda of the administration is to say to people who are asking for change, all they want to do is do away with programs. Their notion is going to be to create fear—fear of change—and we are going to have to do something about that.

I think there are great debates, there are differences in view, clearly, of how people see the world, and there is a great deal of difference right here in this body among the Members. Some believe, genuinely and legitimately, that more Government is better, that we ought to have more money to spend, that the Government does a better job of spending money than do the taxpayers. On the other hand, most of us do not agree with that notion and want to make it smaller.

There is a legitimate debate and there is a great debate. So we have an agenda, and in order to do that, Mr. President, we are going to have to move through that agenda. I respect the purpose of the Senate in terms of its ability to go into depth and it is a deliberative body, and that should be

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

the case. But it should not be an obstructionist body. It should not be a body that simply ties up this great debate, but rather it ought to be out there and we ought to have an agenda and we ought to move forward.

There are a number of things, certainly, that we clearly ought to talk about. We are talking about one of them now, and that is tort reform, something that needs to be done. We need also to talk about welfare reform. That is a legitimate thing we ought to do. We ought to take another look at crime. Clearly, health care needs some revision. We need to have regulatory reform. We need to balance the budget.

These are the agenda items that we have a responsibility, Mr. President, to undertake. I think if those of us who were elected this year have any message, the message is let us move forward with these issues, let us talk about these issues. We are willing to accept the results, of course. But we are not willing to accept the idea that we do not have an agenda, that we are not going to deal with the questions that the American people have asked, that we are simply going to take up all our time in obstructionist kinds of activities, that the rapid response team is always going to be opposed to change. So that is where we are, Mr. President. I think we have the greatest opportunity, and I thought that last month. And I have to tell you, having spent 2 weeks in Wyoming, that notion, in my view, is simply reinforced that people do want us to go forward.

Mr. President, I am not sure of the agenda. But the freshmen had a certain amount of time.

I yield to my associate from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

THE MEDICARE PROGRAM

Mr. SANTORUM. I thank the Senator for yielding. I would like to address a specific issue in the next 100 days in the Senate that I think is going to attract a lot of attention. It has already attracted a lot of attention. It is an issue of great importance to this country and people rely on this program—that is the Medicare Program. There is a lot of discussion going on in this town—and I hope across America—about Medicare and where it fits in with the scheme of things here in Washington.

Is Medicare going to be used to balance the budget? Is Medicare a program that is in trouble? What is the truth? What is the real story and who do you believe? Unfortunately, in Washington, that is a problem we have a lot, which is that every issue, irrespective of the importance of the issue, turns into a partisan battle, and one side says one thing and the other side says another. You would think with an issue such as Medicare, with the information we have before us, that we could act as adults and face the problem squarely, maturely, discuss it, debate it, and come up with a solution to the problem.

But as is the case around here all too often, political gain comes before responsible action. We have folks who think we can make political gains from Medicare, so let us delay responsible action for a while and see how much hay we can make in the process.

Here are the facts. The facts are that the Medicare trustees issued a report that says that Medicare will be insolvent by the year 2002. In other words, it will not have any money left in the trust fund to pay out benefits to anyone. That is not 25 years or 30 years from now, which is the problem of Social Security. Americans seem to be tuned into that Social Security is in trouble in the long term and that we cannot sustain it. The insolvency of Social Security is a little over 30 years away. It is a problem and we have to deal with that. We have a little bit more time.

Medicare is an immediate problem. Medicare runs out of money in 7 years. You would think, as I said, as mature adults elected here to govern the country, we could sit down and accept that, accept the findings of the trustees. Four out of the six Medicare trustees are Clinton administration officials. They have issued this report that says, "The Medicare trust fund will be able to pay benefits for only 7 years and is severely out of financial balance in the long range."

That is what this chart shows. Here is where the Medicare trust fund is exhausted, 2002. Here is the gap. It grows and grows. This is the revenue shortfall. It only gets worse, particularly in the outyears when the baby boomers start to retire.

There are less people working to support the Medicare trust fund. It is obvious that we have to do something; it is obvious that the time to act is now while we have a meager surplus that is going to be exhausted, as I said before, in 7 years. You would think that we could come to the table, accept the Clinton administration's own findings that this is a problem that must be solved, accept their own recommendation—again, the recommendation of the trustees—that says we need urgent action. But, no, you are going to see the big dance that goes on around here, the big dance on how we are going to scare seniors, lie to them; and anybody who wants to touch Medicare is not going to try to save Medicare. Oh, no, they just want to take the program away from them. They want to ruin Medicare. They want to break their promises to the American public.

Why? Why would people say things that are blatantly false? Why would they say that? Well, it is certainly not to preserve the trust fund, certainly not to make sure Medicare is there for future generations—I should not even say future—this generation of seniors. That certainly is not the reason they are saying it. Why are they saying it? Very simple: Political gain.

Political gain. It is a tried and true American maxim in American politics, and that is if you can square seniors enough so that they will vote against the other side who wants to take their programs away, you can win elections and then after the election, you will discover the problem. After the election is over, after you have reaped the benefits by scaring seniors that these bad guys out here who want to touch Medicare are out really to kill the program, after you have accomplished the scare tactics and succeeded in victory, then come to the floor, come to the American people after the election, after you have won and lied, and after you have accomplished what you wanted, and then say, look, the Medicare trust fund is going to be out of money, we have to do something. That is what is going to happen. That is what happened on Social Security in 1982. It is going to try to happen in 1996.

I just hope—I really hope—that the American public is smart enough to see through these scare tactics, not only by the Clinton administration, by the Democrats here in Congress, by these shameless, shameless seniors organizations who prey on the fear of seniors to swell their membership and get contributions and be able to fund their lobbyists and TV commercials and continue to go out there and feed on this frenzy. I hope the American public and seniors can see through this. It is a scare tactic that should not succeed. See through this. See that there is a problem, and see that those who want to tackle the problem now are doing it because we care, not because we want to destroy a program.

I yield the floor.

The PRESIDING OFFICER. Under a previous order, the Senator from Montana is recognized to speak for up to 10 minutes.

(The remarks of Mr. BURNS pertaining to the introduction of S. 745 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CAMPBELL. Mr. President, there will be several people this morning who have reserved time to speak on the potential sale of the Power Marketing Administrations.

I ask unanimous consent to also speak on this issue during morning business.

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

OPPOSE SALE OF PMA'S

Mr. CAMPBELL. Mr. President, I would like to add my very strong voice

to that of my colleague from South Dakota, who will be speaking on this; the Senator from Montana, Senator BAUCUS; as well as Senator DASCHLE, on the potential sale of the Power Marketing Administrations that the administration has proposed.

There are a lot of things wrong with the Federal Government, very frankly, and I know we should always be looking for the functions we can privatize, that are done better in the private sector than by the Federal Government.

The American system of the Power Marketing Administrations is, in my experience and that of many of my constituents, an example of something that the Government does well in direct partnership with those folks living in rural regions of America.

The electrification of rural America is a success story because it involved a true partnership between the Federal Government and the people of rural America who rely on the electrification of the REA's to provide their power.

The partnership with the Federal Government has been a mutually beneficial one. America's rural electric cooperatives and small municipal power systems agreed to purchase the initially more expensive Federal hydropower because they understood the long-term security of a publicly owned power system.

Without the commitment to purchase the power, the system could not have been built. The REA members and other customers pay for electricity based on the cost of providing service, retirement of the construction debt, and interest.

The system is working well, Mr. President. Those who rely on electrical power from the system are repaying the Federal Government for capital investment costs of building a system, as well as the annual operation and maintenance costs of the system.

Down the road, when the projects are paid for, these dams and facilities will be federally owned and will continue to provide significant sources of revenue to the Federal Government.

The proposal of selling off the PMA's has a great deal of uncertainty. It is clearly our goal to cut the deficit, but on the other hand, if we are simply doing things to privatize another Government function without understanding the effects of doing so, I think it is rather risky.

Is it change just for the sake of change? I hope not. If it is to maximize deficit reduction, that means we sell to the highest bidder. If we do that, clearly the highest bidder will have to raise the electric rates for rural America, and that will not do any good for those who represent the States.

The rural regions that are having the toughest economic times of anywhere must have low rural electric rates. As Congress considers a new farm bill and the probability that many vulnerable programs may be cut or eliminated, I think it would be cruel to also turn out the lights.

If, on the other hand, those who represent rural regions insist, and we will, that there be a safe prohibition placed on the rate increases if they are sold, then it seems to me we are truly in a pointless exercise, privatizing a function that most agree serves its customers well at no annual cost to the Treasury.

I want to thank my colleagues, Senator PRESSLER, Senator DASCHLE, and Senator BAUCUS, for arranging a section on which they will also speak.

I yield the floor.

PUBLIC POWER

Mr. PRESSLER. Mr. President, I rise today to express my opposition to the administration's proposal to sell the Western Area, Southwestern, and Southeastern Power Marketing Administrations—collectively known as the PMA's.

Public power serves many functions in South Dakota. As a sparsely populated State, utilities are faced with the challenge of how to get affordable electricity into small cities and communities where there are less than two people per mile of transmission line. Public power provides the solution.

In public power utilities, the only investors are the consumers. Revenues are reinvested in the community—in the form of taxes and services. And, the low cost of power is essential to encourage economic development in small cities and towns.

Public power, purchased through the Western Area Power Administration, known as WAPA, costs South Dakotans an average of 2.5 cents less than the market rate. This allows revenue to be reinvested in additional transmission lines, and better service. The availability of hydropower from the Missouri River to rural cooperatives and municipals have helped to stabilize rates. With 7,758 miles of transmission lines in the Pick-Sloan region, WAPA can serve 133,100 South Dakotans—without charging them an arm and a leg.

Public power has brought more than electricity to South Dakota. For example, Missouri Basin Municipal Power Agency, based in Sioux Falls, has embarked on a program offering incentives for planting trees. The goal is to plant at least one tree for each 112,500 meters in the Agency's membership territory. In fact, Missouri Basin was recognized by the Department of Energy for outstanding participation in this Global Climate Change Program. I congratulate Tom Heller of Missouri Basin for this excellent community service program.

Public power also brings new jobs to the communities it serves. In part due to the low cost of power from East River Electric, there are now three injection molding plants based in Madison, SD—creating snowmobile parts. Arctic Cat, PPD, and Falcon Plastics employ approximately 200 people in Madison.

East River also is involved in other economic development activities. It provides classes to help the community attract businesses, and offers grants for feasibility studies associated with economic development projects. South Dakota clearly has benefited from the work of Jeff Nelson, as the general manager of the East River Electric Power Cooperative.

Public power is a South Dakota success story. It is the source of innovation, development, and community pride. I am sure the same is true in other towns and communities across America. In spite of these success stories, the Clinton administration—and several Members of Congress—want to put an end to this success.

Specifically, President Clinton has proposed selling WAPA and two other power marketing administrations in order to pay for the modest tax cut he has promised the American people.

In essence, this would force South Dakotans—and public power consumers in small cities and rural areas—to cover for the rest of America.

Under the President's plan, South Dakotans would not be able to enjoy the promised tax cut. Why? Because the sale of the PMA's could result in rate increases totaling more than $47 million.

In addition, I question the claim made by the administration that the sale of the PMA's would generate revenue for the Federal Government. Will it? Let us look at the facts.

PMA's still owe $15 billion in principal. Also, more than $9 billion in interest already has been paid to the Federal Government. By selling the PMA's, the Government would forfeit future interest payments.

In fact, a recent report prepared by the Congressional Research Service demonstrates just how much money the PMA's are expected to contribute to the Federal Government. This year, WAPA is expected to pay back $225.1 million borrowed from the Federal Government. But WAPA will also return another $153.4 million to the Treasury. Given these figures, it is clear that the Clinton plan does not make good economic sense.

As my colleagues know, this is not a new issue. I have been fighting the proposed sale of the PMA's ever since I came to Congress. In 1986, the Reagan administration made similar attempts to privatize the PMA's. We stopped them by passing a law to prevent the Department of Energy from pursuing any future plans to sell the PMA's, unless specifically authorized by Congress. I suspect the Clinton administration may have forgotten that law.

Mr. President, once again, we are fighting to prove the worth of public power. Once again, we must demonstrate how necessary it is to the lives of rural Americans. The people of South Dakota have stated their message loudly and clearly—through thousands of postcards, letters, and phone calls. South Dakotans such as Ron Holstein, Bob Martin, and Jeff Nelson have been leaders in their opposition to the proposed PMA sale and I appreciate all their hard work.

Public power is a solid investment for the Nation. Public power is one of the great success stories of South Dakota. I urge all my colleagues to stand united behind the continued success of public power, and the essential service it provides to the Americans who reside in small cities and towns. Now is not the time to mess with success.

POWER MARKETING ADMINISTRATIONS

Mr. BUMPERS. Mr. President, I rise today to join my colleagues in expressing opposition to the privatization of the Federal Power Marketing Administrations [PMA's]. This ill-conceived concept, which proponents claim would help reduce the deficit, is simply a bookkeeping gimmick that would accomplish little except for raising the electric rates of millions of consumers served by municipal and cooperative utilities.

A number of years ago customers of municipal and cooperative electric utilities entered into a covenant with the Federal Government. In exchange for the right to purchase the hydroelectric power generated at multipurpose Federal water projects at cost-based rates, these customers have provided a significant portion of the funds needed to build and operate the water projects. In addition to power production these projects serve other significant purposes, including making water available for irrigation, flood control, navigation, municipal and industrial water supply, wildlife enhancement, recreation, and salinity control. In many instances, the beneficiaries of these nonpower purposes of the water projects have paid little, if anything, for the projects.

Some are not suggesting that the Government renege on its agreement with the power customers by eliminating their right to purchase the power produced at Federal water projects. In addition to being patently unfair, the breach of this covenant with the power customers raises serious questions about the integrity of future agreements entered into between the Government and private parties.

The five power marketing administrations currently sell power to municipal and electric cooperative utilities serving millions of consumers in 34 States. Privatization of the PMA's could result in tremendous rate increases for these customers. In some areas, retail residential rates could triple. A recent study prepared by the Congressional Research Service estimated that PMA privatization could cause electric rates to rise by $1.2 to $1.3 billion per year.

The Southwestern Power Administration [SWPA] currently sells power produced at Federal water projects to customers in my home State of Arkansas, as well as in Kansas, Louisiana, Missouri, Oklahoma, and Texas. The privatization of SWPA could cause serious adverse economic consequences in the region. A study prepared when President Reagan first proposed privatizing SWPA indicated that consumers in Arkansas alone could stand to pay as much as 343 percent more to replace the power currently purchased from SWPA. Mr. President, I don't want to go back to my constituents and tell them that they are going to have to pay three times as much for electricity because the Government no longer wants to honor a contractual commitment.

Rather than roll up our sleeves and make the tough choices in order to reduce the Federal budget deficit, some Members of Congress instead want to resort to budgetary gimmicks. The sale of Government assets to increase the Government's cash flow, in the short term, might be the most cynical gimmick of them all. Because budget scoring periods run for 5 or 10 years, it is tempting to take actions that would reduce the deficit during the scoring period, but would actually increase the deficit in the out-years. This is exactly what would happen if the PMA's are privatized. Selling-off the PMA's could very well produce $2 billion in revenues immediately. However, because the PMA's would no longer be selling power on the Government's behalf, the immediate increase in revenues would be offset by the revenues forgone resulting from the sale of the assets.

In 1990 Congress amended the Budget Act to prohibit the use of receipts from the sale of Federal assets to be scored as a reduction in the deficit. The purpose of this provision is to prevent the use of gimmickry to create an illusion that we are balancing the budget. Mr. President, I fully expect that efforts will be made this year to repeal this prohibition. I intend to fight any such efforts that would make it more difficult to honestly balance the budget.

Mr. President, I recognize that we live in a new era and that streamlining Government and making it more efficient are not only desirable, but necessary. In this spirit, I am willing to work with critics of the PMA's in order to make them more efficient. But I will not support any legislation that would abrogate the covenant between the Government and the PMA customers which provides reasonably priced power to more than 1,000 consumer owned electric systems in the United States.

POWER MARKETING ADMINISTRATION

Mr. WARNER. Mr. President, I rise today in opposition to President Clinton's budget proposal for fiscal year 1996 to sell the Western Area, Southwestern, and especially the Southeastern Power Administrations to private investors.

In Virginia, the electric cooperatives and the municipal power systems represent almost a million citizens who receive a significant portion of electricity from the Kerr-Philpott hydro facilities located in southside Virginia. It is estimated that preferred customers under the electric cooperatives can expect annual increases of approximately $100 per year should the Southeastern Power Administration be sold.

I believe that it is fiscally irresponsible to turn the Power Marketing Administrations over to private interests, which will in turn penalize our consumers by driving up their rates. These members have already paid for a significant portion of investment in these facilities and nearly twice that amount in interest. SEPA has already repaid $433 million, or 30 percent, of the $1.442 invested.

The Federal Government is currently recovering its investment in SEPA facilities through the rates charged for the hydroelectric power generated to the customers in southside. This investment should be viewed as a contract with the ratepayers of the cooperatives to continue service with the Federal Government.

While the sale of the PMA's would provide the Department of the Treasury with the desired instant cash flow, we must consider how these Federal power sales will continue to generate revenue long after the projects are repaid.

The Power Marketing Administration should be valued for its assets, for the income it produces to pay its own way, and for the service it provides to the members of the cooperatives. For these reasons, I believe that the sale of the Power Marketing Administrations is not an efficient means of contributing to deficit reduction and should not be considered as a means of deficit reduction.

POWER MARKETING ADMINISTRATIONS

Mr. EXON. Mr. President, I will not take a great deal of time this morning, but I wanted to reiterate my strong opposition to the sale of the Power Marketing Administrations. I've made similar points with the Director of the OMB. And I sat to discuss this matter with the President.

We seem to go through this exercise just about every year, regardless of who is in the White House or who controls Congress. Until someone can show me some real benefits of privatization, I will continue to oppose the sale of the PMA's.

The Power Marketing Administration's deliver a critically important

service to a large portion of the Nation. They are an example of what's right with Government. It seems ironic and very ill advised that they should be put on the auction block and I will not stand for any wholesale dismantling of the PMA system.

Ms. MOSELEY-BRAUN. Mr. President, I concur and agree with Senator EXON and I want the RECORD to state that.

Mrs. MURRAY. Mr. President, I have spoken in the past about my commitment to continuing the production and distribution of clean, reliable hydropower through Federal Power Marketing Administrations. Today, I reaffirm this commitment.

The Federal power program has served well both the taxpaying public and energy consumers. It serves the taxpaying public by paying its own way—and paying interest on its debt. It also serves the general public by providing navigation, flood control, recreation, fish and wildlife conservation, and irrigation. Few Federal programs can claim such far-reaching benefits at such a low cost.

Mr. President, if we sell our PMA's, we cannot be assured that the general public will continue to reap these many benefits. While the sale of PMA's would product short-term revenue, the sale will do little to solve the long-term problem of our Nation's debt. In fact, the permanent loss of these productive assets will result in foregoing future revenues likely to be in the billions of dollars.

At this time, the Bonneville Power Administration is not immediately threatened with sale. Several months ago, however, officials within the administration suggested to the President that he sell BPA to finance a tax cut. Fortunately, after hearing from Senators and Representatives from the Pacific Northwest, President Clinton elected to decline that advice. Recognizing the special attributes of BPA, he has said he does not intend to offer it for sale. So, my constituents appear to be safe for now.

I speak in opposition to the sale of the other PMA's because I believe their sale is not in the best interest of either the taxpaying public or the tens of millions of consumers who will certainly be saddled with higher electricity bills. Let us reject this short-term solution to our deficit and protect our Federal assets for the next generations of Americans.

SALE OF THE POWER MARKETING ADMINISTRATIONS

Mr. ROBB. Mr. President, like may of my colleagues, I rise today to briefly address the President's fiscal year 1996 budget proposal to privatize some of the Power Marketing Administrations [PMA's], including the Southeastern Power Marketing Administration [SEPA], which serves many Virginians.

I am concerned about the devastating effects of the privatization of the Southeastern Power Administration and other PMA's on rural electric providers and their consumers. Prior to the fiscal year 1996 budget submission, I contacted President Clinton and OMB Director Alice Rivlin and asked for this proposal to be reconsidered. Like many of my Democratic colleagues. I was disappointed to find this one-time asset sale in the final budget proposal.

Nationwide 650 rural electric systems receive allocations of power from Federal projects. Eleven of our thirteen Virginia rural electric cooperatives get a portion of their power direct from the Southeastern Power Administration. Over the years, Federal hydropower has helped rural electric cooperatives keep their rates competitive with investor-owned utilities.

If we are serious about deficit reduction, we must ensure that all of our Federal programs continue to provide significant benefits to our taxpayers. In my opinion, this proposal to sell SEPA and other PMA's is penny-wise, but pound-foolish. I would favor any proposal for deficit reduction, so long as the savings result from sound public policy. Our Federal power program benefits consumers, taxpayers, and continues to facilitate economic growth and development in rural areas across the country. Privatizing the PMA's will not produce benefits that outweigh the current program and is, in my judgment, bad public policy.

We should oppose the sale of the PMA's for several budgetary reasons. In the first place, the Government would lose a stream of revenue flowing into the Federal Treasury if the PMA's were sold. The estimated revenues which go to the Treasury exceed the appropriations for the PMA's. In fiscal year 1995, it is estimated that the net positive receipts to the Federal Treasury will be $243 million.

Given this situation, the fiscal advantage to the Federal Government of selling the PMA's is time limited. During the year in which sales are actually occurring, the Treasury would receive a windfall in receipts as monies received from the sales and saved from appropriations overwhelm the revenues lost as a result of the sale. However, as the foregone revenues exceed the saved appropriations in the years after the sales, we would be adding to the deficit.

Because capital asset sales are a one-time event. We have a budget rule that assets sales should not be counted in the budget. If we were to count the proceeds from selling Government assets as though they were receipts of the Federal Government, then these one-time receipts could be used to fund new spending programs or tax cuts that outlive the stream of receipts. We should follow the budget rule and not allow these fleeting savings to be counted as budget savings.

Another budgetary reason to oppose the sale of the PMA's is that the Federal Government could actually lose money if the sale price were inadequate to cover the present value of the federally-held debt. One study indicates that the revenue from the Alaska Power Administration under the current program would be higher than under its proposed sale. If this is the case with the APA, it could be equally true of the others. Given these budgetary uncertainties, we should not be rushing to privatize these entities.

The PMA's remain an integral part of our commitment to bring affordable and efficient hydroelectric power to the many Americans dependent on rural cooperatives and municipal power systems. PMA's are a wise and profitable investment on behalf of rural America.

We have made great strides in bringing electric power and other utilities to rural areas, largely through the work of rural electric cooperatives, and we should carefully consider the consequences of eliminating this valuable supply of electricity now.

I respectfully urge all of my colleagues to join me and support the continuation of Federal power.

POWER MARKETING ADMINISTRATIONS

Mr. HATFIELD. Mr. President, I am pleased to join with a number of my colleagues from both sides of the aisle who have come to the floor this morning to shed some light on proposals to sell off the Federal power marketing administrations. I continue to oppose such proposals, not only as they relate to the Bonneville Power Administration, but also as they relate to the other power marketing administrations.

Power Marketing Administrations are entities that have been created to market the power generated by Federal hydropower projects operated by the Army Corps of Engineers. PMA's are part of the Department of Energy's Federal power marketing program. One of the central features of this program is the preference clause, which allows consumer-owned, nonprofit local utility systems to have the preferential access to the power produced by Federal dams.

The five PMA's are as follows: The Southeastern Power Administration [SEPA], the Southwestern Power Administration [SWPA], the Western Area Power Administration [WAPA], the Bonnville Power Administration [BPA], and the Alaska Power Administration [APA].

The President's budget includes provisions for the sale of each of these PMA's except BPA. Proposals are pending in the House to either sell all or some of the PMA's or require them to sell their power at market rates, the definition of which appears to this Senator to lead to highly inflated and unrealistic prices.

My opposition to the sale of the PMA's is based on my view that it is

shortsighted public policy to sell one of the few revenue generating assets of the Federal Government. It is important to remember that BPA is repaying, with interest, the capital investments in the Federal hydropower projects in the Columbia Basin. The other PMA's are making similar payments. When the repayment is completed, the Federal Government will be the owners of these projects. The PMA's pay their way and then some. I ask unanimous consent that a table showing project investments and repayment by PMA's be printed at this point in the RECORD.

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

PMA'S PAY BACK PRINCIPAL WITH INTEREST

Customers of the federal power marketing administrations are required by law to pay back the investment in federal hydropower facilities with interest. They are doing so, as shown in the table below:

STATUS OF REPAYMENT AS OF SEPT. 30, 1993 [1]

[Cumulative dollars in millions]

Location	Power investment [2]	Power revenues	Operation & maint. (O&M)	Purchased power	Interest paid thru 1993	Cumulative repayment thru 1995	Unpaid investment
Alaska	$205	$144	$52	0	$53	$39	$166
Bonneville	[3] 12,260	34,723	5,572	$20,825	5,914	[3] 2,412	[4] 9,848
Southeastern	1,442	2,325	1,043	65	781	435	1,007
Southwestern	997	2,042	688	520	536	298	699
Western	5,631	[5] 11,210	4,311	3,013	1,911	2,198	[4] 3,433
PMA total	21,658	47,466	11,166	22,554	8,831	5,133	14,525

[1] All data are on accrual basis of accounting, except as noted, and are based on the best information available.
[2] The power investment to be repaid includes irrigation and other nonpower investment assigned to power for repayment for Bonneville and Western.
[3] Cash rather than accrual basis.
[4] The unpaid investment does not include construction work in progress or capitalized deficits.
[5] Net of income transfers of $109 million.

Mr. HATFIELD. Mr. President, the five PMA's carry out a distinctive mission, including both power and nonpower functions. For example, the Bonneville Power Administration's primary function is to market power generated by the Corps of Engineers dams in the Columbia River Basin. They also have significant involvement in implementing regional conservation measures, regional fishery recovery and conservation measures, and regional renewable energy programs. It is unlikely that the private sector would be willing to fulfill these public duties in the absence of PMA's.

This is of particular interest to the Northwest, where BPA is, under current plans, expected to shoulder the vast majority of the costs of salmon recovery. While many in the Northwest have argued that BPA should not be required to bear the entire burden of these recovery costs, to remove BPA from the picture leaves a void that would be difficult if not impossible to fill.

A number of economists have questioned the true fiscal benefit of selling Federal assets such as the PMA's. Not only would such a sale require the budget scoring rules of the Senate and the House to be fundamentally altered in order to show any positive deficit impact, it would also be of questionable benefit to the deficit problems we face. As Harvard Prof. Martin Feldstein has pointed out:

> Although Government accounting methods would make it look as if Federal spending and receipts are in better balance, these asset sales would do nothing to lessen the burden of the deficit. That burden occurs because Government borrowing to finance the deficit preempts savings that would otherwise be available for private investment in plant and equipment and in housing construction. The administration's proposed assets sales would preempt private savings every bit as much as a Federal sales of new debt of the same value.

Mr. President, over the last decade, I have seen many shortsighted proposals by successive administrations to sell off or alter substantially the power marketing administrations. I have had to fight these proposals each time and will continue to do so. As budget deficits grew, a cash-starved Federal Government looked to all sources of revenue generation to produce more dollars. The power marketing administrations, which produce large sums of annual revenues, became easy targets for those who look only at the bottom line. Little or no consideration was given to the impacts on local economies or the overall impact on Federal revenues.

While none of these proposals ultimately was successful, each created a cost for the economies which depend on PMA electric power. Electricity is the cornerstone of much of the Nation's economy, particularly in the Pacific Northwest. The high reliability and low cost of electric power provides the United States, and especially the Pacific Northwest, with a global competitive advantage which benefits the entire Nation.

As each of these proposals were made, uncertainty over the future cost of electricity was created. In the Pacific Northwest, where over half the electric power consumed is marketed by the Bonneville Power Administration, these proposals cast a cloud of uncertainty over future electric power prices. Rate increases of the magnitude contemplated by the proposals would devastate the economy of the region by discouraging investment in infrastructure, including modernization of new plants and equipment, and close factories and businesses which operate on the margin, many of which were attracted to the availability of low cost hydroelectric power in the region. The benefit of these proposals has overstated by every administration because the potential for lost tax revenue as a result of business failure or lack of investment was never taken into account.

In conclusion, Mr. President, proposals to sell off these revenue generating entities that are such fundamental importance to the local and regional economies they serve are misguided and will be opposed by this Senator. I am pleased to join with my colleagues to reinforce the importance of this issue.

I yield the floor.

Mr. FORD. Mr. President, I wish to voice my opposition to any efforts to privatize parts of the Federal Power Marketing Administrations including the Southwestern, Southeastern, or Western Area Power Administration.

This Nation made a commitment to bring affordable and efficient hydroelectric power to rural customers. In conjunction with thousands of rural cooperatives and municipal power systems across the country, Federal Power Marketing Administrations [PMA's] have met that commitment.

The utilities purchase power through the PMA's and the revenues cover PMA operating expenses, construction costs, and interest payments. And these sales put money into the Federal Treasury.

The proposed sale of these PMA's not only jeopardizes that commitment to rural Americans, but upsets the sensitive dynamics of the many dam projects from which the PMA's market their power.

These dams perform an array of services, including power generation, navigation, flood control, water supply, recreation, and fish and wildlife preservation. As a government entity PMA's have effectively balanced these sometimes diverse, and often competing functions.

As several colleagues and I told President Clinton in a letter back in January, there is no indication that a

private, for-profit entity can be expected to become a full-partner in these interests at an almost certain loss of profits.

And what about the consumer? They essentially lose twice. Estimates show increases of as much as 30 to 50 percent per month for some residential rates. That's a frightening prospect for many families who are already living from paycheck to paycheck.

The consumer gets hit a second time when the Federal Treasury experiences a loss of that steady revenue I mentioned earlier. Because the Federal Power Program pays for all investments made, once construction, and interests costs are repaid, the Federal Government will own the power plants. But once sold, no revenue. And that's bad news for consumers at a time when reducing the deficit is critical to continued economic stability.

The Federal Power Program is one that assures access for rural residents to affordable electricity, returns much-needed revenue to the Federal Treasury, and effectively balances the many demands on these dams—from flood control to water supply to recreation. Clearly, this is not the kind of program Congress should add to the auction block, and I urge my colleagues to oppose any such efforts.

Mr. CONRAD. Mr. President, I would like to speak for just a moment on this PMA matter and then direct my attention to another issue. Who controls time?

The PRESIDING OFFICER. The Chair would inquire of the Senator from North Dakota if he is speaking on the time of his colleague from North Dakota?

Mr. DORGAN. Mr. President, I ask unanimous consent the Senator from North Dakota be allowed to speak for 9 minutes in the time reserved for morning business.

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

The Senator from North Dakota is recognized for up to 9 minutes.

THE POWER MARKETING ADMINISTRATIONS

Mr. CONRAD. Mr. President, I thank the Chair and thank my colleague. I would like to speak just briefly on the PMA matter and then speak on another issue as well.

With respect to the PMA matter, I salute my colleagues who have come to the floor to oppose the sale of PMA's. Let me say I believe sale of the Power Marketing Administrations represents a very bad idea. It is bad for rural America. It represents bad faith. It is bad economics and it is bad policy.

This would have a very serious impact on rural America. In my State we would see an increase in rates of up to 60 percent; 240,000 customers in North Dakota would be adversely affected. Those rural customers are already paying rates that are 15 to 40 percent higher than city customers. The reason for that, of course, is very obvious. There is much less of a load per mile in rural areas than in city areas, so the costs are higher.

Mr. President, this would be a very serious matter for rural America. It also represents bad faith. The Government made a deal. The deal was this power was going to go to help rural America. That is precisely why the Federal Government entered into this enterprise. Preference power, it should be emphasized, is not a subsidy. These facilities are being repaid with interest. I believe the sale also represents bad economics. Selling the PMA's would be a one-time shot. It does not reduce the deficit because their own budget rules say you cannot sell assets to reduce the deficit. So, Mr. President, selling these facilities forgo decades of steady income.

Finally, I believe the PMA sale represents bad policy. These dams serve multiple purposes. No private entity can balance the interests of power production with flood control, navigation, water supply, and wildlife values.

Mr. President, for those reasons I oppose the sale of the PMA's.

WHERE IS THE BUDGET?

Mr. CONRAD. Mr. President, today is May 3. I think it is time to start asking the question of our colleagues on the other side, where is the budget? Where is the budget? We are supposed to have completed action on the budget in the Budget Committee by April 1. Today is May 3. We still do not see a budget. I am on the Budget Committee. I still do not know when we are even going to start to work on the budget.

Mr. President, I must say I am somewhat surprised because our friends on the other side of the aisle had a budget before the election. They told the American people that they had a budget plan. They said they could cut taxes, they said they could increase defense spending, and they said they could balance the budget. But now that they have assumed power and assumed control and assumed authority, there is no budget.

Mr. President, it is amazing the difference an election makes. Before the election there was this plan. They had the Contract With America. They told everybody they had this miracle. It was not going to reveal the details but a miracle plan that was going to allow them to cut taxes dramatically, increase defense spending, and balance the budget. Now that they are in power their plan is missing in action. Maybe it is because the plan just does not add up. This chart shows what we would need to do to balance the budget over the next 7 years. We would have to have a reduction in spending of $1.2 trillion to begin with. Then if we were going to be true to the promise we have made to Social Security recipients, they would have to cover the $636 billion in Social Security surpluses that are going to be generated during that 7-year period.

So now the hole to fill in is $1.8 trillion—not million, not billion, but trillion dollars. That is real money even in Washington talk. On top of that, of course, we are going to have to cover the massive tax cuts that the House has passed, $345 billion of tax cuts over the 7-year period. So that is the hole that we have to fill in, $2.2 trillion.

Unfortunately, before they ever started to fill in this hole, they dug the hole deeper by passing these massive tax cuts.

Let us see what they have produced so far by way of proposals to narrow the gap between the $2.2 trillion we need, and what they have actually done so far over in the House in terms of proposal. They are down here at a measly, anemic, $485 billion.

Mr. President, I would say our friends on the other side of the aisle have a credibility gap that is opening up here. In fact, it is more than a gap. It is a chasm. They are $1.6 trillion short. No wonder we do not see a budget out here. No wonder they have blown the deadline. No wonder they have not even started in the Budget Committee and they were supposed to be completed a month ago.

It is amazing. During the balanced budget amendment debate there was a rush to amend the Constitution to balance the budget. Boy, that was priority No. 1. But now when it comes time to actually do something to balance the budget, because of course, a balanced budget amendment will not cut one dime, will not add one dime of revenue, will not narrow the deficit by a dollar—now, when it comes time to actually present a budget, to actually do something about the deficit, the budget plan is nowhere to be found. This just does not add up. It does not add up, and not surprisingly our colleagues on the other side are more focused on a tax cut for the wealthiest among us than presenting a plan to reduce the deficit.

It is very interesting. If you look at who benefits from the Republican tax bill, what one finds is if you are a family of four earning over $200,000 a year, you get an $11,000 tax cut. If you are a family of four earning $30,000 a year, you get $124.

So the idea of our friends on the other side is to target tax relief in this country by giving 100 times as much to those earning over $200,000 a year than those earning $30,000 a year, and they call this middle-class tax relief. It is an interesting concept of the middle class. It is an interesting concept of focusing tax relief.

Mr. President, we have seen this plan before. We have seen it all before—back

in the 1980's. If we look back at that time, we see what happens to the middle class. Do they benefit from this kind of plan to give big tax cuts to the wealthiest among us and explode the deficit? No. We can look back and see what happened in the 1980's. The top 1 percent saw 62 percent of the wealth growth go to them. The top 1 percent got 62 percent of the wealth growth in that period. The 80 percent at the bottom saw their wealth growth of 1.2 percent. That is trickle-down economics. What we have learned is that wealth does not trickle down. It gets sucked up. The wealthiest 1 percent get all the benefits.

Mr. President, let me just conclude by saying our friends on the other side have got to come up with a budget. Then we are going to see the gap between rhetoric and reality.

I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

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

The PRESIDING OFFICER. The Senator from Montana has 5 minutes in morning business.

Mr. BAUCUS. I thank the Chair.

THE POWER MARKETING ADMINISTRATIONS

Mr. BAUCUS. Mr. President, Webster's define a tax as a requirement to pay a percentage of income from property or value for support of the Government. So we can see that a tax can come in many forms—a direct levy, or a hidden fee that sneaks up on the taxpayers under a cover name. That is precisely what the Clinton administration and some here in Congress have in mind for many Montana and western ratepayers.

As you may be aware, the administration in their fiscal year 1996 budget proposes to sell off four Power Marketing Administrations: Alaska Power, Southeastern Power, Southwestern Power, and the Western Area Power Administration, otherwise known as WAPA which brings low-cost electricity to thousands of eastern Montana families, ranchers, farms, and small businesses. They have found enthusiastic allies in the new House leadership. And together they say they will privatize these electricity providers. They predict a windfall, a one-time profit of $3.7 billion. If anyone promises you a free $3.7 billion, we all know you had better think carefully. You had better look at it real close. There is no exception.

I submit that privatizing the Power Marketing Administrations is a bad idea. It is shortsighted, and it hurts. It does not help. It hurts rural America. Privatization cannot work when its result is to simply create four huge monopolies which will gouge their capital market like any other monopoly.

So at its core, the proposal to sell off PMA's is no more than back-door tax repeal. To sell off the PMA's is no more than a back-door tax increase on the middle class. A tax hidden in the utility bill is every bit as much a tax as a gas tax, an income tax, or anything else. This is a tax, a tax increase on rural America.

The chart, Mr. President, tells it a little bit; $129 is the monthly bill of a typical residential customer in this area in Montana. This is from Marais. Marais residents will find their bill will increase 45 percent, which is $190 a month, as opposed to $129.72 every month.

What does that mean? That means that Montana, like much of the West, which is built on hydroelectric power, will find their economies declining. By harnessing the Missouri River, Fort Peck Reservoir has provided water to small industries which use the affordable power to create jobs and build communities, and folks in rural areas get affordable power to heat and light their homes, an essential service. It is something that works and has worked ever since Franklin Roosevelt came out to break ground at the Fort Peck Dam and bring public power to rural Montana.

Public power meant electricity an ordinary farm family could afford. It helped create Montana communities like Glasgow, Sidney, Shelby, and it keeps towns like these strong and healthy. As my friend Ethel Parker at Fort Shaw says,

> I have lived on a farm all my life; started out south of Geyser in central Montana in a semiarid prairie farm. The REA came to us in the early 1940's. Low-cost electricity has made life livable for those of us who raise the food and fiber for all Americans. Now Congress would knock our pins out from under us.

There are 100,000 Montana families, one in three of all the men, women, and children in Montana, that depend on WAPA and share Mrs. Parker's feelings, and they stand to see their power bills increased by 25 cents on the average on the dollar if this proposal goes forward. You are talking about real tangible cuts in the living standards for towns like Fort Shaw and all over the country, and that is why I am a staunch supporter of WAPA and equally against the sale of the PMA's.

The second point is that WAPA and the other power marketing programs take not one tax dollar. In fact, the Federal Government actually makes money off of these programs. WAPA is an example. The Federal Government has invested a total of $5.6 billion in WAPA, and each year the WAPA pays the Federal Government approximately $380 million for this loan, with interest, that is starting to be paid back. And so far the Federal Treasury has gotten back $4.1 billion on its initial loan. By the time this debt is retired in 24 years, the Federal Treasury will have made $14 billion on its initial investment of $5.6 billion. Even now, the PMA's run a profit for the Government. A recently released CRS report on the PMA's found that the Federal Treasury actually earns a profit of $244 million a year.

To repeat, Mr. President, a recently released CRS report on the PMA's found that the Federal Treasury actually earns a profit of $244 million a year on the PMA's. It is a profit. It does not add to the deficit, Mr. President. It decreases the deficit. So you have to look hard and you have to look long to find a Federal program that provides a good service to the public and makes a profit. WAPA provides a service and it makes a profit.

I find it incredibly shortsighted that the administration would want to sell America's infrastructure for a quick, one-time shot at cash—joined, I might add, by the House leadership. They also want to sell WAPA. So what's next—our highways, our bridges, our national parks? The principle is the same. America's infrastructure up for sale. That is what they want.

It does not make any sense to me, and I do not intend to stand by and let it proceed without a fight. And I serve notice, Mr. President, I intend to do everything I can to see that this proposal is defeated. We will shut the door on this misguided backdoor tax.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

SALE OF PMA'S

Mr. WELLSTONE. Mr. President, I shall be brief. I was one of the first Senators—and I am glad to be out here with colleagues on both sides of the aisle—to oppose the idea of selling the PMA's. I have spoken with the President. I have spoken with Alice Rivlin at OMB. I have spoken to relevant Budget Committee members and written letters to other Senators.

I basically see it this way. If you sell the PMA's, if the Government should sell the PMA's above current value, the only people who would want to buy them, some of the private investor-owned utility companies would want to buy them in order to raise rates. That is the only way they can make up the difference, in which case the ratepayers suffer. If you sell the PMA's at below current value, then this is a loss for the taxpayers. If you sell the PMA's at exactly the current value, insulating both the taxpayer and the ratepayer, then the only thing you are doing is privatizing for the sake of privatizing. So this proposal makes absolutely no sense.

Mr. President, I believe in the mission of the PMA's and the longstanding

contract of the Western Power Administration with Minnesotans, and I think to sell these PMA's would be a serious mistake for greater Minnesota. In western Minnesota, WAPA provides hydroelectric power at production costs to rural electric cooperatives, municipal utilities, hospitals, school districts, and Federal facilities. Without this program, the energy bill for people in greater Minnesota could rise as much as $400 a year per customer—could rise as much as $400 per year per customer.

In this time of budget cutting, it is important to point out that WAPA is not an example of wasteful Government spending. In fact, through WAPA we actually pay off a Government loan. And more importantly, WAPA is a Government program that recognizes the unique needs of rural communities that lack the access to affordable energy enjoyed by their metropolitan neighbors.

Rural Minnesota is willing to do its part as our country works to reduce the Federal deficit, including selling wasteful Government operations. But eliminating a program that does not cost money and actually contributes to the health of the rural economy is an example of cutting for cutting's sake. It makes neither economic sense nor common sense, and that is why, as a Senator from Minnesota, I put this battle at the very top of my list of priorities.

I yield the floor.

Mr. DORGAN and Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have been in the Chamber some while. It is my intention to speak for 5 minutes on the PMA matter and then claim the additional 3 minutes on the morning business that was reserved.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 8 minutes.

The Chair would advise the Senator from Illinois that she does have reserved time to speak for up to 10 minutes and prior to taking the additional 5 minutes, we would recognize the Senator from North Dakota for the remaining 3 minutes and then the Senator from Illinois.

Mr. DORGAN. Mr. President, I would ask if the allotted time for morning business then allows for the full complement of time reserved for the Senator from Illinois; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. I thank the Chair.

SALE OF THE PMA'S

Mr. DORGAN. Mr. President, I should like to add my voice to the thoughts expressed today by the Senator from South Dakota and the Senator from Montana and others on the matter of the sale of the Power Marketing Administrations, the PMA's.

This does not mean much to a lot of people because we hear the use of acronyms and titles of organizations with which most people are not familiar. But the power marketing administrations, along with WAPA, which is the PMA that serves our region of the country, provide a very important mission and role for our region of the country and help provide, for a couple hundred thousand North Dakotans, reasonably low-cost power that has been a Federal promise to them for a long, long while.

We produce power through hydroelectric facilities that were built in conjunction with the construction of dams and reservoirs. Those projects have many purposes, including flood control and a range of other critical needs.

Part of the promise in the construction of those dams and the public works projects over time was the promise of being able to use the electricity from the hydropower generators and distribute it regionally at a reasonable cost. That has been of enormous benefit to rural consumers in my State, who, without this opportunity, would see their electric rates skyrocket.

The President has proposed selling the PMA's. The leaders of the House have proposed selling the PMA's. It does not make any sense, in my judgment, to do that. These are investments we have made. Payments have been made under these investments, on time and with interest. The PMA's are a $21 billion investment. The customers of the electricity, the ratepayer in rural America, have repaid $5.1 billion in principle and have paid $8.8 billion in interest.

For those in Washington to force the sale of the PMA's would be kind of like a hostile takeover when somebody comes along and says, "Well, it is true, you made your payments. You bought this. Now we are going to sell it out from under you."

It is not the right thing to do. I do not know why the President included it in his budget recommendation. It was, in my judgment, foolish to have done so. It does not make good economic sense. I think it breaks a Federal promise, and I think it is actually moving in the wrong direction. I hope, on a bipartisan basis, that we will find a way here in the Senate to put the blocks against these wheels and say, "No more. You are not going to move this forward."

If someone happens to think that selling the PMA's is going to reduce the Federal budget deficit, they should understand that, according to our budget law, you cannot sell assets and claim that you have now reduced the budget deficit. It does not do that under our budget rules.

But, I hope that the Senator from South Dakota, Senator PRESSLER, Senator BAUCUS, Senator CONRAD, Senator WELLSTONE, myself, and so many others who care a great deal about this, will be able to work together in a bipartisan way with the President and the leadership in the U.S. House, to show that that is an idea whose time has never come and one that we must defeat this year.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator's time has expired.

The Senator from Illinois.

Mr. DORGAN. Mr. President, I ask for the remaining 3 minutes of my time under the order. When the Chair indicated that my time had expired, I assume the Chair was speaking of the 5 minutes under the PMA discussion.

The PRESIDING OFFICER. The Senator had 3 minutes remaining, and that time has expired.

Mr. DORGAN. When I sought the floor, I sought to use the 5 minutes under the PMA discussion that was under a previous unanimous-consent, after which I had 3 minutes remaining in morning business.

The PRESIDING OFFICER. There was time for a list of speakers. My understanding is that you have used up all of your time under that list.

Mr. DORGAN. Mr. President, there was how much time reserved for Senator BAUCUS and Senator PRESSLER to discuss PMA in morning business?

The PRESIDING OFFICER. Senator BAUCUS had no time, and spoke under the normal 5-minute limit under Senate rules in morning business. Senator PRESSLER had 30 minutes.

Mr. DORGAN. How much of that time was used?

The PRESIDING OFFICER. Senator PRESSLER had 20 minutes remaining.

Mr. DORGAN. My understanding is that is available in 3-minute increments for those of us who wish to speak about PMA's.

The PRESIDING OFFICER. The Parliamentarian advises me that there was no such order that allows that to be done under Senator PRESSLER's time.

Mr. DORGAN. I disagree with the Parliamentarian.

Let me ask unanimous consent that I be allowed to speak for 3 additional minutes as per the previous agreement in morning business.

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

THE BUDGET

Mr. DORGAN. In the remaining 3 minutes—and I appreciate the indulgence of the Senator from Illinois—I just want to discuss the issue raised by Senator CONRAD a few minutes ago.

We had, not very long ago, an urgency on the floor of the Senate to amend the U.S. Constitution to require a balanced budget, and the urgency was people moving around the floor here saying, "We must do this immediately. The country's future rests on it. It is

critically important for the future of America. We must change the U.S. Constitution to require a balanced budget."

And, of course, almost everyone knew that if the Constitution were changed to require a balanced budget, not one penny's worth of difference in the Federal deficit would have occurred, because you cannot reduce the Federal deficit by changing the U.S. Constitution.

How do you do it? By writing a budget and bringing it to the floor of the Senate. What is the requirement there? Well, the requirement is on April 1, a budget is required by law to be brought to the floor of the Senate. On April 15, a conference report is to be passed on the budget.

Now, the question that many of us asks is: Where is the urgency today? Where is the budget? Is there a budget?

Well, we expect there is a budget somewhere. We cannot seem to see the budget. We hope that those who claimed the reduction of the deficit was so urgent—and it is—just a month or two ago would now understand that urgency and meet their obligation to bring a budget to the floor of the Senate and begin to really cut Federal spending and really reduce the Federal budget deficit.

I said then and I will say again today that there is a difference between posing and lifting. There has been a lot of posing in this Chamber in the last 3 or 4 months, but now it is time for some lifting. I think the American public and the Senate would be well served if those who talked so much about changing the Constitution to eliminate the Federal budget deficit would now be interested and willing to bring a budget resolution to the floor of the Senate as required by law and really start to dig in and reduce the Federal budget deficit.

Why has that not yet occurred? Because they have ridden into a box canyon they call a middle-class tax cut which really gives most of the benefits to the wealthy in this country, and at the same time they really want to go ahead and cut about $300 billion out of Medicare and Medicaid. They have ridden into a box canyon and discovered they have dismounted, running for the bushes, and now they cannot find any plans. They do not seem to have any notion at all about what to do about Medicare and Medicaid. They do not have a budget. They cannot bring it to the floor.

We do know this: They do have a tax-cut plan. It provides $11,200 a year in tax cuts to families with over $200,000 in income and it provides $120 a year to families with under $30,000 in income, and they call it middle class. Middle class on Rodeo Drive, I guess, but not middle class anywhere else in this country.

Most of us in this Chamber who want to deal with the deficit honestly want a budget and we want a budget that is real and does honest things. We want to cut Federal spending where we are spending too much. We want some additional revenues, to close some loopholes, and we want to reduce the Federal budget deficit. And we would like the majority party, while they are at it, while they bring the budget resolution to the floor, to jettison this tax cut and stop calling a tax cut for the wealthy a middle-class tax cut. It does not add up.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. I thank the Chair.

(The remarks of Ms. MOSELEY-BRAUN pertaining to the introduction of S. 746 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE NEAS YEARS

Ms. MOSELEY-BRAUN. Mr. President, tonight the Leadership Conference on Civil Rights, one of the country's leading civil rights organizations, will take time to honor its executive director, Ralph Neas, as he leaves his position after a 14-year tenure. I would like to take a few moments to pay a brief tribute to this extraordinary individual, as he embarks on a new career after devoting the past 20-plus years to public service.

There is an old African proverb which says "God made the world round so we could not see too far down the road." I think it is fitting to mention that proverb here, as I first met Ralph Neas years ago, when we were both students at the University of Chicago Law School. I do not think that either of us could have imagined then that, some 20 years later, I would be a U.S. Senator saluting my former classmate as one of our Nation's foremost civil rights leaders. But I always knew that Ralph Neas would make a real difference, and I take great pride in his accomplishments, and I feel very lucky to be able to call him my friend.

Mr. President, when Ralph Neas finished law school, the world was his oyster. As one of the top graduates of the Chicago Law School, he could have been hired by any of the major law firms, and he could have made a great deal of money in the process. Instead, he chose to devote his life to public service. He joined the Congressional Research Service as a legislative attorney on civil rights, but was soon hired to a legislative assistant to Republican Senator Edward Brooke of Massachusetts, eventually becoming the Senator's chief legislative adviser. He stayed with Senator Brooke until his defeat in 1978, at which time he accepted a job as chief legislative assistant to Senator Durenberger of Minnesota. It was shortly after accepting the job with Senator Durenberger that Ralph was stricken with Guillian-Barre syndrome. Within weeks of contracting the illness in February 1979, he had been placed on a respirator and was paralyzed from the neck down. For nearly 100 days, he lay in the hospital, kept alive by machines, unable to even speak. At one point, he was administered the last rites. When he recovered, he took an 8-month sabbatical, spending time touring Europe, drafting a book about his Guillian-Barre experience, and helping to establish the Guillian-Barre Syndrome Foundation, now entitled the GBS Foundation International, which now has 15,000 members and 130 chapters throughout the world.

In the spring of 1981, Ralph was offered the job as executive director of the leadership conference. It was not the ideal time to take a job as head of a civil rights organization. The Republicans had just captured the presidency and control of the Senate, and many of Ralph's friends questioned why he would want to take such a demanding job after the experience he had endured. But as he stated later when asked about his decision:

> I certainly had more than a few moments [while in the hospital] to think about my life. Here I just came through an experience where I had been a disabled individual, and here [I was offered] a job that dealt with equal opportunity for disabled people, and victims of discrimination. Whatever happened in 1979 was not only important but there were some reasons for it happening. I learned a lot of lessons and I took the job.

Given the fact that the majority of Ralph Neas' tenure at the leadership conference was spent under Republican Presidents and Republican Senates, it might be understandable if little was achieved. But the Neas years were actually among the most productive that the leadership conference has ever had, a fact that is a tribute to his leadership. Ralph Neas was able to reach out to individuals on both sides of the aisle, and truly make civil rights a bipartisan issue.

But you do not have to take my word for it, Mr. President. All you have to do is consider just a few of the civil rights victories that have been achieved during the Neas years. First and foremost, of course, is passage of the Civil Rights Act of 1991, a bill that overturned a series of Supreme Court decisions that made it harder for victims of discrimination to have their day in court. This legislation codified the "disparate impact" standard, allowing plaintiffs to present statistical evidence of the composition of a workplace in order to help prove their discrimination claims, and for the first time provided monetary damages to women, persons with disabilities, and certain religious minorities who were the victim of intentional job discrimination.

In addition, consider the passage of the Americans With Disabilities Act, one of the most significant and dramatic improvements in civil rights law in two decades. This bill extended civil rights protection in employment, transportation, communications, and public accommodations, and greatly improved the quality of life for 49 million Americans with disabilities. During the Neas years, the leadership conference played a critical role in defeating repeated attempts to weaken or repeal Executive Order 11246, the Federal Executive order on affirmative action. I could go on, Mr. President, for there is no shortage of achievements—the Voting Rights Extension Act of 1982, the Fair Housing Amendments Act of 1988, the Japanese-American redress bill of 1988, the Civil Rights Restoration Act, et cetera, but I think these few examples are sufficient to illustrate what an extraordinary contribution that Ralph Neas has made to the civil rights of our Nation.

Tonight, countless individuals from the civil rights community, from the administration, and from Congress will gather to pay tribute to the remarkable leadership that Ralph Neas has provided the civil rights community, the U.S. Congress, and even the Nation during the last 14 years. This is not, however, a retirement. Ralph will continue his work in other ways, joining the Washington law firm of Fox, Bennett & Turner as counsel. While with the firm, he will establish an affiliate, the Neas group, that will provide strategic counseling to business and nonprofit institutions. In addition, Ralph will serve as a visiting professor at Georgetown University Law Center, teaching a course on the legislative process. He will continue his work on the boards of the Guillian-Barre Syndrome Foundation International, the Disability Rights Education and Defense Fund, and the Children's Charities Foundation. I have no doubt that he will continue to provide those of us in the U.S. Senate with his invaluable advice and counsel, a fact for which I am grateful.

Mr. President, when Ralph Neas was hospitalized with Guillian-Barre so many years ago, a nun at the hospital gave him a needlepoint sampler which read "Nothing is so Full of Victory as Patience." I believe the real hallmark of his work has been the consistency and unwavering vigilance—the patience—he has brought to his efforts to assure the enforcement of laws guaranteeing equality of opportunity to all Americans. It is no exaggeration to say that millions of men and women of all races—who may never know you Ralph Neas by name—have benefited directly from his dedication and personal sacrifice in behalf of civil and human rights. He has made a positive, constructive difference for our Nation. I am pleased to have an opportunity on the floor here today, and at the dinner this evening, to celebrate his contributions. I know that I speak for many others in this body when I extend to him my thanks, and my best wishes for his new career.

I ask unanimous consent that a statement by Dr. Dorothy I. Height, the chairperson of the leadership conference, entitled "The Neas Years at the Leadership Conference on Civil Rights," be placed in the RECORD following my remarks.

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

THE NEAS YEARS

(By Dr. Dorothy I. Height)

Last summer, Ralph G. Neas announced that he would be leaving as Executive Director of the Leadership Conference on Civil Rights (LCCR)* in the Spring of 1995. Much too soon that time has come. As Ralph completes his fourteen-year tenure at the helm of the Nation's oldest, largest, and most broadly-based coalition, it is an appropriate moment to reflect upon his extraordinary contributions to the cause of equal opportunity for all Americans and some of the reasons why he has earned his reputation as an effective leader, strategist, advocate, and coalition builder.

THE BIPARTISAN LEGISLATIVE SUCCESSES

Ralph Neas took over as Executive Director of the Leadership Conference, the legislative arm of the civil rights movement, on March 31, 1981, after eight years as a chief legislative assistant to Republican Senators Edward W. Brooke and Dave Durenberger. Ronald Reagan had just been sworn in as president. Senators Strom Thurmond and Orrin Hatch had just replaced Senators Edward Kennedy and Birch Bayh as chairs of the Senate Judiciary Committee and the Senate Subcommittee on the Constitution, respectively. The previous year, Senator Hatch had successfully filibustered to death the Leadership Conference's top legislative priority, the Fair Housing Act of 1980. Many feared that a similar fate awaited the Conference's top priority in the 97th Congress, the legislation to extend the Voting Rights Act of 1965, which was to be introduced in early April of 1981.

No small wonder then that many friends of Ralph, who just two years earlier had been totally paralyzed, on a respirator, and near death in a Minneapolis hospital room, told him that this was not their idea of a brilliant career move. But Ralph believed that his professional training in the Senate, where he had been the senior staffer on civil rights issues, and his bout with Guillain-Barré Syndrome, which had profoundly influenced his life, had prepared him for such a professional challenge.

The situation in the Spring of 1981 demanded bipartisanship, creativity, pragmatism, and leadership. Ralph and his LCCR colleagues showed an abundance of these qualities during the arduous eighteen month campaign to enact the 1982 Voting Rights Act Extension. Many people argued that the time for federal control over local voting processes had ended. But LCCR advocates demonstrated a continuing need and their efforts helped pass the extension by votes of 389 to 24 in the House of Representatives and 85 to 8 in the Senate, leaving President Reagan with no choice but to sign the historic measure into law. That law not only extended the Voting Rights Act for 25 years, but also extended the Act's bilingual assistance provisions and overturned a 1980 Supreme Court decision by reinstating the results standard in the Voting Rights Act.

The remarkable victory against great odds set the tone for the next fourteen years for LCCR. Indeed, the 1982 Voting Rights Act Extension campaign embodied several of Ralph's principal legislative theorems. Theorem number one is to always put together the strongest possible bipartisan bill that can be enacted into law. During the twelve years of the Reagan-Bush presidencies, that usually meant having at least two-thirds majorities in both Houses. Theorem number two is that any successful national legislative campaign must effectively integrate grassroots, Washington lobbying, and media strategies. If one component is absent, the legislative campaign is likely to fail. And third, it is essential that the coalition always remains cohesive and united, never allowing adversaries to successfully use the tactics of divide and conquer. If these basic principles are understood, then one can comprehend the success of the 1982 Voting Rights Act Extension and the legislative victories that followed.

And there were many other LCCR legislative successes. No one could have predicted that more than two dozen LCCR legislative priorities would be enacted into law during Ralph's years at LCCR. In addition to the 1982 Voting Rights Act Extension, Ralph coordinated many of these legislative achievements for the Leadership Conference, including the:

Civil Rights Act of 1991—Overturned eight Supreme Court decisions which had made it much more difficult for victims of discrimination to get into court and to prove discrimination (the first time Congress has ever overturned more than one Supreme Court decision at one time). It also codified the "disparate impact" standard. And it provided for the first time monetary damages for women, persons with disabilities, and certain religious minorities who are victims of intentional job discrimination.

Americans with Disabilities Act (1990)—Perhaps the most significant and dramatic improvement in civil rights law in two decades. Provided civil rights protections in employment, transportation, communications, and public accommodations for the 49 million Americans with disabilities.

Fair Housing Amendments Act of 1988—Provided for the first time an effective enforcement mechanism. Also prohibited discrimination against persons with disabilities and discrimination against families with children.

Japanese-American Redress Bill (1988)—Apologized to Japanese-Americans interned in prison camps in the United States during World War II and authorized $20,000 to each of those who are alive.

Civil Rights Restoration Act—Congress overrode a presidential veto and overturned the 1984 Supreme Court Grove City decision. The Civil Rights Restoration Act restored the broad coverage of the four major civil rights laws that prohibit the federal funding of discrimination against minorities, women, persons with disabilities, and older Americans.

*On May 3rd, at its Annual Dinner to be held at the Hyatt Regency on Capitol Hill, the Leadership Conference will be celebrating its 45th Anniversary and presenting its Hubert H. Humphrey Civil Rights Award to Ralph G. Neas.

The final passage votes on all these laws averaged 85% of both the House and the Senate. In recognition of that extraordinary bipartisan success, Senator Edward Kennedy has called Ralph "the 101st Senator on Civil Rights."

Ralph also managed the successful campaigns to preserve the Executive Order on Affirmative Action in 1985–1986 and to defeat the Supreme Court nomination of Robert Bork. The Bork campaign was perhaps the most forceful statement of the determination of the coalition that the civil rights gains of three decades would not be rolled back.

Other LCCR legislative priorities enacted into law over the past fourteen years include the Family & Medical Leave Act, the Motor Voter Bill, the South African Sanctions Legislation, the Religious Freedom Restoration Act, the Voting Rights Language Assistance Act of 1982, the Elementary and Secondary Education Act of 1994 (including Chapter One reform), the Martin Luther King Holiday Act, three disability measures which overturned Supreme Court decisions, the Age Discrimination in Employment Claims Assistance Act, the Gender Equity in Education Act, the Voting Accessibility for Disabled and Senior Citizens Act, the 1989 Minimum Wage Increase, the Hate Crimes Statistics Act, and key provisions of the Economic Equity Act.

Without question, the past decade and a half has been, legislatively, a bipartisan reaffirmation of civil rights laws and a bipartisan repudiation of the right-wing legal philosophy. Indeed, the right wing did not enact one major item on its regressive civil rights agenda during that time. The LCCR victories are even more remarkable when one considers that during this time two branches of government were hostile to civil rights.

While the civil rights coalition and its congressional allies achieved considerable success, there was a serious downside to the Reagan-Bush years. We had to refight the civil rights battles that had been won during the 1960's and the 1970's. While these battles were won once again, Congress, the civil rights community, and the Nation had to devote an inordinate amount of time, energy and resources in waging these rearguard actions. Consequently, while the legal achievements of the past 30 years were preserved and in a number of instances, strengthened, the Nation by and large was unable to address the unfinished agenda of the civil rights movement—the quest for social and economic justice.

For years, Ralph and his LCCR colleagues have been advocating that economic justice must be the civil rights coalition's top priority. Our legislative efforts should focus primarily on such issues as health care; affordable housing; economic security, especially for women and children; child care; Head Start and other early educational opportunities; employment opportunity, including job creation and job training; and economic empowerment issues. Regrettably, just as this economic opportunity agenda seemed to be moving to the front of the legislative line, once again we may have to devote our energies to resisting efforts to dismantle the legislative achievements of the past several decades.

While the battles will be hard fought, I remain confident that LCCR and its allies will once again defeat the efforts of the right wing, whether the issue be affirmative action or the economic security net for millions of Americans. Indeed, the same type of bipartisanship, creativity, and pragmatism that characterized our efforts in the 1980's and early 1990's will lead us to victory in the last half of the 1990's.

THE EXPLOSIVE INSTITUTIONAL GROWTH OF THE LEADERSHIP CONFERENCE

While the legislative successes are critically important, it is also important to point out the institutional successes as well. The fourteen years Ralph has spent managing LCCR have been characterized by explosive growth. The budget of the Leadership Conference has grown seven-fold since 1981. And the Leadership Conference, always the Nation's largest coalition, has added more than 50 new national organizations, during this time. Some of the new members are the American Association of Retired Persons (AARP), the Association of Junior Leagues, the Disability Rights Education and Defense Fund, the American Association of University Women, the Mexican American Legal Defense and Education Fund, the Service Employees International Union, the Congress of National Black Churches, the American Nurses Association, the Puerto Rican Legal Defense and Education Fund, Families USA, the National PTA, People For The American Way, the United Brotherhood of Carpenters and Joiners of America, the Human Rights Campaign Fund, Citizen Action, and the National Asian Pacific American Legal Consortium. There are now 180 national organizations, with memberships totaling more than 50 million Americans, who belong to the Leadership Conference on Civil Rights.

Such institutional growth has meant also the expansion of LCCR priorities. In addition to minority, gender, religious, and age issues, the Leadership Conference has forged a consensus on disability and gay and lesbian civil rights issues. The exceptional growth of the coalition, while generating new challenges, has made the Leadership Conference stronger and even more effective.

Throughout the years, Ralph has masterfully maintained unity among the diverse elements of the LCCR coalition. And through his work in LCCR, on Capitol Hill, with the Executive Branch, and with the business community, Ralph has earned respect for his ability to build bridges between disparate communities of interest and across the spectrum of political ideologies.

Ralph has also managed the Leadership Conference Education Fund (LCEF), an independent organization that supports educational activities relevant to civil rights. Along with Karen McGill Arrington, LCEF's Deputy Director, he has supervised projects such as an award winning public service advertising campaign promoting tolerance and diversity; a children's anti-discrimination campaign; and the publication of books and reports on emerging civil rights issues.

RALPH'S NEW CAREER

To say the least, things have not slowed down during Ralph's final months as LCCR's Executive Director. He was a key strategist in the successful effort to defeat the Balanced Budget Constitutional Amendment. Presently, he is coordinating the campaign to save affirmative action. In addition, Ralph is lecturing one day per week on the legislative process at the University of Chicago Law School.

In May, Ralph will embark on a new phase of his professional life. He will join the Washington law firm of Fox, Bennett, and Turner, where he will be Of Counsel. At the law firm, he will set up an affiliate, The Neas Group, which will provide strategic counseling to business and non-profit institutions. In addition, Ralph will be a Visiting Professor on a part-time basis at the Georgetown University Law Center where he will teach courses on the legislative process.

Among the boards on which he will continue to serve are the Guillain-Barré Syndrome Foundation International, the Disability Rights Education and Defense Fund, and the Children's Charities Foundation.

On behalf of everyone in the Leadership Conference, I want to express our deepest gratitude to Ralph and wish him well in all his new endeavors. We will miss the personal qualities that made Ralph so effective in his job—his cheerfulness and optimism even when facing great challenges, his patience in working with people to resolve differences within the coalition, and the respect he accorded to everyone's point of view. But we know that there will be many opportunities to work with him as we confront the challenges ahead of us. There is no question in my mind that Ralph will continue to be one of the drum majors for justice.

TRIBUTE TO FORMER SENATOR JOHN C. STENNIS

Mr. HEFLIN. Mr. President, I would like to add my voice to those which have already lamented the passing of our dear former colleague from Mississippi, John Stennis. About 25 of us went down to Mississippi last week to his funeral to say goodbye to one of the true giants in the history of this institution.

I recall about 10 years ago, some Senators, including myself, went to Senator Stennis' hometown of De Kalb, MS, where the people of De Kalb and surrounding areas had gathered to help celebrate his birthday. There was a great outpouring of love and genuine affection from friends and neighbors who had known him, his father, and others before him. No one really knows an individual in the same way that the people of his hometown do, and you could see that as they came together that day. There was an authentic feeling of closeness and friendship.

De Kalb is a small community, probably smaller than the one I come from. The people there—the salt of the earth—knew their favorite son, John Stennis, for his character and integrity. The great outpouring of affection which was on display that day was the best evidence anyone ever needed of his graciousness, honesty, decency, and dedication to principle. All of us there could see that he stood very tall with those who knew him best.

John Stennis and I had much in common, both of us from southern families that go back for many generations. I used to enjoy the stories he would tell about his early years and how his father would raise cotton, transport it over to Alabama, and ship it down the river to Mobile. We were both judges at one time, which gave us a unique perspective on government, individuals, and human nature in general.

John Cornelius Stennis was born on August 3, 1901, in Kemper County, in the red clay hills of eastern Mississippi. He graduated Phi Beta Kappa

from what is now Mississippi State University in 1923 and 4 years later, received his law degree from the University of Virginia. Just 1 year later, he was elected to the Mississippi Legislature. He later went on to serve as a district prosecuting attorney and circuit judge.

After 10 years on the bench, he ran in 1947 for the Senate seat held by the flamboyant Senator Theodore G. Bilbo and was elected over five opponents in November. His campaign theme was "I want to plow a straight furrow right down to the end of my row," and that philosophy guided the rest of his career in public service.

Until his last campaign, in 1982, he was never seriously challenged for reelection. Even then, facing future Republican National Committee Chairman Haley Barbour, then only 34, he won by a 2-to-1 margin.

In his early days in the Senate, John would work 16 hours a day, staying in the Senate until it adjourned and then studying in the Library of Congress. He was meticulous in his work, someone who would go over something again and again until he finally mastered its complexities. He was a commanding presence in the Senate Chamber, where his voice carried such resonance. Even after we had microphones, he would often speak without one.

John Stennis served in the Senate longer than all but one other person in its history. When he retired on January 3, 1989, he had served for 41 years, 1 month, and 29 days. During the 1960's and 1970's, he was the most influential voice in Congress on military affairs. He was chairman of the Appropriations Committee, and was instrumental in the development of the Tennessee-Tombigbee Waterway, which was extremely important to both our States economically. He changed with the times, and began to support civil rights measures. Due to his integrity, diligence, and judgment, he was often called upon to investigate controversial political matters. It became routine to refer to him as the conscience of the Senate. He was a patriarch and teacher to younger Members.

It his later years, while his voice remained clear and his mind sharp, he experienced serious physical problems. He was shot and seriously wounded by a burglar at his home in 1973, and had a leg amputated in 1984 due to cancer, but each time, he returned to his beloved Senate much sooner than had been expected.

After he retired, Senator Stennis moved to the Mississippi State University campus, home of the John C. Stennis Institute of Government and the John C. Stennis Center for Public Service, created by Congress to train young leaders. In one of his last interviews, he said, "I do believe the most important thing I can do now is to help young people understand the past and prepare for the future."

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At that birthday celebration for John Stennis a decade ago, I had the honor and pleasure of speaking. I ended my speech with an old Irish prayer, which goes:

May the road rise to meet you.
May the wind always be at your back.
May the Sun shine warm on your face
And the rains fall soft on your shoulders,
And may the Good Lord hold you in the hollow of his hand during the remainder of your days.

He was a deeply religious man, and he told me he was particularly glad I used the prayer as a closing on that occasion.

John Stennis' days are now over, and his passing gives us reason to pause, reflect, and remember that this body is a decidedly better institution, and the United States a better nation, for having had the benefit of this statesman's service for so many years.

TRIBUTE TO BURTON COHEN

Mr. REID. Mr. President, it is a personal privilege for me to rise today to congratulate a man of considerable achievement in both business and community spirit. Burton Cohen was one of the pioneers who helped lead Las Vegas from its origins as a small gaming community to the thriving resort city that it has become today. Despite the great demands of his career, he has always devoted great time and energy to the development of our community and our State. Burton Cohen is more than a close friend; he is also a role model for Nevadans and all citizens of our country.

Burton Cohen moved to southern Nevada in 1966 when he became part owner and managing director of the Frontier Hotel. He had previously risen to success as the owner of his own hotel development company in Florida.

His talents were soon recognized throughout the Nevada gaming community, and he was recruited for other leadership positions in Las Vegas at Circus Circus, the Flamingo Hilton, Caesar's Palace, and the Dunes Hotel.

In addition to his considerable contributions to various hotel properties throughout southern Nevada, Burton has been a pivotal factor in shaping Nevada's transition to the 21st century. He was president of the Nevada Resort Association and was on the influential board of the Las Vegas Convention and Visitors Authority. Without his innovative presence, and his insightful vision, Las Vegas would not be the destination resort and convention center it is today.

Mr. Cohen has always adhered to the needs of our community. He became closely involved in numerous community activities and charitable causes. He served on the board of the Southern Nevada Drug Abuse Council and led a successful campaign for the United Way in the Las Vegas Valley. Burton was a member of the board of directors of the Boys' Clubs of Clark County and the Nevada Division of American Cancer Society. Furthermore, he has also been an active member in the Anti-Defamation League and is currently a trustee of Sunrise Hospital in Las Vegas.

Burton Cohen recently announced his retirement from his current position as president and chief executive officer of the Desert Inn Hotel and Country Club. His accomplishments in hotel management and in the community are unrivaled and will be deeply missed. Along with his wife, Linda, Burton has made southern Nevada a better place for tourists and residents alike.

On Saturday, May 20, the Anti-Defamation League will be honoring Burton Cohen with the "Lifetime Achievement Award." I can think of no better recipient for this honor, and I want the entire country to know of Burton's achievements and to join those of us in Nevada in recognizing his commitment to excellence.

MR. MAX H. KARL

Mr. KOHL. Mr. President, I rise today to express my sorrow at the passing of my good friend, Max H. Karl. He died on April 19, at the age of 85. Max was a man of vision, intellect, action, and compassion. He lived life to its fullest extent as a family man, a business man, a philanthropist, a civic minded citizen, and as a man devoted to his faith. Max Karl was a good friend not only to myself and my family, but to all of those who had the good fortune to come into contact with him.

At this time, I also extend my heartfelt condolences to his family. Max is survived by his wife Anita, his son Dr. Robert Karl of Miami, daughter Karyn Schwade of Miami, sister Minnie Friedman of Milwaukee, his brother Dr. Michael Karl of St. Louis, and nine grandchildren.

Mr. President, Max Karl was a man who was devoted to his family, his community, and his work. He was a son of Wisconsin, who in every way contributed to the betterment of those around him. Max was a graduate of the University of Wisconsin and its law school. He was the founder and chairman of the Mortgage Guaranty Insurance Corp., headquartered in my hometown of Milwaukee. Max also served as past president of the Mortgage Insurance Companies of America and as a director of First Wisconsin Corp. and MGIC affiliates.

In the public arena, Max served as a member of the Federal Home Loan Mortgage Corporation's advisory committee; the Metropolitan Milwaukee Association Chamber of Commerce; the National Association of Home Builders Roundtable; and was a member of the University of Wisconsin-Milwaukee's School of Business Administration Advisory Council.

Max Karl's other civic activities included serving as a director of the Grand Avenue Corp.; the Greater Milwaukee Committee; the Milwaukee Art Museum; the Milwaukee Symphony Orchestra; and the United Performing Arts Fund. Max was also a past trustee of Mt. Sinai Medical Center; Alverno College; the National Multiple Sclerosis Society; and a trustee emeritus of Marquette University.

Among the many awards and commendations he received in recognition of his charitable and civic work, Max was the 1962 recipient of the National Home and House Award; the 1973 recipient of the State of Israel Golda Meir Award; the 1982 Milwaukee Press Club Headliner Award winner; the 1985 Children's Outing Association Father of the Year; and most recently, in 1994, Max Karl was named to the UWM School of Business Administration "Wisconsin Gallery" of leading corporate citizens.

Max Karl was also a giant in the Milwaukee Jewish Community who, among his other accomplishments, served as a past president of the Milwaukee Jewish Federation; a former chairman of Wisconsin State of Israel Bonds; a member of the boards of Hillel Academy and the former Milwaukee Jewish Home. He also served on the boards of the American Committee for the Weizmann Institute of Science; Americans for a Safe Israel; American Israel Public Affairs Committee; United Israel Appeal; and the United Jewish appeal.

Mr. President, Max Karl was a man who used his time on this Earth fully and judiciously, and in so doing he created a rich legacy that will stand forever. He improved the lives of many, many thousands of people. He was greatly respected and much loved. He will be missed.

HONORING RALPH NEAS

Mr. BRADLEY. Mr. President, I rise today to pay tribute to Ralph Neas, an outstanding leader for civil rights, who is being honored this evening by the Leadership Conference on Civil Rights.

Tonight, as the Leadership Conference on Civil Rights [LCCR] celebrates its 45th anniversary as the Nation's oldest, largest and most broadly based civil rights coalition, Ralph Neas will be awarded the prestigious Hubert H. Humphrey Civil Rights Award for his "selfless and devoted service in the cause of equality." During his 14-year tenure as the executive director of the Leadership Conference, Ralph has been a voice of compassion and reason and a tireless advocate for equality. Dubbed the "101st Senator on Civil Rights" by Senator EDWARD KENNEDY, for his successful coordination of the lobbying efforts of 180 national organizations in the LCCR and for playing a major role in the passage of more than two dozen legislative victories, Ralph has demonstrated his effectiveness as a coalition builder. From the enactment of the 1982 Voting Rights Act extension to the recent enactment of the Civil Rights Act of 1991, his efforts have truly made a difference with respect to securing civil rights for millions of Americans.

Ralph's role in the civil rights community has not been limited to advocacy for the legislative arm of the civil rights community. In addition to his lobbying and legal research efforts, Ralph took on the role of executive director of the Leadership Conference Educational Fund. This independent organization supports numerous educational activities relevant to civil rights such as: an award winning public service advertising campaign promoting tolerance and diversity; a children's anti-discrimination campaign; and the publication of books and reports on emerging civil rights issues.

Today, when our country is increasingly a mixture of races, languages and religions, I am delighted to pay tribute to the efforts of an individual who recognizes the importance of both preserving and celebrating the diversity of our society. The reality is that America is essentially a pair of ideals—liberty and equality. However, these are ideals that are still unrealized. To realize these ideals we need to recognize that our increasing ethnic and racial diversity is a remarkable opportunity. We need to recognize that we will either all advance together, or each of us will be diminished. Ralph Neas has spent the better part of a distinguished career working to ensure that—no matter the color of our skin, the shape of our eyes, our religion, our gender—we all advance together. I salute Ralph Neas for the dedication and leadership he has so generously given to the civil rights community and congratulate him on being awarded the Hubert H. Humphrey Civil Rights Award.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let's do our little pop quiz once more:

Question: How many million dollars are in $1 trillion? While you are arriving at an answer, bear in mind that it was the U.S. Congress that ran up the Federal debt that now exceeds $4.8 trillion.

To be exact, as of the close of business Tuesday, May 2, the exact Federal debt—down to the penny—stood at $4,859,125,275,200.95. This means that every man, woman and child in America now owes $18,445.32 computed on a per-capita basis.

Mr. President, back to the pop quiz: How many million in a trillion? There are a million million in a trillion.

TUFTONIA'S WEEK AT TUFTS UNIVERSITY

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to commend Tufts University in Medford, MA, which 2 weeks ago celebrated its 11th annual Tuftonia's Week events. During this week each year, graduates of Tufts from around the world join together to remember and honor their outstanding university.

Tufts was founded in 1852 and now has over 8,000 students from all 50 States and 213 foreign countries. The university's main campus in Medford/Somerville is home to the college of liberal arts, the graduate school, the school of nutrition, and the Fletcher School of Law and Diplomacy, among others. The school of medicine and dentistry is on the Boston campus, and the Grafton campus houses the only school of veterinary medicine in New England.

I am proud to note that this year, the theme of Tuftonia's Week is community service. Many alumni celebrated the occasion by volunteering and helping to improve life in their neighborhoods. Among universities in Massachusetts, Tufts has taken an impressive leadership role in promoting community service and by integrating opportunities for such service into the academic curriculum.

The Tuftonia's Week celebration has a special meaning for me, because my daughter is one of more than 85,000 Tufts graduates. I am honored to take this opportunity to congratulate the president, John DiBiaggio, and the rest of the Tufts community for their impressive accomplishments.

A GREAT PHYSICIAN AND A TRUE PIONEER

Mr. INHOFE. Mr. President, I rise today to pay tribute to Ray Stowers, D.O., a constituent of mine. Dr. Stowers, a native Oklahoman, is an osteopathic, family practice physician from Medford, OK, who is a true example of the pioneer spirit in America.

In the pioneer spirit, Ray's contributions have resulted in so many "firsts" in his life, both for the State of Oklahoma, for the osteopathic medical profession, and for the patients that he has reached into the rural communities to help.

It is because of his most recent "first", that I rise today to congratulate Ray on his recent appointment to the Physician Payment Review Commission [PPRC]. Ray Stowers represents what is best about medicine and physicians in America today. During a time when the trend to become a specializing physician is so strong and promises such great rewards, Ray Stowers has remained dedicated to the path of providing solo, rural, family medicine for 21 years. Yet from this path, Ray has been able to pioneer programs that enhance the numbers of

physicians who share this important commitment.

One of Ray's many successes occurred when the Governor of Oklahoma appointed him to serve on the board of the Task Force and Rural Planning Committee which was responsible for advising the Governor on the State's health care manpower needs, and for convening a statewide conference to discuss rural health care delivery issues.

As well, Ray had the vision to see Oklahoma's need for rural health clinics, ensuring care for Oklahoma's hardest to reach populations. While he saw the need for, and began, the first rural health clinics in this State, within 5 years that number had burgeoned into 38 rural health clinics. Now, Oklahoma's hard-to-reach and underserved communities are assured access to a doctor and good medical care.

In addition to his many appointments, since 1993, Dr. Stowers also has been a presence on the American Medical Association Relative Value Update Committee [RUC]. As the first osteopathic physician appointed to serve on this prestigious committee, Ray has facilitated greater understanding, collaboration, and teamwork between the osteopathic medical profession and the allopathic physician community, and has lent his considerable expertise on physician practices to the RUC proceedings.

Dr. Stowers has served his family, his profession, his community, and his State with strength and integrity that symbolizes a modern pioneer. Dr. Stowers, the great State of Oklahoma is proud of your accomplishments. And I am honored to join your family and friends and colleagues in wishing you every success as you embark on your next journey; serving on the Physician Payment Review Commission.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 956, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Gorton amendment No. 596, in the nature of a substitute.

(2) Dole modified amendment No. 617 (to amendment No. 596) to provide for certain limitations on punitive damages.

(3) Dorgan amendment No. 619 (to amendment No. 617) to establish uniform standards for the awarding of punitive damages.

(4) Shelby/Heflin amendment No. 621 (to amendment No. 617) to provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided under State law.

(5) DeWine amendment No. 622 (to amendment No. 617) to provide protection for individuals, small business, charitable organizations and other small entities from excessive punitive damage awards.

(6) DeWine amendment No. 623 (to amendment No. 617), regarding asset disclosure.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour for debate equally divided and controlled by the Senator from Washington [Mr. GORTON] and the Senator from South Carolina [Mr. HOLLINGS] or their designees, prior to any votes ordered on or in relation to the Dole amendment No. 616.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business for 4 minutes.

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

BUDGET DELAY

Mr. FEINGOLD. Mr. President, I add my voice of concern over the delay in action of the Federal budget. It is now May 3. That is over a month after the April 1 deadline for the Budget Committee to report a concurrent resolution on the budget. It is also nearly 3 weeks after the April 15 deadline for Congress to have completed its work on that concurrent budget resolution.

I raise my concern, Mr. President, knowing that not every budget deadline has always been met, nor do I suggest that the task facing the Budget Committee is an easy one. It is a very tough one. But by this time, during the two sessions of the 103d Congress, we had considered and passed a concurrent budget resolution through the Senate.

In 1994, we passed the Senate version of the concurrent budget resolution on March 25, and agreed to a conference report on May 12.

Moreover, those concurrent budget resolutions contained politically tough deficit reduction provisions, and were submitted, debated, and passed at a time when a new administration was taking office—the first Presidential party change in 12 years.

Mr. President, many of us on this side of the aisle are ready to help craft a budget that will eliminate the Federal deficit.

We have demonstrated that we are willing to vote for politically unpopular proposals to lower the deficit.

In 1993, when we were the majority party, we developed and passed a $500 billion deficit reduction package.

We are still very sorry that no member of what was then the minority party decided to support that package, though it was certainly the right of each Senator to vote as they saw fit.

Beyond the individual right of minority members, though, during the 103d Congress it was our responsibility as the majority party to advance a budget, not the responsibility of those on the other side of the aisle who were in the minority at the time.

Mr. President, it is the responsibility of the majority party to propose, refine, and pass a budget, with or without the help of members of the minority. We want to be a part of that process and to cooperate. But it is first the responsibility of the majority.

It is the privilege of the minority party to respond, offer alternatives, and, when conscience requires, to dissent from the budget proposal.

Such is the political dynamic of our legislative process.

And our colleagues on the other side of the aisle exercised their privilege as the minority party in 1993, and refused to join us in making that tough deficit reduction vote.

Mr. President, the two parties have exchanges roles in the 104th Congress, but the duty of the majority party remains unchanged.

It is the majority party that sets the agenda, proposes a budget, and finds a way to pass that budget.

By contrast to the last Congress, however, I know a number of us in the minority are willing to support a budget resolution that reduces the deficit.

We will help shoulder the burden of passing a budget that reduces the deficit.

But, Mr. President, before we can provide that cooperation, we must have a budget to work with.

The choices that face us are already extremely difficult.

Each day we delay they become even harder.

We are all very much aware of how our budget problems are accelerating, and what delay means in lost fiscal opportunities.

But delay also risks the political consensus that must be achieved if we are to make significant progress on the deficit.

Mr. President, without public support, we cannot hope to find the votes for a balanced budget.

I don't mean to suggest that we can only pass a budget if the American people are enthusiastically behind every provision.

That is not going to happen when doing spending cuts.

If we could find such a proposal, we would have balanced the budget a long time ago.

Nor do the American people expect or even want such a budget.

They rightly are skeptical of those who promise easy solutions.

Mr. President, what the American people do want is to feel that their elected Representatives are being straightforward and open with them about what they propose.

They will not support a budget that is the product of closed-door meetings, held in the dead of night.

But they will support a budget that is openly debated.

They are willing to sacrifice if they feel that the process has been open and fair.

Mr. President, this budget delay really amounts to a budget blackout.

The longer the delay, the longer the blackout, and the less likely that we will be able to build the political consensus with the American public that we will need to balance the budget.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. HEFLIN addressed the chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I would like to address the Dole amendment and its relationship to other parts of the bill.

The Dole amendment, of course, extends the provisions of this proposed bill to all civil actions involving interstate commerce. That includes almost every automobile accident, and every conceivable type of accident, not just product liability cases. And, as we know, the language "interstate commerce" has been so liberally construed up until the very recent Lopez case that it includes almost any situation. There are many examples, too numerous to cite here, that can demonstrate the liberal construction of the interstate commerce clause.

Let me first recite the provision not only in the Dole amendment but in the overall bill pertaining to punitive damages, that if you seek punitive damages and any party can call for a bifurcated trial which means that at the request of any party, the trier of facts, the jury, shall consider in a separate proceeding as to whether punitive damages should be awarded. By the way, bifurcated proceedings will result in an increase in transitional costs which is somewhat ironic in as much as the proponents of this legislation have maintained that one of the bill's objectives is to reduce, not increase, transactional costs.

If there is evidence of punitive misconduct, it is inconceivable to me that any defendant would not take advantage of a bifurcated trial. So, all punitive damage cases will have two trials. In the first trial, which is the trial in regard to underlying liability, compensatory damages will be sought, which includes noneconomic damages and economic damages, and all of its component aspects. There is this provision in the Dole amendment, and also in the overall bill—it is just a repetition put here—that evidence relative only to the claim of punitive damages as determined by applicable State law shall be inadmissible—not admissible, but inadmissible—in any proceedings to determine whether compensatory damages are to be awarded.

That means that in an automobile accident case or in a truck/automobile case, you could prove negligence in the trial in chief, but you could not prove gross negligence. Basically, what that means—and every defendant who would come along would argue—yes, you can argue that the truck that caused the accident, that did the wrongdoing, crossed the center line and hit an individual. But you could not prove that the driver had three beers or had a pint of whiskey, because that issue would go to the punitive damage aspect of the case. You could not prove basically that the owner of the truck knew, under these circumstances, that that driver had been convicted four times before of drunk driving. You could not prove in the trial in chief that the driver of that motor vehicle—and it was known to the owner of the truck, the truck company, that defendant had been convicted twice of reckless driving. You could not go into any aspect that would be evidence relating punitive damages and punitive misconduct.

Now, you could not prove in the Pinto automobile cases that there was a memorandum to the effect that a company will come out financially better rather than having a recall because of the location of the fuel tank and the certain danger that would result in the case of a rear end collisions. The memorandum in question showed that the company would come out better financially and with less expense to just pay off the claims that might arise from rear end collisions.

Now, how does this relate also to the Snowe amendment which is in the Dole amendment? We have to go in and look to several liability for noneconomic loss. Under the Snowe cap, the cap on punitive damages is twice the amount of economic and noneconomic damages.

Section 109 of the bill on the matter of several liability reads

> Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant determined in accordance to the harm to the plaintiff with respect to which the defendant is liable.

Therefore, in a motor truck and automobile accident, if a person were suing for punitive damages in a particularly egregious situation and trying to prove noneconomic damages, such as pain and the suffering, for example, and being aware of the basis for the cap of the Snowe amendment, that person could not prove against the owner of the truck that the owner knew of four convictions of drunk driving and two convictions of reckless driving in his efforts to establish the several liability of the driver and the owner of the truck.

How can a person establish under not only the Dole amendment but under the bill as a whole the amount of noneconomic damage, for example, against the owner of the truck?

Now, that is just one example, and there are probably a multitude of other examples. There are other aspects, but these two relate together in that, together, they put an injured party at a terrible disadvantage. It in effect says, regardless of the injury or the human element in this, we are interested in profits.

To me, as I look at all of this, and every time I see more and more instances which raise serious questions in my mind, there are all sort of provisions throughout this particular bill that just really shock the conscience as regards to the issue of fairness.

I am deeply concerned that people do not really understand how the provisions interrelate and what ultimate impact the bill will have on the individual and his or her rights to seek fair redress for injuries he or she may have received.

How much time is remaining on our side?

The PRESIDING OFFICER. Sixteen minutes.

Mr. HEFLIN. I reserve the balance of my time.

Mr. GORTON. Mr. President, how much time does the Senator desire?

Mr. McCONNELL. Mr. President, 7 or 8 minutes.

Mr. GORTON. I yield 8 minutes to the Senator from Kentucky.

Mr. McCONNELL. Mr. President, the amendment I offered yesterday to broaden this bill to include medical malpractice reform, which the Senate approved, may have been the shot heard around the civil justice system, but the amendment we will be voting on offered by Senator DOLE to extend punitive damages reform to all civil cases in the country is really the beginning of the revolution.

The Dole punitive damages amendment, together with an Abraham-McConnell amendment on joint and several liability, which we will offer shortly, are the true tests of whether the Senate is going to provide meaningful and comprehensive civil justice reform for every American.

Let me explain why the Dole amendment is so important to restoring justice to our civil justice system. Economic and noneconomic damages are awarded to compensate an injured party, to make the person whole in every possible way. That is a fundamental purpose of civil liability and one which I strongly support.

Punitive damages, on the other hand, are assessed to punish the responsible party for conduct that is almost criminal in its recklessness, deliberateness, or malice. Since we assign liability for

economic and noneconomic damage on the basis of fault, it is clear that punitive damages are meant to punish something much more than mere negligent conduct. Such damages are to be sought in extreme and unusual situations, not as a bonus, in every case, Mr. President.

However, as any students of the tort system can say, the distinction between the two types of civil damages have become seriously blurred, making a mockery of the different purposes these damages are meant to serve.

Claims and large awards for punitive damages have become routine. Plaintiffs who are fully compensated for their injuries throughout economic and noneconomic damages get an extra windfall that bears no relation whatever to the harm that they have suffered.

The lawyers who represent these plaintiffs are stuffing their pockets with the money, as many plaintiffs lawyers will take up to half and even more of the total amount of these lucrative damage awards.

Often, Mr. President, the potential for such enormous punitive damages awards entices people to sue in the first place. Plaintiffs, egged on by their lawyers, will sometimes turn down offers to compensate all their harm in the hope of scoring big with punitive damages or extorting a much larger settlement out of a defendant, who is understandably reluctant to play punitives roulette.

In other words, what was once intended as a very narrow remedy lying somewhere between civil and criminal law has now become a gold mine that is exploited without regard to the considerations of justice and due process. The Dole amendment is designed to restore the concept of punishment to punitive damages.

If we accept the principle that the law of punitive damages must be reformed in product liability and medical malpractice, it follows that such reform should be extended to other civil actions as well.

Punitive damage reform will not limit an injured party's right to be fully compensated for any harm. Instead, it will give relief to consumers in the form of lower prices at the checkout counter and lower insurance costs for their homes and businesses. To confine that relief to product liability and medical malpractice gets only part of the job done.

Now, who is hurt by excessive punitive damages awards? The list is almost endless. Cities, counties, park districts, nonprofit agencies, charities like the Girl Scouts and the Little League and small businesses.

For example, the Girl Scouts in Washington have to sell 87,000 boxes of Girl Scouts cookies just to pay their liability insurance premium. In southern Illinois, they must sell 41,000 boxes to cover insurance liability. Girl Scout camps can no longer afford to offer horseback riding because of excessive risk. They have no diving boards in the swimming pools—too much exposure to litigation.

Cities spend $9 billion on liability judgments and settlements every year. An employee of the Smithsonian won a $400,000 award—$390,000 in the form of punitive damages because his supervisor called him an unflattering name. I guess that proves that sticks and stones may break my bones, while names earn a lawsuit.

For small businesses, one lawsuit can mean bankruptcy, even if it is won. The huge fee and time spent away from the businesses has literally wiped out mom and mop enterprises despite the fact that they win the suit. No wonder so many small businesses cave in to legal extortion rather than risk court costs, legal fees, disruption of the business, harm to their reputation, and exposure to the most expensive lottery in America—punitive damages.

The National Federation of Independent Business, which has been one of the true heroes on civil justice reform, brought to my attention the case of Hunt Tractor in my home State of Kentucky. They have been sued in two cases involving product liability allegations. In one case, the equipment operator was obviously negligent; and in the other case, the owner had modified the equipment to make it unsafe.

While Hunt won both cases, it cost the company and its insurance carrier more than $100,000 to defend, and countless hours entangled in legal proceedings.

Domino's, the chain of pizza delivery restaurants, was found liable for the injuries of a woman harmed when one of its pizza trucks was rushing to meet Domino's promised 30-minute-delivery deadline. Regardless of whether you believe Domino's had some share of the responsibility, the damages awarded in the case were astonishing. Out of a total award of $79 million, close to $78 million was punitive damages.

Some of my colleagues have mentioned the situation in Alabama, a State I have a great deal of interest in. I was born there and lived the first 8 years of my life in Alabama. In Alabama, plaintiffs routinely recover punitive damage awards. In three counties studied by Prof. George Priest, of the Yale Law School, he found that punitive damages were awarded in 72 to 95 percent of all cases in these three counties in Alabama—all cases.

It is hard to imagine that in all these cases defendants have behaved so egregiously as to warrant an assessment of punitive damages. Clearly, we need to bring punitive damages under control and relate them to punishment—not another routine part of every case. That is what this debate is about. It is not, as the opponents of reform have claimed, about taking money away from victims. It is about bringing some certainty to civil punishment, just as we do for criminal defendants.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. MOSELEY-BRAUN addressed the Chair.

Mr. HEFLIN. Mr. President, I ask for the yeas and nays on the Shelby amendment.

Mr. GORTON. Excuse me, will the Senator withhold?

Mr. HEFLIN. All right, I yield to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, I know that I do not have a great deal of time, but I would like to discuss very briefly why I believe it would be a mistake for the Senate to adopt the Dole amendment on punitive damages. I know that the sponsors of this amendment are confident that their amendment, as drafted, will ensure that no limitations are placed on the ability to recover punitive damages in Federal civil rights cases. I am not sure that I agree with their assessment; however, even if it were correct, the pending amendment will have disastrous consequences in numerous cases that are brought pursuant to State law, including cases to vindicate civil rights. I have here a letter from Morris Dees, chief trial counsel for the Southern Poverty Law Center, which states:

> The Southern Poverty Law Center has used both Federal and State laws to cripple a number of white supremacist and neo-Nazi groups during the past 10 years. If a Senate bill that limits punitive damages is enacted, these judgments would not be possible.

A description of some of the types of cases that would be impacted by the Dole amendment illustrate the major harm that broadening the limitations of punitive damages to cover all civil litigation would create.

In 1990, the Southern Poverty Law Center won a $12.5 million judgment against the White Aryan Resistance and its leaders—Tom Metzger and his son John—for the beating death of a black student in Portland, OR. Of that award, $2.5 million was for compensatory damages, while the remaining $10 million was for punitive damages, a punitive award that was four times the amount of compensatory damages.

During the trial for civil damages, it was demonstrated that Mr. Metzger and the Ayran Resistance had for years preached that nonwhites were "God's mistakes," and that Jews were the progeny of Satan. Tom Metzger and his son, John, sent agents to Portland, OR, to organize the East Side White Pride, a youth division of the Aryan Resistance. At the organizational meeting, members were encouraged to commit

violent acts against blacks, a fact that had disastrous consequences for a 28-year-old black Ethiopian immigrant named Mulugeta Seraw. While walking home, Mr. Seraw was attacked with a baseball bat by three skinheads who had attended the White Ayran Resistance meeting. Mr. Seraw—who had come to America to attend Portland State University, and who shipped money from his part-time job to his family back in Ethiopia—didn't stand a chance. He was dead before he ever reached the hospital.

Mr. President, I mention this case because it was brought not pursuant to Federal civil rights laws, but pursuant to a State wrongful death statute, the very type of civil action that will be impacted by the Dole amendment. And it is not the only lawsuit of its kind that the Dole amendment would limit.

Consider this case: In 1987, a wrongful death claim was brought against the United Klans of America for the lynching death of 19-year-old Michael Donald, a masonry student at Carver State Technical College in Alabama. The case resulted in a $7 million judgment against the Klan. Again, as this is exactly the type of claim that would be impacted by the Dole amendment, I will briefly describe the facts.

While walking home from his sister's house one evening, Michael Donald was kidnapped by two Klan members, Henry Hays and James "Tiger" Knowles. After driving to a deserted woods, Michael was ordered out of the car. A newspaper account describes what happens next:

> Henry Hays pulls a knife. Michael Jerks free. He runs. They chase him. He grabs a fallen tree limb. They knock it away. Hays has the noose. They wrestle it over Michael's head. Michael pulls on the rope, running in circles. Knowles holds the other end and beats him, again and again, with the tree limb. Michael collapses. Henry Hays pushes his boot into Michael's face and pulls the rope tight. They drag him through the dirt to the car. They lift him into the trunk. Knowles asks Hays if he thinks Michael is dead. "I don't know," Hays replies, "but I'm gonna make sure." He cuts Michael's throat three times. They drive back to Henry Hays' house and throw one end of the rope over the limb of a Camphor tree across the street. Then they lift Michael by the neck—high enough to swing. From the porch, the rest of the Klansmen can see. As Knowles steps back up to join them, he feels a friendly punch. "Good job, Tiger."

Mr. President, Tiger Knowles and Henry Hays were convicted of crimes for their role in Michael Donald's brutal death, which some people may feel is sufficient punishment. But for civil rights activists in the deep South, it was not. They recognized that this behavior was part of a pattern and practice of conduct by the Klu Klux Klan, designed to deprive minorities of their civil rights under law. So these activists sued the Klan, not pursuant to Federal Civil Rights Laws, but pursuant to State wrongful Death Statutes.

At trial, evidence was presented to show that on the evening of the murder, Tiger Knowles and Henry Hays had been told by their local Klan leader "get this down: if a black man can kill a white man, a white man should be able to get away with killing a black man * * *." The jurors were shown a Klan newspaper, that had a drawing of a black man with a noose around his neck, a drawing that Tiger Knowles testified had influenced his behavior. Jurors were informed of countless other, similar incidents in which the United Klan had been involved. And ultimately—and quite wisely, I would assert—they awarded Michael's mother, Beulah Mae Donald, $7 million.

Perhaps there are some who feel a lower award would be appropriate in this case. Again, I will quote from a newspaper account which describes that amount of the award:

> The Klan cannot pay. It has nowhere near that kind of money. So, in addition to a quarter of the wages some of the klansmen will earn for the rest of their lives, and in addition to titan Bennie Hays' house and farm, Beulah Mae Donald accepts every penny of the several thousand dollars that the United Klans of America has to its name, and the deed and keys to its national headquarters. She shuts it down.

Mr. President, I have outlined two examples of punitive damages in wrongful death cases, but these are not the only types of State law cases that would limited by the Dole amendment. In 1988, the Southern Poverty Law Center won $1 million from two Georgia Klan groups who attacked marchers celebrating Dr. King's birthday. Or consider a recent award of $7 million in punitive damages against a law firm that tolerated sexual harassment—a claim that was brought pursuant to California's Fair Housing and Employment Act, not Federal civil rights law.

As I stated at the beginning of debate on this legislation, I hope to be able to vote for cloture on a narrow, moderate product liability bill. I support reforms such as a statute of repose, or limitations on vicarious liability, or limitations of recovery if drug or alcohol use caused the injury. But I will never support any legislation that would, in the guise of civil justice reform, make it more difficult to bring civil rights claims under State law. I would never vote for an amendment that will restrict the ability of civil rights groups to sue the Klu Klux Klan. I urge my colleagues to reject the Dole amendment, and I ask unanimous consent that the text of the letter from the Southern Poverty Law Center, as well as the article describing their work, be printed in the RECORD following my remarks.

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

THE SOUTHERN POVERTY LAW CENTER,
Montgomery, AL, April 25, 1995.

Senator TOM DASCHLE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: The Southern Poverty Law Center has used both federal and state tort laws to cripple a number of white supremacist and neo-Nazi groups during the past ten years. If a Senate bill that limits punitive damages is enacted, these judgments would not be possible.

In 1987, the Center got a $7 million judgment against the United Klans of America for the lynching death of a black teenager. The judgment bankrupted this violent hate group whose members had previously bombed the Sixteenth Street Baptist Church in Birmingham, Alabama, killing four young girls.

In 1990, the Center got a $12.5 million judgment against the White Aryan Resistance and its leader Tom Metzger for the death of a black student in Portland, Oregon, at the hands of Skinheads. Most of the judgment was punitive damages. The group we sued is now virtually out of business.

In 1988, the Center got $1 million judgment against two Georgia Klan groups for their assault on a group of marchers celebrating Dr. King's birthday. Almost all of this amount was punitive damages. We bankrupted both groups and took property from several members.

We presently have a civil damage suit pending against Rescue America and its Florida leader, John Burt. Our client is the family of slain abortion doctor David Gunn. Without a large punitive damage award, a favorable judgment would not be significant or effective.

Senator, this is a bad bill that is being proposed in the frenzy of political change. I urge you to vote against cloture on any bill or amendments that limit the ability of our civil justice system to punish those people and organizations that inflict unspeakable injuries on our friends, neighbors, family members and communities.

Sincerely,

MORRIS DEES,
Chief Trial Counsel.

[From the Los Angeles Times magazine, Dec. 3, 1989]

THE LONG CRUSADE

(By Richard E. Meyer)

When Morris Dees was 4, his daddy gave him his only whipping. He used a belt, and he whipped him all over the barnyard. It was for speaking with disrespect to a black man.

It made an impression, but nothing like the impression his daddy left a few years later, when Morris Dees was old enough to tote water. It was summer in Alabama, mercilessly hot. He carried the water in a bucket out to his daddy's workers, hoeing cotton in the fields.

One of them was Perry Lee. She was black. She kept a big dip of snuff in her cheek. One day, as Morris Dees handed her the water dipper, his daddy drove up. Perry Lee tucked a finger behind her teeth, flicked out her snuff and took time to drink. Morris Dees' daddy did two things his son never forgot.

With Perry Lee's hoe, he kept up her row, so she would not worry about falling behind.

Then he took the same dipper and drank.

Morris Dees grew up with a golden touch. He sold cotton mulch in high school, birthday cakes in college and mail order books after law school. By the time he was 32, he and a partner had sold the business for $6 million.

He lent the touch to raise money for Democratic presidential candidates—and, at the same time, Morris Dees, his daddy's son, put the touch to work for people like Perry Lee. In 1971, he co-founded and funded by directmail appeals the Southern Poverty Law Center in Montgomery, Ala., a nonprofit group of attorneys who use the law like a sword.

The law center recently unveiled a civil-rights memorial designed by Maya Lin, creator of the Vietnam Veterans Memorial. But its real importance is its litigation on behalf of the underdog. The center has challenged employment discrimination, hazardous working conditions, denial of voting rights, shoddy education, tax inequities and the death penalty. Its battles against the Ku Klux Klan are legendary—so successful that Morris Dees is a man marked for assassination.

He is praised as a courageous klan-buster, but he also gets criticized—even among those who share his goals. His critics say that some racists are toothless and that he busts them to impress the center's donors.

Now Morris Dees is coming West—to take on California's own Tom Metzger, of Fallbrook, and his White Aryan Resistance (WAR). Dees has sued Metzger, charging him with inciting neo-Nazi skinheads who killed a black man. He wants the courts to order Metzger and his organization to pay damages to the victim's family. His tactic is to ruin Metzger financially—as he has empires of the klan—and put him out of business.

If he succeeds, he will undo one of the most important white supremacists still operating.

Morris Seligman Dees, 52, is a soft-spoken man with light blue eyes and sandy hair. He is informal, given to wearing open shirts and loafers with no socks. He is wealthy enough to retire. But he does not.

What is it like to do what he does?

Why, with the inherent danger, does he keep on doing it?

It is spring of 1981, a Wednesday night in Mobile, Ala. Out in the suburbs, members of United Klans of America, the biggest, most secretive and arguably most violent of the Ku Klux Klans, are meeting at Bennie Hays' place. Usually they talk about klan business in Bennie's barn, then watch TV over at his house. But by most accounts—testified to, published or simply told—their meeting this night marks the beginnings of something that becomes extraordinary.

They are preoccupied by what they consider an outrage. A white policeman has been killed in Birmingham, 85 miles from Montgomery. A black has been charged with the murder. And it looks like the jury is deadlocked. Bennie Hays, 64, titan in charge of Klavern 900, commands everyone's attention. Although he will deny it later, two klansmen swear that Benny Hays declares to the meeting assembled; "Get this down: If a black man can kill a white man, a white man should be able to get away with killing a black man . . .".

Klansman James (Tiger) Knowles, 17, borrows a 22-caliber pistol. Then Knowles, fellow klansman Benjamin Franklin Cox, 20, and Henry Hays, 26, who is Bennie Hays' son and a member of the klan as well, go to Cox's home and pick up a rope. They tell Cox's mother they need it to tow a car.

They listen for word. On Friday night, Knowles and Cox go to Henry Hays' home to catch the 10 o'clock news. In the car, Tiger Knowles knots a hangman's noose. As they pull up chairs in front of Henry Hays' TV, a newscaster announces that the jury in the black man's case has, indeed, deadlocked. If the black man is not retried, he will go free.

Henry Hays and Tiger Knowles burst for the door. They drive straight to a black neighborhood. They see an elderly black man, but he is too far from their car. Besides, he is on a public telephone—he could appeal for help.

Not far away, Michael Donald, 19, the youngest son of Beulah Mae Donald, 61, is walking home from his sister's house. A masonry student at Carver State Technical College, Michael Donald works part time in the mail room at the Mobile Press Register. He is quite, broad-shouldered and well-mannered. He likes music, plays basketball on a community team, dates two or three girls.

As he detours to a corner gas station to buy cigarettes, Henry Hays and Tiger Knowles pull up.

They motion him over.

Knowles asks the way to a nightclub, and Michael Donald starts to direct him.

"Come closer," Knowles says.

Michael Donald leans over. Knowles pulls out the pistol.

"Be quiet," Knowles says.

They order him into the car and drive across Mobile Bay and into the woods.

"I can't believe this is happening," Michael Donald pleads. "I'll do anything you want. Beat me; just don't kill me. Please don't kill me."

The car stops. They order him out. Knowles holds the pistol. Michael Donald grabs him. All three scuffle for the gun. It goes off.

The bullet whines into the air.

Henry Hays pulls a knife. Michael jerks free. He runs. They chase him. He grabs a fallen tree limb. They knock it away. Hays has the noose. They wrestle it over Michael's head. Michael pulls on the rope, running in circles. Knowles holds the other end and beats him, again and again, with the tree limb.

Michael collapses.

Henry Hays pushes his boot into Michael's face and pulls the rope tight.

They drag him through the dirt to the car. They lift him into the trunk. Knowles asks Hays if he thinks Michael is dead.

"I don't know," Hays replies. "But I'm gonna make sure."

He cuts Michael's throat—three times.

They drive back to Henry Hays' house and throw one end of the rope over the limb of a camphor tree across the street. Then they lift Michael by the neck—high enough to swing.

From the porch, the rest of the klansmen can see.

As Knowles steps back up to join them, he feels a friendly pinch.

"Good job, Tiger."

In the dead of night, two of the klansmen drive downtown to the Mobile County courthouse. Out front, they set flame to a cross. And in the cool of the early morning, the city finds Beulah Mae Donald's son, hanging from the camphor tree, bruised, broken, dead.

Despite the rope and the burning cross, the Mobile County district attorney declares that race—much less the Ku Klux Klan—does not seem to be a factor in Michael Donald's death.

But the black community calls it a lynching.

Beulah Mae Donald's attorney, state Sen. Michael Figures, says it is clear to him that, at the very least, white extremists of some kind are involved.

Whites accuse Figures, who is black, of stirring up racism.

The police investigate, but they do not question the klan. Instead, they look into a theory that Michael Donald might have been involved with a white woman at the Press Register and gotten killed in a love triangle. Than they investigate a theory that he might have gotten killed in a drug deal. They arrest three men they describe as junkies. But when the case goes to a county grand jury, it tumbles apart.

Thousands of blacks march in protest.

All Beulah Mae Donald wants, she says, is "to know who really killed my child."

Michael Figures' brother, Thomas, an assistant U.S. attorney in Mobile, asks for a second investigation—this time by a federal grand jury.

And this time, Tiger Knowles cracks.

He plea-bargains. In return for his testimony, Knowles gets life—and Henry Hays gets death.

There the matter of Michael Donald might remain—but for the district attorney, who continues to maintain the klan's innocence. "I'm not sure this as a klan case," the district attorney says. Rather, he declares, this was a case in which members of the Ku Klux Klan just happen to have been involved.

Morris Dees simply does not believe it, and he cannot ignore it.

From what he can plainly see, Tiger Knowles and Henry Hays did not act in a vacuum. Dees calls Michael Figures and suggests that Beulah Mae Donald and the NAACP filed a civil suit against the United Klans of America, headed by Robert Shelton, its imperial wizard. Dees proposes to prove that the killers carried out a policy of violence for which the klan is responsible—just as a corporation is liable for the actions of its employees when they carry out its policies.

Although individual klansmen—Tiger Knowles and Henry Hays—were prosecuted, nobody has ever tried suing United Klans as a whole for damages. The idea, Dees says, would be to win a financial judgment large enough to bankrupt it.

Beulah Mae Donald approves.

On her behalf, Morris Dees sues United Klans of America in U.S. District Court in Mobile for $10 million.

The klan sees trouble.

Even before jury selection, it consents to a broad injunction against harrassing blacks. Then, as the trial gets under way, Morris Dees calls Tiger Knowles to testify.

Flanked by federal marshals, Knowles walks into court, past Beulah Mae Donald at the plaintiff's table.

Already a turncoat for testifying against Henry Hays, today he will add to the vengeance the klan feels against him. He walks past former fellow klansmen, seated at the defense table. Next to them is Shelton, their imperial wizard. Not a defendant, he is there as the chief officer of United Klans.

Morris Dees questions Knowles softly. Knowles tells how it was that Michael Donald died.

"We got the gun," Tiger recalls, "and then later . . . I tied the hangman's noose in Henry's car."

Throat cut, face bruised, clothing in disarray, wounds on the hands. Was that his work?

"Yes."

Dees holds up a drawing from a klan newspaper edited and published by Shelton. It shows a black man with a noose around his neck.

Had Tiger seen the drawing before he killed Michael?

"Yes."

Had it influenced him?

"Yes, it did."

Tiger steps down to show how Michael Donald was strangled.

Beulah Mae Donald sobs softly.

John Mays, the klan attorney, asks Tiger if he had heard Shelton order violence.

No, Tiger replies, but "he instructed us to follow our leaders."

Tiger recalls how Bennie Hays had suggested that if a black man could get away with killing a white man, then a white man ought to be able to get away with killing a black man.

"Mr. Hays is who I took orders from . . . He took his orders from Mr. Shelton. . . .

"All I know is I was carrying out orders."

Mays concedes that Michael's murder is a "horrible atrocity"—but he tries to portray the klan as a political organization. Shelton tells the jury that white supremacy is a political goal—nothing more. He says that nothing in the klan bylaws approves of violence. He says that he does not advocate violence.

Shelton adds triumphantly: "I'm not ashamed to be a white person."

In America, Mays says, "we don't punish the organization. We punish the individuals."

But Dees counters with a tutorial in klan history. With testimony from some former klansmen and depositions from others, he shows how Shelton personally directed the infamous Mother's Day attack in 1961 on Freedom Riders at the Trailways bus station in Birmingham; how a United klansman was convicted of bombing Birmingham's 16th Street Baptist Church in 1963, killing four black girls as they prepared to participate in the 11 o'clock service; how four klansmen killed Viola Liuzzo, a white civil-rights worker, in 1965 after hearing Shelton say, "If necessary, you know, just do what you have got to do," and how in 1978, just 2½ years before Michael Donald was killed, Shelton told a group of klansmen, "Sometimes you just got to get out there and stop them," after which the klansmen fired shots into the homes of blacks, including the state president of the National Assn. for the Advancement of Colored People.

Ku Klux Klan policy is hardly politics, Dees declares. Make no mistake, he says, it is violence.

Finally, Dees calls klansman William O'Connor to the stand. On TV news tape the day that Michael died, Bennie Hays had been pictured walking up to the camphor tree to look at his body. O'Connor tells the jury that Hays had said it was "a pretty sight."

Hays, acting as his own lawyer, calls O'Connor a liar. He says he had no knowledge of any plans to kill Michael Donald—and that anybody who says anything to the contrary is lying.

"I have never in my life heard anybody talk about a hanging," he tells the jury. He says lynching talk was a "no-no" during klan meetings. And, Bennie Hays says, Henry, his convicted son, still maintains that he is innocent.

As both sides wind up their cases, Tiger Knowles summons Morris Dees to his jail cell. Although he has been testifying for the plaintiffs, Tiger is a defendant—and he wants to offer a closing statement of his own.

"Say what you feel," Dees counsels.

When court resumes, Tiger Knowles, one of the killers of Michael Donald, stands in front of the jury box.

He won't take long, he says. He knows people have tried to discredit his testimony, but everything he has spoken is true. "I've lost my family, and I've got people after me," he says. "I was acting as a klansman. I hope people learn from my mistakes, learn what it cost me."

He turns to the jurors, "Return a verdict against me," he says, beginning to shake, "and everything else."

Then he turns to Beulah Mae Donald. He pauses.

He is in prison for life—but he is alive. Her son is dead. Trembling, then sobbing, Tiger Knowles apologizes. Jurors are crying, Judge Alex T. Howard, Jr., wipes his eyes. Tiger tells Beulah Mae Donald that he has nothing to pay her, but if it takes the rest of his life to make amends, he will—for any comfort it may bring. As for her son, he says, "God knows, if I could trade places with him, I would."

Softly, from her chair, Beulah Mae Donald forgives him.

The members of the jury deliberate for four hours. In the end, they award her $7 million.

The klan cannot pay. It has nowhere near that kind of money. So, in addition to a quarter of the wages some of the klansmen will earn for the rest of their lives, and in addition to Titan Bernie Hays' house and farm, Beulah Mae Donald accepts every penny of the several thousand dollars that the United Klans of America has to its name—and the deed and keys to its national headquarters.

She shuts it down.

Before, during and after victory, retribution from the klan and other white racists is a worry for Dees and his staff—sometimes a big one.

One night in the summer of 1983, a man stops his pickup on South McDonough Street, not far from an entrance to the Montgomery city sewer system. Two younger men step out of the truck. Silently they drop down into the sewer, out of sight.

The older man drives off.

He is Joe Garner, 37, a convenience store operator. The younger men are Tommy Downs and Charles (Dink) Bailey, both 20, who rent a room from Garner behind one of his stores, out in the county near Snowdoun. Besides being their landlord, Garner has become an influence on their lives.

For their mission of the moment, Garner has given Downs and Bailey a flashlight, a pair of brown gloves, some silver duct tape, a garden sprayer and a container of gasoline. They carry these items, in an old canvas bag, down into the sewer. One block north, on Hull Street, they climb out of the sewer and slip along Hull to the Southern Poverty Law Center. They dash into some bushes in back.

Earlier the same evening, Morris Dees has returned to the law center from northern Alabama, where he gave federal investigators evidence against members of the Invisible Empire, Knights of the Ku Klux Klan. This particular arm of the klan had attacked the president of the Southern Christian Leadership Conference and other blacks during a civil-rights march in Decatur, and Dees' evidence—including the identities of many of the assailants—eventually will lead to the conviction of several klansmen, including a former grand wizard.

After the criminal trial, Dees will sue the Invisible Empire, Knights of the Ku Klux Klan, winning an $11,500 settlement for the marchers and a ban against further harassment. And—more galling still—he will win a court decree ordering seven klan members to sit down with civil-rights leaders, who will teach them race relations.

Hours before Tommy Downs and Dink Bailey arrive at the law center, Dees and his investigators have locked the front door and gone home.

Tommy Downs eases out of the bushes. By his signed account to investigators, he sticks some of the duct tape to a back window, then taps along the tape with a tire tool. The glass cracks silently under the tape, and he lifts it out.

He runs back to the bushes and listens for a burglar alarm. There is none. Someone has forgotten to set it.

Downs fills the sprayer with gasoline. Then he slips through the broken window. With Dink Bailey standing guard outside, Downs sprays the carpet with gasoline. He sprays around the desks and around the filing cabinets, then opens a few drawers and sprays inside. He lights the gasoline—and crawls back outside.

Downs and Bailey run along Hull Street and climb back down into the sewer. They wait.

A smoke detector alerts the fire department. From an opening in the sewer, Downs and Bailey watch as fire trucks and police arrive. Then they duck down and make their escape.

At the law center, the gasoline vaporizes quickly, and the fire follows the vapor straight up. It scorches the carpeting and the file cabinets and causes $140,000 worth of damage to the walls, frame and ceiling. But virtually all of Dees' evidence against the klan—in the file drawers—survives.

When Dees arrives, the fire is still burning. On the wall, the law center clock is melted to a halt: 3:48 a.m.

Morris Dees has a hunch.

About a month before, he remembers, he had summoned Joe Garner to the law center for a deposition in the Decatur case. Garner had denied being a klan member—but Joe Garner sounded like someone who might carry a grudge, even against being questioned.

Dees checks into Garner's background—and into the past of his two renters. He discovers that when Tommy Downs moved from a previous address, he left behind a certificate that declared him to be a member of the klan. And the klan certificate is signed by none other than Joe Garner.

Within weeks, a law center investigator finds, a photo showing Tommy Downs marching at a klan rally—and Joe Garner marching in front of him. Both are wearing klan robes. On the arm of Garner's robe, just above the wrist, are the stripes of an exalted cyclops.

Dees brings the certificate and the photo to the Montgomery County district attorney.

The district attorney summons Tommy Downs before a grand jury and points out that lying could mean jail for perjury. Downs begins to cry. He confesses that he torched the Southern Poverty Law Center. It was Joe Garner, he says, who wanted it done—to destroy all of Dees' evidence against the Ku Klux Klan. And Tommy Downs reveals that Joe Garner has more in mind.

He wants to blow up downtown Montgomery.

Civil-rights leaders are planning a march. Downs says Garner wants to plant dynamite in the sewers beneath the streets—and touch it off as the civil-rights leaders pass overhead. The district attorney investigates—and finds 123 7-ounce sticks of dynamite and 8 pounds of plastic explosive. That, says a bomb expert with the Alabama Department of Public Safety, is enough to destroy an entire city block.

In addition, Downs says, Garner wants to set explosives on Morris Dees' car and blow it up one day when Dees drives to work.

The authorities arrest Joe Garner. He, Downs and Bailey plead guilty to a variety of state and federal charges. Joe Garner is sent to federal prison for 15 years. Downs and Bailey get lesser sentences.

Often, retribution is aimed solely at Morris Dees.

In one of his early fights, he wins a court order ending harassment of Vietnamese fishermen along the Texas Gulf Coast. The order is against a group of Texas fishermen—and a band of klansmen headed by Louis Beam, the Texas grand dragon of the Knights of the Ku Klux Klan.

Worse for the Knights, Dees wins a second court order that disbands Beam's Texas Emergency Reserve—a group of paramilitary klansmen organized into what amounts to a private army. During the legal proceedings, Beam calls Morris Dees an Antichrist Jew and holds out a Bible and cross to exorcise his demons.

And Louis Beam never forgets his humiliating defeat.

He leaves Texas and goes to Hayden Lake, Ida., where Richard Butler heads the Aryan Nations, an umbrella group of hard-core white racists. From Hayden Lake, Louis Beam writes to Dees and challenges him to a "dual [sic] to the death—you against me. . . .

"If you are the base, despicable, lowdown, vile poltroon I think you are—you will of course decline, in which case my original supposition will have been proven correct, and your lack of character verified . . ." Beam writes, "Your mother—think of her, why I can just see her now, her heart just bursting with pride as you, for the first time in your life, exhibit the qualities of a man and march off to the field of honor. (Every mother has a right to be proud of her son once). . . ."

When he gets no reply, Beam goes to Montgomery. He meets with Joe Garner, who has just come under investigation for the law center fire. An FBI report, recounting an agent's interview with Garner, says that Beam tells Garner he thinks Dees is "scum."

According to the report, Garner introduces Beam to one of Dees' cousins—who does not like Morris Dees and shows Beam where Dees lives. The report says Beam videotapes Dees' property, including details of his home. Then Beam talks his way into the lobby of the Southern Poverty Law Center. An investigator throws him out.

At about the same time, another white supremacist who frequents the Aryan Nations compound in Idaho takes up what is now becoming a growing cause: killing Morris Dees.

He is Robert Mathews, who organized the Order, which seeks to wrest large portions of the United States away from its "Zionist Occupied Government," and to establish a nation for whites only. The Order has in mind banning all other races, whom it calls "God's mistakes"—and it wants to kill all Jews, whom it considers the seed of Satan.

Mathews formulates six steps to accomplish this. Step Five is the assassination of "racial enemies"—and Dees in at the top of Mathews' hit list.

After a stop in Denver, where he and his men kill Alan Berg, a radio talk-show host who likes to bait racists, Mathews heads south. A resident of Birmingham who belongs to the Aryan Nations says Mathews asks him to gather all the information he can on Dees—but he refuses because he does not want to become involved.

Finally, Mathews tries to send a confederate, who is actually an FBI informant, south to finish Dees off.

The informant says that Mathews orders him "to kidnap [Dees], torture him, get information out of him, kill him, then bury him in the ground and put lye on it."

Within days, the FBI surrounds Mathews' hide-out on Whidbey Island in Puget Sound in Washington state. The FBI wants Mathews for a variety of crimes that include the slaying of Alan Berg and the $3.8 million robbery of a Brinks truck to finance the Order's incipient white racist revolution.

On Whidbey Island, Mathews and the FBI shoot it out. Night falls. It is a standoff. FBI agents fire flares. The flares ignite Mathews' house, and he is burned to death.

One of the last of his men to be captured is Bruce Pierce, fingered by others as the Alan Berg triggerman.

FBI agents arrest him in Rossville, Ga. In his van, the agents find cash, weapons and several news articles, including one about Morris Dees.

The next day, agents stop Pierce's wife. She is in Dees' state—Alabama. In her trailer, the FBI finds nine weapons and several books:

"Hit Men: A Technical Manual for Independent Contractors."

"Assassination: Theory and Practice."

Volume 1–5 of "How to Kill."

In August, 1989, the FBI opens an investigation into information from Georgia that some klansmen are yet again plotting to kill Morris Dees.

The information comes as Dees takes legal steps to collect a judgment he won for 75 civil-rights marchers attacked by the klan in Forsyth County, Ga., two years ago.

The judgment totaled $1 million. It was a crushing blow to both the Invisible Empire and the Southern White Knights.

"We think," Dees says, "it got them riled up."

More people are likely to get riled up as Morris Dees moves against Tom Metzger and his White Aryan Resistance.

Metzger, 51, is a one-time member of the John Birch Society who became the California grand dragon of the Knights of the Ku Klux Klan. As a klansman, he ran for Congress in 1960 from California's 43rd District. It reaches across northern and eastern San Diego County, Imperial County and part of Riverside County.

In the 1980 primary election, Metzger attracted 33,071 vote—enough to win the district's Democratic congressional nomination.

Although he ultimately got swamped, his primary election success gave him what he called "great exposure." In 1982, he ran unsuccessfully for the U.S. Senate—then founded the White Aryan Resistance.

Today Tom Metzger, a TV repairman, runs the White Aryan Resistance from Fallbrook, in San Diego County. He is the host of "Race and Reason," a TV interview program available to subscribers on more than 50 cable systems in at least a dozen states. The White Aryan Resistance publishes a newspaper. Metzger is linked by computer to white supremacists across the nation.

Like members of the Order, Metzger has held to racist tenets over the years, including the belief that non-whites are "God's mistakes" and that Jews are the progency of Satan.

Metzger has a 21-year-old son, John, who heads his youth recruitment. John Metzger runs an organization known as the White Student Union, the Aryan Youth Movement, the WAR Youth or the WAR Skins.

As the latter name implies, the Metzgers are hospitable to skinheads, young thugs who shave their skulls and favor military-style clothing. Skinheads strut about in heavy boots with steel toes, known as Doc Martens—and they sometimes carry clubs. Often the clubs are baseball bats. Tom Metzger supplies the skinheads with his White Aryan Resistance newspaper. Its comics feature the killing of blacks and Jews.

In a lawsuit filed in October, Dees and lawyers for the Anti-Defamation League of B'nai B'rith accuse Tom and John Metzger of sending agents to Portland, Ore., to organize and guide a particular group of skinheads called the East Side White Pride. "The agents reported regularly to . . . [the Metzgers] concerning their organizing efforts," the suit says. "The agents also urged . . . [the skinheads] to call . . . Tom Metzger's telephone hot line to receive aid, encouragement and direction."

One night a year ago, the suit says, Metzger's agents and the East Side White Pride held an organizational meeting of particular interest. "At that meeting," according to the suit, "the agents . . . in accordance with the [Metzgers] directions . . . encouraged members of the East Side White Pride to commit violent acts against blacks."

And on that same night, in southeast Portland, two friends drop off Mulugeta Seraw, 28, a black Ethiopian immigrant, in front of his apartment.

It is 1:30 a.m. Seraw works for Avis Rent-A-Car at the Portland airport. He sends money home to his parents, a son and five brothers and sisters in Ethiopia, where he hopes to return after attending Portland State University. Mulugeta Seraw goes to work at 7 a.m. Bedtime is long past.

He does not make it to his door.

Three skinheads attack him. One has a baseball bat.

Mulugeta Seraw's two friends, also black jump from their car. They are beaten back.

"Kick them!" scream two teen-age girls, watching nearby. "Kill them!"

Three minutes later, Seraw is lying in the street, bleeding, broken.

Neighbors call the police. Mulugeta Seraw is taken to a hospital. Doctors pronounce him dead.

Working with descriptions provided by witnesses, police track down Kenneth Mieske, 23, a performer of "hate metal" rock music who uses the name Ken Death; Kyle Brewster, 19, and Steven Strasser, 20. All are members of the East Side White Pride.

Mieske pleads guilty to murder and Brewster and Strasser to manslaughter. Mieske gets a life sentence, which carries mandatory imprisonment of 20 years. Brewster gets a 20-year sentence, with a minimum of 10 years' imprisonment. Strasser plea-bargains for a sentence of 9 to 20 years.

In their lawsuit, filed on behalf of Mulugeta Seraw's uncle, Engedaw Berhanu, who is the executor of his estate, Dees and the Anti-Defamation League charge the Metzgers, their White Aryan Resistance and skinheads Mieske and Brewster with wrongful death and conspiracy to violate Seraw's civil rights.

"The actions of the Oregon defendants in attacking Seraw were undertaken pursuant to the custom and practice of the defendant WAR of pursuing its racist goals through violent means," the suit says. Moreover, it says, the actions were undertaken "with the encouragement and substantial assistance of the California defendants."

Without specifying an amount, Dees and the Anti-Defamation League ask for punitive

and compensatory damages to punish the Metzgers and to deter "further outrageous conduct of this kind."

Legally, this lawsuit is similar to the lawsuit in which Beulah Mae Donald won the last pennies in the coffers of the United Klans of America and the keys to its headquarters. And this is just what Morris Dees and the ADL have in mind.

But unlike the United Klans of America, Tom Metzger says, he will win. "They lost more because of the UKA's incompetence than anything else," Metzger says. "And because the UKA failed to appeal.

"There is absolutely no basis for this suit," Metzger says. "I don't have agents. We are not into telling anybody to go down out on the streets and get anybody and beat on them. Anybody who says that my son or I have said that is lying."

About his chief adversary, Metzger says: "Morris Dees is a clever fellow, and he's had some success. So we don't take this lightly.

"But I am not exactly a pushover, either."

For his efforts. Morris Dees gets awards—from civil-rights groups, Common Cause, bar associations and the like. But he also gets criticism—from writers in magazines such as the Progressive and the Other Side, a liberal publication that prints a giver's guide to charitable foundations.

The criticism focuses on the Southern Poverty Law Centers focuses on the Southern Poverty Law Center's $27-million endowment and its $3-million annual budget. The center has a stylish new building. Wags call it the Poverty Place. When Dees and the center attack racists, these critics say, they attack a foe who is no longer an important threat—but they do it anyway to improve donors and make the center's endowment grow.

Dees makes no apology for resources. It takes money, he says, to win lawsuits—and to provide the security that the center and its four lawyers need.

And certainly, Dees says, the klan is not the threat it once was. His own experts at the law center say that klan membership is down to one of its lowest levels in history. Credit goes to good times economically. In bad times, poor whites tend to take out their frustrations on blacks. Credit also goes, the experts say, to police work—as well as to antiklan groups.

So why does Morris Dees keep on doing what he does?

He is a multimillionaires. He does not need his law center salary of $79,600—more than what many of the 35 members of his staff earn, but less than the six-figure salary his top staff attorney makes.

Why does he keep putting himself in bam's way?

He leans back, crosses a sockless loafer over one knee and pauses.

First, the threat of racist terror may have eased some, but it has not ended. "If you don't think skinheads are any threat, then go ask the Seraws if their son is alive."

Second, he has always liked a good fight, "I've had my ass whipped, and I've whipped a few. . . . We absolutely take no prisoners. When we get into a legal fight, we go all the way. . . . Ever since I've been a kid, I've always liked a good challenge."

Third, although he was raised a Baptist, he feels a kinship with Jews. "My middle name is Seligman, and my family may have some Jewish connections. . . . You know, years ago, nobody took the threat to the Jews seriously. I am not saying that Louis Bearn and his crowd will duplicate what happened in Nazi Germany. I would think that this country is quite different. But I do see it as just a personal responsibility to do what I can to stop just a little bit of this happening right here. . . . And with the legal training I've got and what we've put together here, we're in a unique position to do it. . . .

Like Morris, Dees daddy, when he took Perry Lee's hoe. . . .

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I yield 7 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator is recognized.

Mr. EXON. Mr. President, I am pleased to be an original cosponsor and leading Democratic advocate for the Dole amendment to limit punitive damage awards in civil liability cases.

As a former small business person, I understand the need for businesses to plan for contingent liabilities. The litigation explosion since the 1970's when I left the private sector and entered public life has made the job of running a small business more difficult today than it was when my wife and I started our own successful small business. The Dole amendment will restore some degree of certainty to business, personal and charitable risk management and planning; all of which help facilitate commerce in this great Nation.

Punitive damages are a wild card in today's legal system. These awards are unpredictable, unrelated to the level of harm caused by a defendant and potentially they are unlimited. A particular injury, a particular lawyer, and a particular jurisdiction can mean a big recovery for the plaintiff and his lawyer and the end of business for the unlucky defendant.

The real cost of the current system is not only measured in the number of punitive awards won, but also the legal cost of defending against such suits, as well as the increased insurance and product costs for all Americans.

Certainly, no one wants to create a legal system which will encourage wrongdoing or careless behavior. The problem is that the relationship between punitive damage awards and safe behavior is not proven. One could argue that the current punitive damages system creates a bounty for the litigators to hunt for the right combination of facts, law, jury, and injury.

This uncertainty has led honest business people to settle even unworthy cases in order to avoid risking a spin at litigation and the roulette wheel mentality that goes with it.

The greatest expense of the current uncertainty is the contempt it generates from average citizens. They hear about unexplainable cases involving cups of hot coffee, or spilled milk shakes and their faith in the legal system is shaken. Our hallowed courts could some day take on the image of a legal casino.

A handful of States, including the State of Nebraska, do not even permit punitive damages. In the State of Nebraska the total absence of punitive damages has not created an unsafe environment or careless manufacturers or increased wrongful conduct. What the State of Nebraska does have are insurance rates which are more affordable to all citizens.

Under the Dole amendment, States which want to keep punitive damages can continue to have such a system, if that is their will. In those States, punitive damages would simply need to be related to the actual compensatory damages suffered by an injured party. Nothing in this amendment would require States to adopt punitive damage systems.

Mr. President, I am pleased to cosponsor and support the Dole amendment. To those who predict the end of American jurisprudence, I say come to Nebraska, Washington, or other States where punitive damages are not part of the State's legal system. You will see a high quality of life, affordable cost of living, and court systems a little less jammed with frivolous lawsuits.

Although not as dramatic as the course chosen by the State of Nebraska, I am confident that the Dole amendment is a step in the right direction to restore a degree of confidence and predictability to our legal system.

I thank the Chair. I thank my friend from Washington for yielding. I yield any remaining time of the 7 minutes originally allotted to this Senator.

Mr. GORTON. Mr. President, I yield 5 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to pay tribute to the distinguished Senator from Nebraska for his fine statement and for his support of this amendment on this floor. I think many people in this country are grateful for his leadership in this matter.

Let me spend a few seconds on some of the comments made by one of my dear friends, Senator HEFLIN, when he was here. He made reference to what evidence may be inadmissible in the compensatory damages phase of the trial.

It must be emphasized that the evidentiary restrictions on the Dole-Exon-Hatch amendment are based on State law. The relevant language is section 107(d)(1).

> Evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be admissible to determine whether compensatory damages are to be awarded. Whether particular evidence is admissible or inadmissible, therefore, depends on the facts of the case and the law of the State in which the action is brought. Moreover, if evidence is relevant only to punitive damages, there is no reason to object to excluding it in the compensatory damages case, and indeed such exclusion accords with the traditional rule . . . that irrelevant evidence is inadmissible.

I must mention that bifurcated proceedings in punitive damages cases are required or permitted under current

law in almost all jurisdictions that permit claims for punitive damages.

Let me turn to the Dole-Exon-Hatch amendment. Naturally, I support this amendment. It is an amendment worthy of adoption. Unlike the Dole amendment, several other amendments have been offered that, in my view, weaken our efforts to reform punitive damages abuses. Thus, I cannot support those weakening amendments such as an amendment to remove limits on the award of punitive damages.

Yesterday I came to the floor and spoke at length about curbing the abuses in our punitive damages laws and the need for meaningful reform in this area. I would like to consider another example of out of control punitive damages and their impact. Consider the case of *Sherridan* v. *Northwest Mutual Life Insurance*, 630 So. 2d 384 (Ala. 1993). The insurance company in this case undertook a background check and numerous interviews of a person who became an agent for the company.

Moreover, in that case, the company, once it became aware that its agent had defrauded some policyholders, arguably did everything it could to rectify the situation. In fact, it was Northwestern Mutual that first notified the plaintiffs that payments made to an agent to pay for life insurance premiums were retained by him. The agent fled after he was confronted by the company. The company then offered to refund money with 10-percent interest and to reimburse them for any fees and expenses they may incur related to the money taken by their agent. The company appeared to do everything it possibly could do to make the victims whole for any and all loss.

Despite their effort to screen out wayward job applicants and a good faith effort to resolve this most unfortunate incident, the company was ultimately sued for compensatory and punitive damages. I should also mention that the policyholders, owners of a small business, whose original loss was $9,000, were the only policyholders out of 40 who held out and sued, rather than settle the case. Reportedly, at trial there were many repeated and exaggerated references to the wealth of the company, yet the jury was not allowed to hear of Northwestern Mutual's efforts to resolve the claim.

The Alabama jury—again an Alabama case, a State where tort law seems to be running out of control—awarded the plaintiff $400,000 in compensatory damages and $26 million in punitive damages. The Alabama Supreme Court reduced the punitive award to $13 million.

So they have the award. They are prone to do this.

Now let us think seriously about this case. The owners of a small automotive business were defrauded of $9,000 and, in response, the courts turned these individuals into multimillionaires. How anyone can defend a system that would allow such an injustice is beyond me. It really requires some world class rationalization.

Our legal system is in danger of losing all credibility in the eyes of the public as an institution where justice is served. It is unfair to American business, to American consumers, and the American public. Look. The people who are benefiting primarily by these types of outrageous awards and by the lack of restraint in this area are attorneys. Not all attorneys, however, should not be maligned because of these abuses by a few trial lawyers. Our profession is being hurt by trial lawyers who want to win it all at all costs, who will win at all costs, who are buying judges, who are influencing judges by contributions and who literally are denigrating the whole legal profession.

A competent lawyer can still win big damage awards by getting good economic damage awards and good noneconomic damage awards. A good lawyer does not need to allege and recover punitive damages to serve his client well. In fact, when I practiced law up to 19 years ago, we used to get big awards for both economic and noneconomic losses.

Let me just say this: There is plenty of room to recover a significant damage award by arguing persuasively and doing a competent job as a trial attorney. We do not need to have runaway juries and runaway courts of law and runaway attorneys upping runaway punitive damage awards. These abuses are what we are trying to correct here through our amendment. Punitive damages needs to be corrected because our country is being dislocated by these out-of-control approaches to the law.

So I hope that our colleagues will vote down some of these amendments. I hope that they will vote for this Dole-Exon-Hatch punitive damages amendment. I think that it will correct some of the difficulties of our current system, while at the same time provide for a continuation of good, fair, reasonable laws in our country.

Keep in mind, this judgment affects policy holders and insurance rates throughout the country, not just in one state. While this case arose in Alabama, the cost of these excessive judgments are passed on to all its customers throughout the United States.

Moreover, the very fact that a jury could award such an outrageous amount of punitive damages cannot go unnoticed by those who make and sell goods and services in this country. An award like this adds to the overall litigation climate in this country. It fuels the understandable perception that the system is a lottery with more and more jackpots. And those who can get socked with such awards by run away juries have to take that into account as they price their goods and services—to the detriment of consumers.

Mr. President, I have heard a number of my colleagues who are opposed to punitive damage reform claim that there is no increase in reported punitive damage awards, and thus no need for reform. The figure they repeatedly cite is a figure from one study that found 355 punitive damage awards granted by juries in product liability cases in the period 1965–90. On that basis, they claim that there is no problem with punitive damages in this country and that, consequently, no legislative solution is required.

This could not be further from the truth. I have been well aware of that study, as have many others. However, what I have learned in studying punitive damages, and in listing to experts testify at hearings I chaired in the Judiciary Committee is that no one has a precise handle on the number of these awards. That data is simply not available. In fact, those who cite to the study seem to have missed an enlightening statement on the second page of that study. On that page, it is acknowledged:

> The actual number of punitive damage awards in product liability litigation is unknown and possibly unknowable because no comprehensible reporting system exists. [See Michael Rustad, "Demystifying Punitive Damages in Product Liability Cases" (1992), at p. 2.]

In addition, testimony in the Judiciary Committee by Victor Schwartz indicated that other research demonstrated that, in just 5 States since 1990, 411 jury verdicts have awarded punitive damages. Punitive damage awards are certainly more frequent than opponents of this measure are willing to admit. And, of course, the Dole amendment covers all civil actions. There have also been a number of punitive damages awards outside the product liability context.

Perhaps what is by far the most important factor to keep in mind, however, is that excessive punitive damage awards have a harmful effect regardless of the number of reported cases on punitive damages. The number of reported cases bears no relationship to the detrimental impact of punitive damages because most cases are settled before trial. A mere demand for punitive damages in a case raises the settlement value of the underlying case and delay settlement.

The end result is that plaintiffs' trial lawyers begin to include exorbitant requests for punitive damages in the most routine cases. Data presented to the Judiciary Committee by Prof. George Priest, of Yale Law School, showed that in certain counties in Alabama between 70 and 80 percent of all tort cases filed include a claim for punitive damages. Unfortunately, using punitive damage claims as a threat in litigation is incredibly commonplace.

The allegation of punitive damages makes settlement nearly impossible because it is difficult to place a value on the claim for punitive damages. It also makes the prospect of a huge loss a real risk for defendants. That artificially inflates the cost of settlement.

Further, liability insurance costs in turn must rise. The bottom line is that these costs are passed on through the economic system, where consumers and workers ultimately pay the price. That occurs regardless of the precise number of punitive damage awards that juries in fact granted in any particular period.

I also urge my colleagues to support Senator DEWINE's amendment to offer small businesses some further protection against punitive damages. In my view, small businesses are the engine that drive our economy and provide much of our new employment opportunities. They truly deserve our support. Many small business owners are forced to live in constant fear of losing their entire investment and livelihood as a result of one lawsuit. That fear puts an enormous strain on their businesses, and more importantly, on the lives of their family members. This amendment offers our small business some modest relief from abusive claims.

Finally, I had intended to offer an amendment concerning the important issue of multiple punitive damage awards. I will pursue that issue on another day.

THE MULTIPLE PUNITIVE DAMAGES PROBLEM

Mr. HATCH. Mr. President, I rise today to discuss one of the most serious problems facing our civil justice system today—the imposition of multiple punitive damage awards against a party for the same act or course of conduct. The multiple imposition of punitive damages is simply unfair and undermines the public's confidence in our system of civil justice. Earlier this year, I introduced the Multiple Punitive Damages Fairness Act, S. 671, which addresses the fundamental unfairness of a system that allows a person to be sued again and again, sometimes in different States, for the same wrongful act. I had intended to offer the substance of my legislation as an amendment to the Products Liability Act, but have decided to withhold my amendment at this time.

Punitive damages, as we are all aware, are not awarded to compensate a victim of wrongdoing. These damages constitute punishment and an effort to deter future egregious misconduct. Punitive damage reform is not about shielding wrongdoers from liability, nor does the multiples bill prevent victims of wrongdoing from being rightfully compensated for their damages.

The people of Utah and the rest of the Nation have known for a long time that our system of awarding punitive damages is broken and in need of repair. State and Federal judges have repeatedly called upon the Congress to address this important issue. The American Bar Association House of Delegates, in a resolution approved in 1987, called for appropriate safeguards to prevent punitive damages awards "that are excessive in the aggregate for the same wrongful act." Although their recommendation suggests this action should be taken at the State level, there is no practical way to implement meaningful reform addressing multiple awards at the State level. The multiple imposition of punitive damages is one area where a Federal response is clearly justified.

Likewise, the American College of Trial Lawyers, a group comprised of both plaintiff and defense counsel, in a strongly worded report on punitive damages discussed the problems associated with the multiple imposition of punitive damages for both plaintiff and defense counsel. They wrote:

> From the Defendant's standpoint, there is a very real possibility that the punitive awards will be duplicative and therefore result in punishing the defendant more than once for the same wrongful conduct. This obviously offends basic notions of justice. Conversely, a plaintiff runs the risk that prior awards may exhaust the defendant's resources, and that, not only will there be insufficient funds from which to pay the plaintiff's punitive award, but the funds will be inadequate to pay a compensatory award.

More recently, Judge William Schwarzer, Director of the Federal Judicial Center, wrote abut the problems with multiple punitive damages. He concluded: "Congress needs to adopt legislation that creates a national solution, invoking its power over commerce. The repeated imposition of punitive damages for the same act or series on a firm engaged in interstate commerce surely constitutes a burden on interstate commerce."

Let me be very clear about what this amendment does. This amendment does not in any way affect a person's ability to be fully compensated for their economic and noneconomic damages. A plaintiff remains entirely able to recover their full compensatory damages if this amendment is enacted. Likewise, this amendment does not in any way limit the amount of punitive damages that may be awarded against a defendant.

Judge Friendly, a highly respected circuit court judge, first recognized the difficulties of the multiple imposition of punitive damages in several States in a 1967 opinion, *Roginsky* v. *Richardson-Merrell*, [378 F.2d 832 (2nd Cir.)] where he wrote:

> The legal difficulties engendered by claims for punitive damages on the part of hundreds of plaintiffs are staggering. If all recovered punitive damages in the amount here awarded these would run into the tens of millions. . . . We have the gravest difficulty in perceiving how claims for punitive damages in such a multiplicity of actions throughout the nation can be so administered as to avoid overkill.

My amendment goes to the heart of the fundamental unfairness so eloquently described by Judge Friendly.

The defendant and consumers are not the only ones hurt by excessive, multiple punitive damage awards. Ironically, other victims that the system is supposedly intended to protect, may be most seriously impacted by multiple punitive damage awards that precede their case. Funds that might otherwise be available to compensate them for their compensatory damages can be wiped out at any early stage by excessive punitive damage awards.

As mentioned, safeguards are needed to protect these later victims against the abuses inherent in the early award of multiple punitive damages. The conflict between current litigants seeking punitive damages and potential litigants seeking merely compensatory damages was addressed in a recent case, *Edwards* v. *Armstrong World Industries*, [911 F.2d 1151 (5th Cir. 1990)]. In that case, the court reluctantly affirmed a lower court decision awarding punitive damages explained its misgivings in the decision:

> If no change occurs in our tort or constitutional law, the time will arrive when Celotex's liability for punitive damages imperils its ability to pay compensatory claims and its corporate existence. Neither the company's innocent shareholders, employees and creditors, nor future asbestos claimants will benefit from this death by attrition.

Incidently, just 1 month after Judge Jones wrote those words, Celotex, already liable for $33 million in punitive damages, and faced with a potential quarter of a billion dollars in additional punitive damages as the result of an ongoing trial involving 3,000 additional claims, in which it had been decided that punitive damages would be calculated at two times the amount of compensatory damages, Celotex filed for bankruptcy protection under chapter 11, where it remains today.

Let me give another example that illustrate several of the concerns with multiple punitive damages. The Keene Corp. also illustrates how a company can be hit with so many punitive damage suits that they eventually declare bankruptcy.

In the late 1960's, the Keene Corp. purchased a subsidiary company for $8 million. Unfortunately, the subsidiary had made thermal insulation that contained about 10 percent asbestos. When the asbestos danger came to light in 1972, Keene closed the subsidiary. The company has only sold about $15 million in products while they owned the subsidiary.

From 1972 onward, Keene has had 50 punitive damage verdicts returned against it. Most of these verdicts involve claimants who were exposed to asbestos 25 years before the Keene Corp. was formed. The Keene Corp. has paid out over $530 million in damages as a result of that purchase, much of it to lawyers, and it still faces numerous lawsuits.

Ultimately, Keene was forced into bankruptcy just last year. And, as a result, victims who might have been entitled to receive compensatory damages may be left out in the cold. Keene filed papers in every case that asked for punitive damages, calling on the courts to disallow further awards since they no longer served any deterrence value or public policy purpose.

Obviously, the multiple imposition of punitive damages for Keene's wrongful conduct served no legitimate purpose. The company had already stopped selling the alleged harmful product and the $530 million paid out in damages was surely a sufficient punishment and deterrent.

This imposition of multiple punitive damages awards in different States for the same act is an issue that can only be addressed through Federal legislation and, thus, necessitates a congressional response. State and Federal judges have no authority to address the clear inequities confronting these defendants. In *Juzwin* v. *Amtorg Trading Corp.*, [718 F. Supp. 1233, 1235 (D.N.J. 1989)], the court vacated its earlier order striking, on due process grounds, the multiple imposition of punitive damages. In arriving at this decision the court noted:

[T]his court does not have the power or the authority to prohibit subsequent awards in other courts. . . . Until there is uniformity either through Supreme court decision or national legislation this court is powerless to fashion a remedy which will protect the due process rights of this defendant or other defendants similarly situated.

Let me remind my colleagues that it is the courts, and not just private interests, that are calling for reform of multiple punitive damages.

My legislation addresses precisely the problems inherent in a system that allows every State to punish a defendant separately for the same wrongful act or conduct. More important, it is straightforward and simple. The legislation prohibits the award of multiple punitive damages based on the same act or course of conduct for which punitive damages have already been awarded against the same defendant.

This legislation also allows some flexibility. It allows some discretion to the court to allow subsequent cases to proceed to the jury on the issue of punitive damages, if there is new and substantial evidence that justifies the imposition of additional such damages, or if the first award was inadequate to punish and deter the defendant or others.

Under the first exception, if the court determines in a pretrial hearing that the claimant will offer new and substantial evidence of previously undiscovered, additional wrongful behavior arising out of the same course of conduct on the part of the defendant, other than injury to the claimant, the court may let the jury decide to award punitive damages.

The second exception included in this amendment was not contained in S. 671. This exception gives the court discretion to determine in a pre-trial proceeding whether the amount of punitive damages previously imposed, was insufficient to either punish the defendant's wrongful conduct or to deter the defendant or others from similar behavior in the future. If, after a hearing, the court makes specific finding that the damages previously imposed were not sufficient to punish or deter the defendant or others, the court may permit the jury to make an additional award of punitive damages. In both instances, the judge will deduct the amount of the prior award from the award in this subsequent case.

Moreover, my legislation will not preempt State law where a State prescribes the precise amount of punitive damages to be awarded. Thus, if a State desires to fix the amount of punitive damages for a specific egregious act, they may do so under my amendment. Likewise if a State desires to make an award of punitive damages proportional to the compensatory damages awarded, they may do so through State legislation. This provision is intended to preserve the discretion of States to legislate on this aspect of punitive damages in this limited fashion.

Finally, my legislation makes it clear that a defendant's act includes a single wrongful action or a course of conduct by the defendant affecting a number of persons. In applying this act, the phrase "act or course of conduct" should be interpreted consist6ent with our legislative objective of eliminating multiple punishment for what is essentially the same wrongful behavior.

I have looked at the problem of multiple punitive damages for some time and have concluded that a federal response is the only way of effectively addressing this issue. My legislation is a small step in addressing the larger problem of excessive punitive damages, but a needed beginning. I hope Senators join me in supporting this important legislation. It allows the unfettered imposition of punitive damages by a jury to punish and deter those who offend our community. However, with limited exception, we punish the defendant only once for his misconduct. I believe this is a fair way to proceed on this issue.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from Alabama.

Mr. HEFLIN. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. Eleven minutes.

Who yields time?

The Senator from Alabama.

Mr. HEFLIN. Madam President, again, let me address some of the things that I think have escaped the attention of people—the interrelationship with the Dole amendment and the underlying bill, the underlying Gorton substitute—which deal with the issue pertaining to the calculation on each defendant of the noneconomic damages, and then its relationship to the Snowe amendment which basically sets the cap on punitive damages at twice the noneconomic damages, and the economic damages.

The underlying bill and the Dole amendment provide for a bifurcated trial—that is, two—where punitive damages are sought. If punitive damages are sought, then any—and I read from the Dole amendment, which is the exact language as in the bill —

. . . evidence relative only to punitive damages as determined by applicable State law shall be inadmissible in any proceedings to determine whether compensatory damages are to be awarded.

Compensatory damages include noneconomic damages so therefore you cannot prove gross negligence; you cannot prove recklessness; you cannot prove wantonness; you cannot prove intentional conduct pertaining to the compensatory damage trial. The Dole amendment includes all civil actions, including automobile accidents that I talked about. It would also include this matter of the issue pertaining to rental cars.

Take, for example, a company decides there is need of a recall of certain cars, and therefore in the recall of those cars there is an immediate danger. But they continue to lease those cars. Then, in effect, you could not prove it where you sought also punitive damages.

Now, the noneconomic damages as it relates to section 109, which is several liability for noneconomic damages, provides, and I read:

Each defendant shall be liable only for the amount of noneconomic loss allocated to defendant in direct proportion to the percentage of responsibility.

For the harm, in other words, the percentage of fault. Therefore, if you seek punitive damages, then under the underlying bill and the Dole bill, you cannot prove in the compensatory damage lawsuit in the trial in chief those elements of fault which constitute elements that would go to the proof of punitive damages. You are precluded. It is inadmissible.

So how can you prove the percentage of fault that may rest on defendants that have been guilty of punitive damage conduct, wantonness, conscious, flagrant indifference? How can you prove that and how can there be any logical sense way of determining what the noneconomic loss is? And in its relationship here, it makes it an impossibility. Therefore, when it comes to the case, as I pointed out, of a motor vehicle, where the company knew that the man had been convicted of four drunk driving charges, two reckless

driving charges, and they continued to allow him to operate and drive trucks, you could not prove any of that in the case in chief. Therefore, you could not go toward the establishment of the percentage of harm of noneconomic damages towards that defendant.

And then in the punitive damages, it can only be twice the amount that might be allocated to him in the overall situation.

So it seems to me that the relationship of this and the punitive damages, particularly with the Snowe amendment really, have so many consequences. I have just thought of a few. There are a multitude of consequences that occur relative to this matter.

So I wish to point out that this is a situation which ought to be carefully considered, and I just do not believe even the authors of the bill and the authors of the Snowe amendment recognize the dangers that they are getting into relative to these matters.

How much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes 40 seconds.

Mr. HEFLIN. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. How much time remains to my side?

The PRESIDING OFFICER. Eleven minutes 15 seconds.

Mr. GORTON. Madam President, we are discussing here several amendments dealing with the concept of punitive damages in the court systems of the United States, a healthy discussion, and it is one that I do not believe has been previously debated on the floor of the Senate in spite of the invitation to do so extended by the Supreme Court of the United States.

Before we get into any of the details, I believe it important for Members and for the public to understand the peculiar nature of punitive damages. Punitive damages by the very title are a form of punishment imposed by juries on defendants in civil litigation. All other forms of punishment under our judicial system come as a result of criminal trials, in which case defendants have a wide range of constitutional protections and very particularly have the benefit of a limitation on punishments—a series of sentences set out by statutes either in specific terms or within ranges, together with the proposition that their guilt must be proven beyond a reasonable doubt. With respect to punitive damages, not only is the standard of proof lower but there are literally no limits on the amount of punishment, the fines, the damages, which can be imposed.

I must say that I find it peculiar that any Member of the Senate defends such a system which presents to juries, without any guidance or any limitation whatsoever, the right on any basis whatsoever to award any amount of punitive damages whatsoever, without even the slightest degree of relationship to the actual compensatory damages suffered by such a defendant. Over a century and a quarter ago, a judge in a New Hampshire court said:

> The idea is wrong. It is a monstrous heresy. It is an unsightly and unhealthy excrescence deforming the symmetry of the body of the law.

We might not use exactly that language today, Madam President, but I believe that my friend, the Senator from Nebraska, was entirely correct when he pointed out that his State and mine, lacking authority for punitive damages in civil cases, do not have discernibly more negligent, more outrageous, more unreasonable people engaged in business, whether that business is in making and selling products or in providing nonprofit services. There simply is not any real indication that this form of unlimited punishment has an actual impact on the economy other than discouraging people from getting into business in the first place, from developing and marketing new products, and other than causing them to withdraw perfectly valid products from the marketplace.

More recently, the Supreme Court of the United States has taken up this issue itself and in effect has invited us to move into this field. The majority opinion in a recent case, Pacific Mutual Life Insurance Company versus Haislip, in 1990, says:

> One must concede that unlimited jury discretion, or unlimited judicial discretion for that matter, in fixing punitive damages may invite extreme results that jar one's constitutional sensibilities.

And that is exactly what the case is right now. These jar one's constitutional sensibilities.

Justice O'Connor, in a dissent in that same case, said:

> In my view, such instructions—Instructions that the jury could do whatever it thinks best.
>
> Are so fraught with uncertainty that they defy rational implementation. Instead, they encourage inconsistent and unpredictable results by inviting juries to rely on private beliefs and personal predilections. Juries are permitted to target unpopular defendants, penalize unorthodox or controversial views, and redistribute wealth. Multimillion dollar losses are inflicted on a whim. While I do not question the general legitimacy of punitive damages, I see a strong need to constrain juries with standards to restrain their discretion so that they may exercise their power wisely, not capriciously or maliciously. The Constitution requires as much.

Madam President, this bill does not abolish the concept of punitive damages. It does, however, provide some limit on the sentences which juries can impose in the way of punitive damages—a sentence not to exceed twice the total amount of all of the economic and noneconomic damages which the juries have already found. To me, that seems eminently reasonable.

And I literally fail to understand why there is such a passionate defense of a system of absolutely unlimited liability, absolutely unlimited punishment, in the American system.

One would think at the very least that the opponents would come up with alternative standards upon which to make judgments with respect to punitive damages and other limits if they do not like the limits that are here. But we have one second-degree amendment before us that, once again, says there are absolutely no limits, absolutely no limits. And the opposition to the Dole amendment is that in every case which it covers beyond those already covered by the bill there should continue to be absolutely no limits on punitive damages. Madam President, that is simply wrong.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Straight to the point in the limited time available here, Madam President, it is totally misleading to state that there is no test, to say that in criminal law, we have a test, but in civil litigation, punitive damages, there is no test whatever.

To the contrary, there is a stipulation going right straight down the line of cases that, in awarding punitive damages, Madam President, you have to look at the ability to pay. There is a listed group of tests that are included. You have to look at the willfulness. These damages have to be found on willful misconduct, and right on down the line.

I want to get right to the McDonald's case, when they say there is no limit, that these punitive damages punish.

Then in that McDonald's case, I heard the foreman of that particular jury in an interview say she thought it was a frivolous charge at first until they found out there were some 700 cases and that McDonald's had cost-factored out, on a cost-benefit basis, the hotter the coffee, the more coffee you received out of the coffee bin. So they just wrote it off. They could keep taking the 700 claims and give third-degree burns over a sixth of the body and keep them 3 weeks in the hospital and everything else.

But punitive damages were awarded in that McDonald's case for $2.7 million. The court itself reduced it to $480,000.

There are limits in every jurisdiction. And punitive damages, if you go right to the automobile cases, caused in the last 10 years 72,254,931 cars to be recalled. That is wonderful safety on the highways of America. Why? Because of punitive damages? It has been proved from the Pinto case on down in all of these automobile cases. Had it not been for the punitive damage portion of the award, none of these would be recalled because the manufacturers could put it in the cost of the car.

We have garage door openers redesigned, we have cribs withdrawn, we have Drano packaging redesigned, firefighters' respirators redesigned, Remington Mohawk rifles recalled, the production of harmful arthritis drugs ceased, charcoal briquets properly labeled, steam vaporizers redesigned, heart valves no longer produced by Bjork-Shively, hazardous lawnmowers redesigned, hotel security strengthened, surgical equipment safely redesigned. On and on down the list, punitive damages have proved their worth to society.

And to come now and say in criminal cases we have sentencing guidelines, but there are no guidelines whatever in punitive damages cases is totally misleading. In fact, they have gone to the U.S. Supreme Court and the U.S. Supreme Court has upheld in the several States the punitive damages awards that have been made.

So we go right on down each one of the cases over and over again and again and we find, for example, in the leading case to ensure that a punitive damage award is proper, one, the defendant's degree of culpability, which must be willful misconduct; two, duration of the conduct; three, defendant's awareness of concealment; four, the existence of similar past conduct; five, likelihood the award will deter the defendant or others from like conduct; six, whether the award is reasonably related to the harm likely to result.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLINGS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Washington has 4 minutes and 30 seconds remaining.

Mr. GORTON. Was not the order for voting at 11:15?

The PRESIDING OFFICER. That was the original intent of the order. The Senator may yield back his time, if he wishes.

Mr. GORTON. This Senator can make one very, very brief comment. He finds it curious that his friend from South Carolina, who is the leading member of his party and the former chairman of the Senate Commerce Committee, on which this Senator serves, and a cosponsor or a supporter of all of the automobile safety legislation which has gone through that committee in the last 15 years, which is the primary cause of a greater safety, should ascribe all changes in safety to product liability litigation. If that is true, he and I have certainly been wasting our time on hearings on automobile safety and passing laws respecting seat belts and air bags and side impact protection and the like.

Mr. DORGAN. Madam President, will the Senator yield?

My amendment will be the first amendment voted on when we begin this series of votes. I wonder if the Senator would yield 1 minute to me.

Mr. GORTON. Do I have a little bit more than a minute remaining?

The PRESIDING OFFICER. The Senator has 2 minutes and 40 seconds remaining.

Mr. GORTON. I will finish this thought and I will yield the remainder of my time to the Senator from North Dakota.

In any event, even the Senator from South Carolina has not come up with any parallel with respect to punitive damages and the criminal code. In the criminal code, maximum sentences for all offenses right up to and including the most aggravated forms of murder are set out in the statutes, ranges on which sentences can be imposed. With respect to punitive damages, there are no such limits. This proposal in its present form has such limits tied logically enough to the amount of damages which the person has actually suffered. This is the appropriate way to go.

I yield the remainder of my time to my friend from North Dakota.

Mr. DORGAN. How much time remains?

The PRESIDING OFFICER. The Senator from North Dakota would have 1 minute and 40 seconds.

AMENDMENT NO. 619

Mr. DORGAN. Madam President, the amendment that will be voted on immediately following my 1 minute or so will be the amendment I offered that strikes the limitation or the caps on punitive damages.

I want to explain why I offered this amendment. As I do so, let me say is that I have supported the notion of product liability reform. I voted for this bill coming out of the committee, although I had a problem with this section. I likely will vote for this bill going out of the Senate with respect to product liability reform.

But the standard is that you must prove that a company, that there is clear and convincing evidence that the harm was carried out with a conscious, flagrant indifference of the safety of others. If you have proven that standard of a company that they moved forward with a conscious, flagrant indifference of the safety of others, why on Earth would you want to put a cap on punitive damages?

The whole notion of punitive damages is to punish a company that would do that. We have very few punitive damages awarded in this country. It is not a crisis. Yes, I think we should have some product liability reform, and I support that. But the bill last year that was brought to the floor of the Senate reforming the product liability laws had no cap on punitive damages; none at all. Now this year they bring a bill to the floor with this cap. This cap should be stricken.

I hope that Members of the Senate will support my amendment. Again, the standard is conscious, flagrant indifference to the safety of others. If a corporation or a company has demonstrated that, then we say to them, "By the way, when someone tries to punish you for conscious, flagrant indifference to the safety of others, we won't let them punish you very much. We will put a cap on that."

Why would we do that? That is absurd. That makes no sense. It was not done last year; it should not be done this year.

I hope Members will support my amendment to strike that cap.

The PRESIDING OFFICER. The time of the Senator from North Dakota has expired.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, has all time been utilized?

The PRESIDING OFFICER. All time has expired.

Mr. GORTON. Madam President, I ask unanimous consent that all votes in the stacked sequence, following the first vote, be reduced to 10 minutes in length.

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

Mr. GORTON. I also call for the regular order which would make the voting sequence begin with the Dorgan amendment, with one exception.

I ask unanimous consent that the Shelby amendment be the last of the second-degree amendments to the Dole amendment considered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GORTON. What is the pending business, Madam President?

The PRESIDING OFFICER. Amendment No. 619, the Dorgan amendment, will be the first amendment to be voted on.

Mr. GORTON. Madam President, I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 619

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 619. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 145 Leg.]

YEAS—51

Abraham	Chafee	Domenici
Ashcroft	Coats	Exon
Bennett	Cochran	Faircloth
Bond	Coverdell	Frist
Brown	Craig	Gorton
Burns	DeWine	Gramm
Campbell	Dole	Grams

Grassley	Kyl	Nunn
Gregg	Lieberman	Pressler
Hatch	Lott	Robb
Hatfield	Lugar	Santorum
Helms	Mack	Smith
Hutchison	McCain	Snowe
Inhofe	McConnell	Stevens
Jeffords	Moynihan	Thomas
Kassebaum	Murkowski	Thurmond
Kempthorne	Nickles	Warner

NAYS—49

Akaka	Feinstein	Moseley-Braun
Baucus	Ford	Murray
Biden	Glenn	Packwood
Bingaman	Graham	Pell
Boxer	Harkin	Pryor
Bradley	Heflin	Reid
Breaux	Hollings	Rockefeller
Bryan	Inouye	Roth
Bumpers	Johnston	Sarbanes
Byrd	Kennedy	Shelby
Cohen	Kerrey	Simon
Conrad	Kerry	Simpson
D'Amato	Kohl	Specter
Daschle	Lautenberg	Thompson
Dodd	Leahy	Wellstone
Dorgan	Levin	
Feingold	Mikulski	

So the motion to lay on the table the amendment (No. 619) was agreed to.

Mr. GORTON. Madam President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 622

The PRESIDING OFFICER. The question is on amendment numbered 622, offered by the Senator from Ohio [Mr. DEWINE].

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ABRAHAM. Mr. President, the amendment I have offered with the distinguished Senator from Ohio [Mr. DEWINE], is extremely important for small business owners across the country. This amendment protects small businesses and other small entities with 25 employees or less from excessive punitive damage awards over $250,000. Individuals, including small businesses organized as sole proprietors, whose net worth does not exceed $500,000 would also be protected.

Let me make it clear that small business owners support requiring someone to make restitution when they cause injuries. However, under our current liability structure businesses can be bankrupted by the addition of punitive damage awards that are vastly in excess of the business' ability to pay. The result is fewer small businesses and lost job opportunities. Our amendment will not limit plaintiffs from receiving full compensation for their economic and noneconomic damages.

Mr. President, this small business punitive cap amendment will be rated by the National Federation of Independent Business as a key small business vote for the 104th Congress. This amendment is also strongly supported by the 739,000 members of the National Restaurant Association. I ask unanimous consent that letters of endorsement by the NFIB and National Restaurant Association be printed in the RECORD. I yield the floor.

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, May 2, 1995.

Hon. SPENCE ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the more than 600,000 members of the National Federation of Independent Business [NFIB], I commend you for offering an amendment that would protect small business owners from excessive punitive damage awards.

Small business owners support requiring someone to make restitution when they cause injuries. However, our current liability rules can mean that businesses can be bankrupted by the addition of punitive damage awards that are vastly in excess of the business' ability to pay. Because of the potential for such an outcome, many small business owners are, in effect, forced to settle out of court. This results in higher insurance premiums, higher consumer prices, and worst of all, increased disrespect for our legal system.

Your amendment does not mean that plaintiffs will not be compensated; they will still be able to recover unlimited economic and non-economic losses. It merely means that punitive damage awards over and above actual restitution will be capped at a level that permits many small businesses to survive a lawsuit.

Thank you for offering this important common sense small business amendment. Passage of your amendment along with the underlying Dole amendment will be Key Small Business Votes for the 104th Congress.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Government Relations.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, May 3, 1995.

Hon. SPENCE ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the National Restaurant Association and the 739,000 units the foodservice industry represents, I want to express our support for your amendment providing protection for small businesses from excessive punitive damage awards.

In an industry dominated by small businesses—72% of all eating and drinking establishments have sales of $500,000 per year or less, and experience profit margins in the 3 to 5% range—an excessive damage award can force a restaurant to close its doors. This hurts not only the business owner and his/her family, but the employees and their families as well.

Everyone agrees that citizens should have the right to sue and collect reasonable compensation if they are wrongfully injured. However, common sense legal reform is needed to bring balance back into the system. Your efforts in this regard are greatly appreciated.

Again, thank you for your efforts to protect America's small businesses.

Sincerely,

ELAINE Z. GRAHAM,
Senior Director, Government Affairs.

Mr. BAUCUS. Mr. President, I want to voice my support for two amendments offered by Senator DEWINE to S. 565 that were passed by voice vote today. The first amendment places a $250,000 cap on the amount of punitive damages that can be awarded against small businesses that have a net worth of less than $500,000. The second amendment allows juries to consider a defendant's assets when determining the appropriate amount to award for punitive damages.

I oppose S. 565. I believe that this bill extends the reach of the Federal Government into an area that properly belongs to the States. And rather than slowing litigation, I believe S. 565 will create confusion and therefore more litigation. Under this bill you will have 50 different State courts interpreting the impact on this law on existing State case and statutory law. It is a result that only the lawyers will benefit by.

At the same time, I recognize just how hard small businesses struggle to stay afloat. And, I am well aware that Montana law recognizes the need to appreciate small business concerns. For example, Montana allows small companies to operate as "limited liability" companies. By doing this, small companies are able to limit their liability exposure to the amount of capital invested. Montana also requires to look at a defendant's financial resources in determining punitive damages awards.

To the extent that we are going to enact Federal legislation governing certain aspects of tort law, I believe it is important to include provisions that are specifically targeted to small businesses. For this reason, I support the DeWine amendments as offered.

Mr. GORTON. Madam President, this amendment and the next amendment have been worked out by the two managers and can be agreed to by voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 622, offered by the Senator from Ohio [Mr. DEWINE].

So the amendment (No. 622) was agreed to.

Mr. GORTON. Madam President, I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 623

The PRESIDING OFFICER. The question is on amendment No. 623, offered by the Senator from Ohio [Mr. DEWINE].

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 623) was agreed to.

Mr. GORTON. Madam President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 621, AS MODIFIED, TO AMENDMENT NO. 617

Mr. SHELBY. Madam President, I send to the desk a modification of the amendment I have at the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 621), as modified, is as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to this section, but only during such time as the State law so provides.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Is the Shelby amendment now the pending business?

The PRESIDING OFFICER. The Shelby amendment as modified is the pending business.

Mr. GORTON. Madam President, this is worked out with the two Senators from Alabama who are opponents to the bill but who nevertheless have a legitimate question about a quirk in Alabama law. The amendment applies only to certain cases in Alabama, and is acceptable.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 621), as modified, was agreed to.

Mr. SHELBY. Madam President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 617, AS AMENDED

The PRESIDING OFFICER. The question is on the Dole amendment, No. 617, as amended.

Mr. GORTON. Has a rollcall been ordered?

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 617, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—51

Abraham	Frist	Lott
Ashcroft	Gorton	Lugar
Bennett	Gramm	Mack
Bond	Grams	McCain
Brown	Grassley	McConnell
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Nunn
Coats	Helms	Pressler
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Simpson
Craig	Jeffords	Smith
DeWine	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kerrey	Thomas
Exon	Kyl	Thurmond
Faircloth	Lieberman	Warner

NAYS—49

Akaka	Feinstein	Moynihan
Baucus	Ford	Murray
Biden	Glenn	Packwood
Bingaman	Graham	Pell
Boxer	Harkin	Pryor
Bradley	Heflin	Reid
Breaux	Hollings	Robb
Bryan	Inouye	Rockefeller
Bumpers	Johnston	Roth
Byrd	Kennedy	Sarbanes
Cohen	Kerry	Shelby
Conrad	Kohl	Simon
D'Amato	Lautenberg	Specter
Daschle	Leahy	Thompson
Dodd	Levin	Wellstone
Dorgan	Mikulski	
Feingold	Moseley-Braun	

So the amendment (No. 617), as amended, was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, is there now an order in which the Senator from Tennessee [Mr. THOMPSON] is to offer the next amendment?

The PRESIDING OFFICER (Mr. THOMAS). That is correct.

Under the previous order, the Senator from Tennessee is recognized.

Mr. GORTON. Mr. President, I will shortly suggest the absence of a quorum. But, Mr. President, with the cooperation of the other side of the aisle, we will seek time agreements on future amendments and will hope to stack votes on any amendments which are ready to vote for sometime late in the afternoon so Members are not called back and forth willy-nilly.

While we look for that and wait for the Senator from Tennessee, I suggest the absence of a quorum.

Mr. FORD. Mr. President, we could not understand the distinguished Senator from Washington. May we have order?

The PRESIDING OFFICER. We will have order in the Senate. The Senator is exactly right.

Will the Senator repeat his statement?

Mr. GORTON. Under the previous order, the Senator from Tennessee, who is now present, has the right to offer the next amendment. I was suggesting that we attempt to get time agreements on as many amendments as possible in the future, but at the same time, to stack votes for sometime later this afternoon, if it is possible to do so, so that again we can bring Members here for votes, perhaps more than one vote, but not interrupt their schedules every hour or so.

Mr. HEFLIN. Mr. President, might I say, before we agree to that, we would have to see what the amendments are.

Mr. GORTON. I fully agree. This is simply a suggestion. I hope it will work. If it does not, we will proceed to the regular order.

Mr. President, I see the Senator from Tennessee is present. I yield the floor.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. Under the order, the Senator from Tennessee has the floor.

Mr. THOMPSON. Thank you, Mr. President.

AMENDMENT NO. 618 TO AMENDMENT NO. 596

(Purpose: To limit the applicability of the uniform product liability provisions to actions brought in a Federal court under diversity jurisdiction)

Mr. THOMPSON. Mr. President, I call up an amendment numbered 618, which is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 618 to amendment No. 596.

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

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

The amendment is as follows:

In section 102(a)(1), after "commenced" insert the following: "in a Federal court pursuant to section 1332 of title 28, United States Code, or removed to a Federal court pursuant to chapter 89 of such title".

In section 102(c)(6), strike "or" at the end.

In section 102(c)(7), strike the period at the end and insert "; or".

In section 102(c), add the following new paragraph:

(8) create a cause of action or provide for jurisdiction by a Federal Court under section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

Mr. THOMPSON. Mr. President, we are now engaged in a national debate on an issue that is important to the future of this country. The issue before us essentially is should the U.S. Congress federalize certain portions of our judicial system that, up until now, have been under the province of the States? And, if so, should we make major changes or more modest ones?

I cannot think of a more important subject for us to consider than our system of justice. The judicial system is a bedrock of our free society. It must be

fair. It must be perceived to be fair. Our citizens must have confidence in it. As we continue our deliberations, we must do so with the purpose in mind of striving for a system that is most likely to achieve justice in most cases. It is serious business, and our decisions should not depend upon whose favorite ox is being gored at the moment.

At the outset, I must say that we could do this process a service by refocusing the terms of this debate. It seems that we have in large part gotten off to a somewhat rocky start, and have been spending too much time arguing about which side is the most greedy and which side has contributed the most to which party's political campaigns.

Most of the literature, most of the press, and a lot of the conversation has had to do with those subjects, and it is an all-too-easy refuge for those who really do not understand the issues or who do not care and are simply trying to win the debate.

As far as the debate going on between the private interests of each side of this legislative battle, I have not noticed that either side is going against its own economic interest.

They are all sophisticated and well financed.

It seems that nowadays the debate on important issues is going the way of political campaigns: concentrating on grossly distorted anecdotes, sound bites, and 30-second commercials designed to appeal to ignorance and emotion. That is fine for the contestants in this matter to engage in if they choose to do so, but this body has a duty and a different function.

First, we need to address the issue of federalism. At the outset, I must state that I have great concern with any proposal that imposes a Federal standard in an area that has been left up to the States for 200 years. I would remind many of my Republican brethren that we ran for office and were elected last year on the basis of our strong belief that the government that is closest to the people is the best government; that Washington does not always know best; that more responsibility should be given to the States because that is where most of the creative ideas and innovations are happening. Whether it be unfunded mandates, welfare reform, or regulations that are strangling productivity, we took the stand that States and local governments should have a greater say about how people's lives are going to be run, and the Federal Government less.

People have different notions about the importance of philosophical consistency. But let there be no mistake about what we are doing if by legislative fiat we usurp significant areas of State tort law, passed by State legislators, elected in their own communities. We are going against the very fundamentals of our own philosophy which has served as our yardstick by which we measure all legislation.

In the Contract With America, every provision, in one way or another, has to do with limiting the power or authority of the Federal Government or one of its branches with regard to the States or individuals except one: the change in the legal system. That provision has nothing to do with limiting or changing the rules with regard to the Federal Government—but, rather, with the Federal Government changing the rules between two private parties, the very thing we have been so critical of in the past. I would say to my friends who are conservative in all matters except this one: If and when we are no longer in the majority, we will stand naked against our opponents as they rewrite our tort law for America to fit their wishes and constituencies because we will have lost the philosophical high ground.

It is ironic that all of this is occurring at a time when the philosophical battle that we have been fighting for so many years is finally being won. Several recent Federal court decisions, including the recent Supreme Court decision in the Lopez case, have finally begun to place some restrictions on Congress' use of the commerce clause to regulate every aspect of American life. Conservatives have been complaining for years that congressional expansion into all areas, with the acquiescence of the Federal courts, has resulted in rendering the restrictions of the commerce clause meaningless. Now the courts have let Congress know that there are limitations to Congress' authority to legislate in areas only remotely connected to interstate commerce. And yet as we won the war, we take the enemy's position. We are now the ones who seek to legislate and regulate medical procedure in every doctor's office in every small town in America. And we are the ones who now seek to legislate and regulate the fee structure between a lawyer and his client in any small town in America.

It is not as if the States have abdicated their responsibilities in this area. Many States have tougher and more restrictive laws than those advocated before this body.

Four States have no punitive damages. Some States have caps on punitive damages. Most States have gone from a preponderance of the evidence standard to a clear and convincing standard for punitives. My own State of Tennessee has a 10-year statute of repose while the products bill before us allows 20 years. And as was recently pointed out by the National Conference of State Legislatures, "Each of the 50 State legislatures, many configures by a fresh influence of Republican tort reformers, is considering some type of overhaul of the legal system."

It is not as if State legislatures wish to be relieved of the burden of dealing with the subject of tort reform. As the president of the National Conference of State Legislatures recently said:

> As you know, NCSL regards the unjustified preemption of State law as a serious issue of federalism, comparable in many ways to the issue of Federal mandates. Federal mandates erode the fiscal autonomy of States, while Federal preemption erodes the legal and regulatory authority of States. Every year Federal legislation, regulations, and court decisions preempt additional areas of State law, steadily shrinking the jurisdiction of State legislatures.
>
> NCSL opposes Federal preemption of State product liability law, strictly on federalism grounds. Tort law traditionally has been a State responsibility, and the imposition of Federal products standards into the complex context of State tort law would create confusion in State courts. Without imposing one-size-fits all Federal standards, States may act on their own initiative to reform product liability law in ways that are tailored to meet their particular needs and that fit into the context of existing State law.

However, we are told that, while all of the above may be true, the system has totally gotten out of hand. It is said that our Nation is smothering under an avalanche of litigation and frivolous lawsuits; that our legal system is nothing more than a lottery system and that the lawyers are the only ones who really win the lottery. Well let us examine all of that.

In the first place, I want to say that in any system run by human beings there are going to be abuses and miscarriages of justice and our legal system is no exception. For example, there is no question but that some frivolous lawsuits are filed. However, it should be understood by the American public there is not one thing about any of the substantive legislative proposals we have considered or will consider that will in any way diminish the possibility of frivolous law suits. No proponent of reform will argue that there is. There is simply no way to prejudge a case before it is filed. What we can do and should do is impose a penalty upon the litigants and the lawyers once a court has determined that a lawsuit is frivolous. The Brown amendment, which strengthened rule 11 in Federal cases, does that. I voted for it, and I hope it finds its way into any legislation that is finally adopted.

Also, I am convinced that some industries in some States are being hit especially hard. I am very sympathetic to those that produce products or render professional services, that provide jobs for working people, and that make the wheels go around in our economy. That is why I am working to help relieve the burden of regulation that they face and the tax burden that too often penalizes investment and productivity.

My own personal opinion is that the number of lawsuits brought in this country is too high and that it is a reflection of more serious things going on in our society.

However, nothing in the proposed legislation would cut down on the number of lawsuits, and I do not think anyone believes that it is Congress' role to place a quota on the number of lawsuits that can be filed in this country.

We have reached a point where a lot of people would support any legislation if they thought it would hurt lawyers. And there is no question that lawyers are often times their own worst enemy. My own opinion is that the profession has become too much like a business, too bottom line oriented, that lawyer advertising has hurt the profession that some of the fees being reported from Wall Street and other places over the last decade or so have caused the public's regard for the legal profession to fall dramatically. Frankly that is something that the U.S. Congress should be able to appreciate. So we have an imperfect system in an imperfect world.

However, there is another side to the story. The fact of the matter is that all things considered, the system has served up pretty well for a long period of time. Our State tort system has provided us with a form of free market regulation. Goals like achieving product safety are reached without additional and intrusive government mandates that other countries have imposed as a substitute for a tort-based compensation system.

Also, in the State courts during 1992, all tort cases amounted to 9 percent of the total civil case load. In the Federal courts, product liability claims declined by 36 percent between 1985 and 1991, when one excludes the unique case of asbestos. Since 1990, the national total of State tort filings has decreased by 2 percent. If this trend continues in the next 10 years, State courts will experience a decline of 10 percent in State tort filings. As a matter of fact, the primary cause of the surge in litigation in Federal courts has been disputes between businesses. Contract cases, which make up only one type of all commercial litigation, have increased by 232 percent over the period of 1960 through 1988.

And there is a lot going on that does not meet the eye that has to do with self regulation in a free society. Every day all over the country lawyers are telling clients that they do not have a winnable case, or that, although they have a pretty good case, the expense involved is not worth the potential recovery. You see, lawyers do not make money on frivolous lawsuits. Insurance companies learned a long time ago that paying off on frivolous cases in order to avoid potential litigation expense does not pay off. And the plaintiff lawyers know that the insurance companies will not pay extortion.

Also going on every day in this country are cases which are settled where a person was wrongfully injured and received a reasonable amount of compensation. That is most cases. They do not make the newspapers.

Also going on every day in this country are decisions by insurance companies not to settle with the plaintiff even though he is clearly entitled the recovery because he is a little guy and stretching it out for a couple of years and causing his lawyer to have to bear the burden financing the depositions and other expenses will make the plaintiff and his lawyer more amenable to a lower settlement later on. Besides, they know that they can put the settlement money to good use for that 2-year period and make money on that money. On balance, it more than makes up for their own attorneys' fees.

Also, going on quite often, are situations where a large corporate defendant is caught having committed outrageous conduct which resulted in tremendous injuries to innocent people. Often these cases are settled even before suit is filed because the plaintiffs do not want to go through a lawsuit and defendants know what might be in store for them if the plaintiffs get a mean lawyer who knows what he is doing.

This is the real world. This is the rest of the iceberg of our legal system that most people do not see. It is free market, give and take, sometimes rough and tumble, and sometimes produces injustices. But we have always believed in America that, with all its faults, the best way to resolve disputes is not at 20 paces but with a jury from the local community who hears all the facts and listens to all the witness and who is in the best position of anybody in America to decide what is justice in any particular case. Then you have a judge who passes on what the jury did and then you have at least one level of appeal to pass on what the judge did. And I can assure you—and anybody who has ever been there knows this—that you do not find much run-away emotion left by the time you get to the appellate level in most State courts.

So if we are determined to ring out the injustices that slip through the State system here at the Federal level, what are we going to replace it with?

What are we going to replace it with? A one-size-fits-all standard? One standard that would apply to mom and pop and to General Motors? One standard that would cover both the frivolous lawsuit and the lawsuits involving gross misconduct by the defendant? In our haste to correct one problem, are we not running the danger of creating greater problems?

Let me give you another example from real life. A lot of people are concerned about frivolous lawsuits against the medical profession. I share that concern. There have been good physicians wrongfully sued in this country. I think the system pretty well takes care of the problem in the end, but I regret that they have to go through that process. I am sure most of them were very displeased with me—my good friend and his supporters—when I could not go along with a $250,000 punitive cap on their exposure. I wish I could have gone along with it. But I could not. Because, not only do I have grave reservations about Congress legislating in this area, but in addition, the same cap that would legitimately and properly help them in some cases would unfairly hurt others in other cases. That is the problem with the one-size-fits all approach in Washington.

Let me tell you a little story. David and Tammy Travis from Nashville, TN, came to see me last Wednesday, April 26. They have been following this debate and they wanted to tell me about their daughter Amanda. Amanda was a 5-year-old girl who was scheduled to have a routine tonsillectomy at a medical clinic in Nashville. Amanda arrived at the clinic at 6 a.m. A nurse, not an anesthesiologist, administered the anesthesia and he administered the wrong anesthesia. Also, Amanda was hooked up to the wrong intravenous solution, as well.

The errors continued as Amanda was given demerol even though she was not complaining and was not even awake. When Amanda began throwing up blood, the nurse informed the family that this was normal. By 2 o'clock that afternoon Amanda was lethargic. The nurse told the family that a doctor wanted to keep Amanda overnight, which was represented to be normal. However, the nurse had not contacted the doctor and had made that decision herself.

Later in the afternoon, Amanda could not breathe. The short-staffed hospital had only a nurse and a sitter on duty. In fact, the nurse who administered the anesthesia was a drug addict, who subsequently died of an overdose while preparing to go into an operating room for another patient. The clinic had known that the nurse had this drug problem.

When Amanda was hooked up to emergency equipment, her head blew up like a balloon, and she began to bleed out of her mouth, as her father used his handkerchief to try to stop the flow. The nurse ran off to get more equipment to open the airways. By this point, Amanda was getting so little oxygen that Mrs. Travis pleaded that 911 be called. Someone at the clinic did call 911 and the paramedics rushed Amanda to Vanderbilt Hospital. By this point, Amanda was essentially dead, although the paramedics did their best to revive her.

After Amanda died, her parents were not given timely copies of her records from the clinic. Amanda's parents did, however, obtain the records from Vanderbilt. When they received the clinic's records, it was obvious that the clinic had altered the records to cover up their errors. The clinic tried to make it

look like Amanda had been fine when she left the clinic, and that it was the paramedics who had messed up.

The case went to trial about 2 years after the lawsuit was brought. The Travises are people of modest means. Their lawyer, Randy Kinnard of Nashville, financed 48 depositions and other expenses out of his own pocket over the 2-year period. The case was settled during trial for $3 million, an amount that reflected the clear liability of the clinic and availability of punitive damages. The lawyer's fee, incidentally, was 30 percent.

The Travises traveled to Washington with their story even though Mrs. Travis was under doctor's orders not to travel as a result of recent knee surgery. They came to my office with Mrs. Travis in a wheelchair. The Travises have no further financial interest in any of this legislation. They simply want to ask me to try to help make sure that we did not do anything up here that would make it more likely that other parents would lose their little girls the way they did; that we did not do anything to make it more economically feasible for hospitals or large companies to hire on the cheap or to cut corners.

The question presented to me is whether or not I am going to be a part of a process that tells Tennesseans that they cannot award this family $3 million if a jury in Tennessee, after hearing all the evidence, gives them that amount, or a company, realizing that they are finally at the bar of justice, coughs up that amount. I will not be a party to that.

We had another situation in Hardeman County in rural west Tennessee a few years ago that is instructive. A chemical company contaminated the region's groundwater. Residents exhibited various forms of disease: cancer, liver damage, kidney, skin, eye and stomach ailments, and nervous, immune, and reproductive system disorders. The jury found the chemical company had knowingly and recklessly dumped the chemical waste at its landfill site, failed to make the dumping site leakproof, disregarded the warnings of contamination by one of its own senior employees, failed to warn residents or government officials of the dangers, and attempted to cover up evidence when an investigation was initiated. Residents of Hardeman County recovered $5.3 million in compensatory damages and $7.5 million in punitive damages. Do I think that Congress should tell Tennesseans that they cannot allow the jury who heard the case to award those damages? I do not.

I get the feeling that there are cross currents running through the Senate at this point in our deliberations. I believe that there is a strong and understandable feeling that we should pass some tort reform measure in this session of Congress. I think, however, that there is another feeling that we are not quite sure of what we ought to pass and we fear that we do not fully appreciate or understand the effect of what we may be about to do.

It seems to me that the responsible thing to do is to take a second and harder look at the proposals before us and try to respond to a legitimate Federal interest while resisting the temptation to federalize 200 years of State law that has undergone substantial reform and is still being reformed as we deliberate. I suggest that because of the interstate nature of the activity that there is a legitimate Federal interest in the products liability laws of this Nation. Approximately 70 percent of all manufactured goods in this country travel in interstate commerce. I believe that this is one area under consideration that would pass the commerce clause test. Furthermore, not only do the products travel in interstate commerce but the litigants in product litigation are often also interstate in nature in that they are citizens of States different than that of the manufacture, thereby creating diversity jurisdiction, and are able to avail themselves of the Federal court system. Therefore, it would seem reasonable to legislate in an area involving interstate commerce with regard to litigation involving our Federal court system.

Therefore, I am offering on behalf of myself, Senator COCHRAN, and Senator SIMON an amendment to limit the bill's application to cases in Federal court. If my amendment were adopted, and a plaintiff filed a case in Federal court under diversity of citizenship jurisdiction, this Federal legislation would govern the case. If the plaintiff filed this suit in State court, State law would control. However, if the defendant successfully removed a case filed in State court to Federal court, this Federal law would apply.

My amendment would restore the federalism that the bills currently drafted would threaten. At a time when the American people overwhelmingly believe that the Federal Government has obtained too much power at the expense of the people and the States, we should not adopt a Washington-knows-best approach to tort law.

Particularly troubling is the selective preemption H.R. 956 creates. States cannot provide less protection to defendants than the bill mandates, but States are not prohibited from providing more. It is the bill's selective preemption that guarantees that it will not produce a uniform response to a supposedly national problem. The preemptive features of the bill overlook that Americans are unique individuals. Moreover, States have their own right to determine the law that should be applied to their own special situations.

My amendment is based not only on theories of federalism, it also recognizes the enormous practical problems the bill, as currently drafted, would cause to State-Federal relations.

Because State law would still govern tort cases to the extent that the bill did not preempt it, there would be numerous questions to litigate concerning the relationship between the Federal law and existing State laws. New, different, and inconsistent interpretations of the Federal law and the State laws would result. Under the underlying bill, Federal courts of appeal would resolve these issues. Those courts, not State courts, would ultimately determine the scope and meaning of State law as it interacts with this bill. To my mind, Federal courts should be bound by State court decisions on the meaning of controlling State law. By contrast, this bill would make State courts follow Federal court interpretations of controlling State law. Such a regime turns federalism on its head.

As I previously stated, my amendment recognizes that interstate commerce is the justification for a Federal tort reform bill. And it is interstate commerce that justifies Federal court jurisdiction in cases brought by citizens of one State against citizens of another State. I believe that the commerce clause rationale of the bill corresponds precisely with the reasons underlying Federal diversity jurisdiction. Moreover, by adding this amendment, the bill would actually provide a uniform law in Federal court to resolve the tort cases to which it applies. The existing bill would not achieve that result.

Despite the claims made, no one truly knows the effect that this underlying bill will have on the ability of injured persons to recover adequate compensation for their injuries. Nor will anyone know whether competitiveness of American businesses will be enhanced or insurance premiums will fall if H.R. 956 is enacted. At the same time, the bill would displace 200 years of law based on actual experience. If the bill failed to achieve its objectives, there would be almost no means of unscrambling the federalized egg. By contrast, applying the bill only to Federal court cases would provide an opportunity to experiment. If the bill's ideas work, States can adopt these rules as their own. Potentially, a preemptive approach might then make sense. But if the bill created numerous practical problems, well-tested State law would remain undisturbed while Congress acted to fix the problems in the Federal law.

The practical effect of the amendment would be that defendants sued out of State in many instances would be able to remove their cases to Federal court and obtain the Federal rule. Defendants sued in their home State courts would not be able to remove the case to Federal court. Thus, those defendants would be governed by their State law as applied by their own State

court. I believe that this is a much more sensible approach than the one now before the Senate, and one consistent with the Federal system and the Constitution.

Mr. President, we should protect the right of the States we represent to maintain their core function of crafting law designed to compensate injured persons. We should also permit Federal courts to apply Federal law to those cases that represent truly national concerns. We should certainly be careful before we displace many years of law based on experience. My amendment would accomplish all those goals. I strongly recommend its adoption.

AMENDMENT NO. 618, AS MODIFIED, TO AMENDMENT NO. 596

Mr. THOMPSON. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The Senator from Tennessee has sent up a modification. Is there objection to the modification? Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 618) as modified, is as follows:

On page 9, line 3, after "commenced" insert the following: "in a Federal court pursuant to section 1332 of title 28, United States Code, or removed to a Federal court pursuant to chapter 89 of such title".

On page 10, line 19, strike "or" at the end.

On page 11, line 4, strike the period at the end and insert "; or" and add the following new paragraph:

(8) create a cause of action or provide for jurisdiction by a Federal Court under section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

CHANGE OF VOTE

Mr. LAUTENBERG. Will the Senator yield for a unanimous-consent request? I have just a short unanimous-consent request to make.

Mr. President, on vote 139 that took place yesterday, I voted "yea." It was my intention to vote "no." It does not change the outcome of the vote in any way. I ask unanimous consent that that be recorded as a "no."

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

Mr. SIMON. Mr. President, I will be very brief, I say to my friend from Washington, because I have a satellite TV feed to high school students in Illinois that is going on right now.

Mr. GORTON. This Senator simply wanted to inquire about a time agreement.

Mr. SIMON. I will be very brief.

Mr. President, I strongly support and am pleased to cosponsor this amendment. It is right in theory. It is in line particularly with the Court decision that was made the other day about guns in school. I happen to disagree with that Court decision, but that is the law of the land. But it is right practically.

What we are doing without this amendment is massively overturning two centuries of tort law and tort decisions. What this amendment says is, "Let's move a little slowly. Let's apply this in the Federal courts but not in the State courts."

So we can learn, and maybe we will want to, after we have had a little experience, apply it to the State courts. I think it is a sound amendment. I am pleased to support and cosponsor the amendment of my colleague from Tennessee.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first, I should like to inquire of the Senator from Tennessee, and those who support his amendment, whether or not we might reach a time agreement for the disposition of this amendment.

Mr. HEFLIN. Will the Senator yield?

Mr. HOLLINGS. Not at this time.

Mr. HEFLIN. I do not think so at this time. I think we want to ask some questions and do some things and have a clearer understanding of what the Thompson amendment does. I want to engage in a colloquy at least and so forth relative to the matter. So I would think at this time we ought to know.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. GORTON. If that is the case, I obviously will defer asking for such a unanimous-consent but will hope that with support of the amendment we will agree to one. The debate will ultimately be terminated, perhaps, or at least dealt with by a motion to table. But if we can plan the afternoon and evening, it will be helpful.

Mr. EXON. Will the Senator yield for a question?

Mr. GORTON. Yes, I will.

Mr. EXON. Since there is a time deadline of 1 p.m., I would like to ask my friend from Washington whether or not there could be general agreement on the passage of an amendment that he and I have worked out with regard to product liability that I think has been cleared on both sides of the aisle. We have been trying to find an appropriate time to do that. If possible, I think we can do it in 2 or 3 minutes if we can get unanimous-consent and if that is the will of my friend from Washington, the manager of the bill.

Mr. GORTON. Parliamentary inquiry. Is the rule that all amendments must be filed or formally introduced by 1 o'clock?

The PRESIDING OFFICER. Rule XXII requires that they be filed.

Mr. GORTON. This Senator is perfectly willing to deal with the amendment of the Senator from Nebraska, with which he is familiar. I am not sure that the other Senators here are, however. So I do not know that it is cleared yet.

Mr. EXON. I thought it had been cleared.

Mr. GORTON. I suggest the Senator file it and discuss it with the principal opponents to the overall bill, and perhaps we can do it in 1 or 2 minutes. It looks to me that they do not know what it is about.

Mr. HEFLIN. Mr. President, as I understand it, he is filing it with the idea of meeting the post-cloture requirement. In the event of that, all he has to do is file it at the desk and we can do it. Is that not all he has to do is file it at the desk?

The PRESIDING OFFICER. The amendment must be timely filed to be germane.

Mr. HEFLIN. All right.

Mr. EXON. Mr. President, I will comply with the wishes of my colleagues.

Mr. HEFLIN. In order to clarify, I think if there are amendments people have, if there is no objection, I think it may be extended until 3 o'clock or something like that, if people have them. I do not know of any more I am going to file myself.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. HEFLIN. Are there any objections to that?

Mr. GORTON. Mr. President, I do not think I am authorized to make that distinction at this point. The Senator can file it right now, and then, if we settle it later, we can take it up and dispose of it promptly, which I hope will be the case.

Mr. President, I find myself in a somewhat paradoxical situation. With almost all of the remarks and policy positions presented by the Senator from Tennessee, I find myself in agreement. Yesterday, for example, I voted with him against a limit on noneconomic damages in the medical malpractice portions of this bill, at least in part for the very kind of reasons that he outlined. I also found most forceful and persuasive—having used it myself—his arguments that the strongest case for congressional legislation in this field rests in the field of product liability, because we deal, almost without exception, with products manufactured in one State, sold in interstate commerce in a national market.

I lost him, however, on the last turn—that that very forceful argument for greater uniformity in the rules under which product liability litigation was conducted therefore meant that we should apply this bill only to litigation conducted in Federal courts, whether it be product liability or presumably other forms of litigation which have now been adopted as a part of this bill. In that, I profoundly disagree with him and find it somewhat surprising that he and other good, thoughtful lawyers and former judges in this body would countenance this amendment, even if they oppose this bill overall.

Now, one set of my reasons is purely pragmatic. The other is academic and

theoretical, but nonetheless vitally important, perhaps more important than the practical reasons. The practical reasons are that 95 percent of product liability cases are filed in State rather than in Federal courts. Ninety-five percent. That is not unlike the proportion of all cases in State and in Federal courts. Overwhelmingly, legal disputes are decided in State courts, not in Federal courts themselves.

So, if interstate commerce is a justification, at least for the product liability provisions of this bill, why should the rules of this bill be limited to litigation conducted in Federal courts? That is to say, 5 percent of such litigation. The interstate commerce impacts of the development, the production, the distribution, and the use of products, is not affected in the slightest by the location of the court in which disputes or problems in connection with those products arise. If the interstate commerce clause is justification for any Federal rules in this field, it is justification for such rules in State courts to exactly the same extent that it is justification for such rules in Federal courts. There simply is no difference.

The interstate commerce is not the lawsuit, it is not the litigation, Mr. President; the interstate commerce is the travel of the product, the fact that the product is produced in one place, sold in another, perhaps developed in a third and used by a particular individual in a fourth State, or maybe in 10 or 20 States if it is a movable product. If we are going to have a set of rules with respect to product liability litigation, obviously, they should apply in all courts.

Let us go beyond that. We have said that, at the present time, the distribution of these cases is approximately 95 percent to 5 percent. We also have opposition to this bill primarily on the grounds that it will make some litigation more difficult or will limit the recovery of punitive damages. So the choice now of any lawyer representing a plaintiff in any case which does not have more severe limits on this litigation than are contained in this bill will be to bring that litigation in State court. In fact, if a lawyer who has a choice between the two brought it into Federal court, that lawyer would probably be guilty of malpractice. What earthly reason would there be to bring such a case in Federal court?

So instead of 5 percent of all cases in Federal court, would it be 1 percent? Would it be less than 1 percent? For all practical purposes, it would approach zero. We would gain no experience in finding which set of rules were better by the passage of this amendment.

In fact, what we are learning with the present experimentation is some States have more product liability litigation and some have greater punitive damage awards than others do.

Now, of course, this amendment applies not only to litigation which is commenced in Federal Court but litigation which is originally commenced in the State court and removed to Federal court. And, Mr. President, to oversimplify the case, getting into the Federal court with a product liability case like this is almost always going to be based on what is called "diversity of citizenship." That is to say, the claimants, the plaintiff; in one State, the defendant is from another State, or a certain amount is in issue.

If that is the case, and the original action is brought at a State court, it can be removed by the defendant to a Federal court. This right, however, does not exist when the parties are from the same State or when there is more than one party and there is a complete and total diversity of citizenship.

Again, Mr. President, given the way in which claimant lawyers operate in these situations, always suing or almost always suing not just the manufacturer but the retailer, sometimes the wholesaler, the developer, and the like, again, almost any competent lawyer can prevent the existence of diversity jurisdiction.

Mr. President, I would predict, I think there is not much opportunity to be contradicted, we would not have 1 percent of this kind of litigation actually conducted in Federal courts if this amendment were passed. We would not get this experimentation. We would simply see to it that the relatively small handful of such lawsuits now conducted in Federal courts ended up being conducted in State courts.

Even more troubling to me, at least, Mr. President, is the proposition that this so profoundly changes the nature of diversity litigation in Federal courts, and gives such a reward to those who game the system to find the best place in which to sue, that it has been exactly the opposite role that has obtained for a minimum of 60 years in this country.

Everyone in this body now who went to law school, or were at one time in law school, is familiar with the case in the Supreme Court of the United States called Erie Railroad Co. versus Tompkins in the year 1938.

The Supreme Court, as long ago as that year, found lawyers gaming the system, figuring out if a more favorable rule of law were going to be applied in the Federal court than the State court, they would try to get in to the Federal courts.

So the Supreme Court quite wisely said "Look, you bring one of these product liability lawsuits in Federal court or remove it to Federal court, we are going to apply exactly the same legal rules that State courts in that State would apply."

So we cannot get a better deal, a more favorable law, a more favorable rule by going into Federal court. A person would get exactly the same rules. That, of course, has been the law of the country ever since. It is that Supreme Court case that this amendment would overturn.

I do not mean to say it would be unconstitutional; certainly it would be constitutional. That is simply a ruling by the Supreme Court on these relationships. But if Congress wants to create an entirely different rule, it can do so.

In fact, this Congress has always in the past followed the rule of Erie versus Tompkins. When Congress does create Federal rules of tort law—and it does in the Federal Employees Liability Act and the Federal Longshore and Harbor Workers Compensation Act, and the Merchant Marine Act—it always says that those rules are going to be applied in any court wherever it is located in which such an action is brought, so that the system cannot be gamed.

It would be utterly improper, Mr. President, to depart from that wise set of rules and to move to a system in which consciously we set up one set of rules for actions in Federal court and another completely different set of rules for actions in State courts.

Nor does anything in the bill criticized by the Senator from Tennessee on the relationship between State and Federal courts, undercut or contradict that. If I understood him correctly, the Senator from Tennessee, said that this bill would have Federal courts interpreting State law through the circuit courts of appeal. Not so.

I will read the section that has to do with that relationship from the current bill. It says, "Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title," that is to say, Federal law if we pass this "this title shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the Circuit Court of Appeals."

This does not change the law. This is the law right now—Federal courts have priority in the interpretation of Federal law. At least at the Supreme Court level, that determination is binding on State courts when State courts interpret Federal law.

Nothing in this section gives Federal courts of appeal the right to interpret State laws. It only gives them the right to interpret this law, assuming that we pass it, which is something in my view that we did not have this section in the bill itself.

But to return to the argument, the argument is presented very forcibly by those who do not want the Congress legislating in this entire field, who are

content with 50 to 53 different jurisdictions on tort law. They have a lot of precedent on their side. This has been, by and large with the exception of certain Federal statutes, the way in which these relationships have been conducted in the past.

The impact of changes in the legal system, more litigious system, higher judgments, greater risks to research and development of products, has created an urgency, I think a sufficient urgency, to move cautiously into this field. It can certainly be properly argued as it is on the other side that, no, we should not interfere at all.

I think it is that argument that ought to be made, Mr. President, that we should not involve ourselves in these issues, that we should defeat this bill. I do not think we should do it by presenting an amendment, first, which will not have any effect because there will be so few cases brought; and, second, reverses a wise decision of the Supreme Court of almost 60 years in age designed to prevent forum shopping, by saying whatever court a person is in they will abide by the same rule which this bill is consistent and which this amendment is not.

I hope we can get on to debating the merits of the entire bill, product liability, medical malpractice, rules relating to punitive damages and the like.

As I say, the Senator from Tennessee illustrated the fact that we have a problem, that we have a problem that crosses State lines. I believe we should do something about that problem, but I would rather see Members do nothing than to totally change the relationship between the State and the Federal courts in the manner which would be accomplished by this amendment.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, let me, first of all, compliment the distinguished Senator from Tennessee for bringing this issue to the Senate in the form of this amendment. I think it highlights the frustration that many Members feel at this point in the consideration of this legislation.

The Senator from Washington very correctly points out that this may be an amendment on which reasonable scholars, even, could disagree in terms of its impact on this bill before the Senate.

I think it speaks to a frustration that we have seen so many amendments adopted now, and have been rejected, that seek to enlarge considerably the subject matter which was first presented to this Senate in this product liability bill.

I think it is clear that there is a sound jurisdictional basis for the Congress to legislate in this area under the commerce clause—at least that is my opinion—but it does not necessarily extend to all of the subjects that have been debated on this floor after the bill has been called up.

We have now undertaken to fully explore the Federal role in limiting or modifying or writing new rules for professional liability of physicians and others in the health care area, why not insist that there be included a title on architects and engineers who are also professionals and who are held to a higher standard of conduct because they are professionals, but they are not included.

Are we going to permit, then, the legislation to proceed and have all other professionals excluded because of this omission? Even lawyers are professionals in the view of most. I mean, they are held to the same high standard of conduct as professionals. So when they breach their duty to provide skilled and thoughtful and professional assistance for pay to some member of society, they are held liable if they breach that duty, under the standards that are written into the law, just as physicians are, or hospitals, or others. So I think what the Senator from Tennessee is pointing out is that we are out into the deep water now in an effort to comprehensively reform the civil justice system of the United States, piecemeal, on the floor of the Senate.

We have committees that have jurisdiction over some of these areas. The Labor Committee, for example, had a markup session and reported out a bill dealing with malpractice liability and reforms in that area. As I understand it, that was the basis of the amendment of the Senator from Kentucky, Senator MCCONNELL, on medical malpractice, which the Senate has now adopted.

I understand the Banking Committee also is considering reporting out legal reform legislation dealing with securities transactions where class action suits are brought against companies or brokerage houses for various alleged acts of negligence or breaches of duty to the general public with respect to the value of securities or the conduct of officers and board members with respect to running the companies in a skilled way, or at least up to that standard that is owed to the investor who might buy stock in that company.

There has developed, as I understand it, a sort of cottage industry in some legal circles of bringing these kinds of actions, and now there is a cry for reform and restraint and restrictions on those kinds of actions. The Banking Committee has taken that up. They are considering it, and I understand they are going to report out a bill. If we are going to reform comprehensively the civil justice system of this country, why not await the advice of the Banking Committee on that subject and include that as a title in this bill or some bill?

I understand the Judiciary Committee has now before it a proposal by the chairman of that committee, Senator HATCH from Utah, which includes suggestions for other reforms in the civil justice system of the country.

My concern, which is reflected in this amendment of the Senator from Tennessee, is that we have gone so far now, we need to stop and say: "Wait a minute. This is not a civil justice reform bill. It is not all-inclusive," and try to narrow the application and the scope of this legislation to something that more narrowly fits the purpose of the bill that was brought to the floor by the Commerce Committee.

This bill relates to products liability. While some of us disagree about some of the provisions—we might want to change it, amendments ought to be considered—nonetheless, it had a fairly narrow application that was firmly based upon the commerce clause of the Constitution giving the Congress the power to legislate in this area. Some of these arguments that I have heard have absolutely nothing whatsoever to do with the Federal role in our society.

When they were talking about setting the lawyers' fees in certain contingent cases, I thought back to the time when I remember organized professional groups pleading with the Congress to do something about the Federal Trade Commission because they were about to get into the fee schedules of local professional organizations. Do you remember that? Several years ago there was a great hue and cry by the—well, I am not going to name the groups. They might get more attention than they want.

But the point is, we were arguing that the Federal Trade Commission did not have anything to do with the setting of fees at the local level by professionals. That was something that was regulated by professional societies, or State laws, or other entities—not the Federal Government. And now here we are being asked to pass judgment on a fee charged by a lawyer to his client in a purely local action maybe. It does not have anything to do with the Federal Government. And the Federal Government should not have anything to do with that. If you want to read and give effect to the Constitution, that separates the Federal role from State governments' roles in these areas.

So I am troubled about where we are now. I think at some point we may have an opportunity to consider whether this bill should be modified in a way that puts it more nearly back to where it started and that is dealing with product liability rather than an effort to comprehensively fix or modify every conceivable area of civil justice procedure or substantive law that strikes a Senator in a moment of serious concern that needs to be addressed on this bill, and we have seen those amendments come up now, and I guess we will see many others.

So I again compliment the Senator from Tennessee for trying to put in

perspective what we are doing here and what we ought not to be doing here.

I intend to vote for his amendment.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, we had the occasion to attend the funeral of our distinguished former colleague, Senator Stennis. Time and again the visiting Senators who had served with him talked about his wisdom. My only comment is the wisdom of that distinguished gentleman is not lost to the Senate when you hear the Senator from Mississippi, Senator COCHRAN, talk. He does talk with professionalism. He does talk of trying to act professionally with respect to a Federal legislative body, and his statement on the amendment of the distinguished Senator from Tennessee is music to my ears.

This has been sort of a run-amok situation. When the Senator from Mississippi says it is not the intent to reform the whole civil justice system, we started on product liability—that is what he thought and that is what I thought but that is not what the contract calls for. I do not want somebody to say I had gotten partisan on this thing, because I am welcoming the bipartisanship with respect to the amendment of the Senator from Tennessee. But the RNC talking points show they do not have any idea of product liability. But they do have the civil justice. The contract calls for that. And you have seen what has been provided, Senator, on the House side, which is very, very disturbing.

Right to the amendment of the Senator from Tennessee, and particularly his address, which has really been music to my ears. It is like a drink of water in the desert, because he talks professionally of the duty and responsibility here of the U.S. Congress and the Federal Government. We do not find—and I agree with the Senator from Tennessee—the need for the Federal Government to start preempting local jury trials and the handling of tort cases at the local level. So what he is saying is, to try to keep step with the theme upon which he was elected—and incidentally it has been the theme upon which I have been elected for 28 to 29 years—is that the government that is the best government—the Jeffersonian phrase most often quoted—"is that closest to the people" and the local folks decide these things.

As I have said time and again here, you have a solution looking for a problem, because product liability cases are on a diminishing scale. There is no Federal problem with respect to the lawyers' fees nationally with respect to their clients.

It is only to deter and enhance and enrich the manufacturer that we even had the Abraham-McConnell amendment. But what the Senator from Tennessee does, as I read this amendment, is sort of bring a little order out of chaos. With respect to applicability, and in diversity cases under title 18 what we have is a jurisdiction and a responsibility.

So this would apply to the provisions of this bill, and diversity only in those cases that have been removed from the State courts to the Federal system. Yes. We have in Federal court a responsibility at the Federal level. And let us apply whatever they desire, which is almost open sesame now around here. I cannot tell what the next thing is coming up. But like the sheepdog can taste the blood, they are going to gobble up all the rights of the individuals back home because all of a sudden we, who have been elected by the people back home—think the people back home have totally lost judgment. We have to tell them how, why, where, and when. You can put in this evidence but you cannot put in this.

If that is necessary, the Senator from Tennessee says, let it apply in those diversity and removal cases, and then we will have fulfilled our responsibility. I hate to talk longer on the amendment because you become identified with your position in these matters. Somebody would say—I can hear them now—"Well, HOLLINGS is for the Senator from Tennessee's amendment, you had better vote against it."

I am trying to laud the distinguished Senator from Tennessee, particularly his comments. I just listened as he went chapter and verse right down the line. That is the first address of which I had the occasion to hear the distinguished Senator from Tennessee. I listened to him through his client, Senator Howard Baker, years ago in earlier proceedings. But now he is speaking in and of himself. I find that solid. When they talk about common sense, that solid common sense is coming through with respect to this particular issue of product liability and the amendment of the Senator from Tennessee. So I heartily endorse the attention, particularly of my colleague from West Virginia, one of the leading sponsors on this bill.

When it comes down to law, yes. We have a responsibility on the Federal side—diversity and removal. And let us apply whatever everybody decides by a majority vote is necessary to occur. But let us not in the context of simplicity and uniformity come back in and jumble this whole thing into the 50 jurisdictions with the 50 different interpretations and bring it up to the Federal system for even further interpretations and appeals and say that what we have now is uniformity.

The Senator from Tennessee gives us uniformity. There is no question about it in this particular amendment. I heartily endorse his initiative and his amendment.

I hope we can sort of calm down now without all of the little amendments of interested parties. They are on a roll—you can see by the way the votes are going—to affect all civil cases with respect to punitive damages. You would never think that would occur on the floor of the U.S. Senate because punitive damages had a salutary effect in our society. All I have heard is about runaway juries and the legal system as a lottery; these catcalls you might call it. It is almost like an athletic event up here. The deliberative body is the cheerleading section. The Senator from Tennessee says let us get out of the stands, get out of the chair, and get down on the field of responsibility and act like Senators and legislate where we have that responsibility, and leave the States and the local folks to their own judgments, their own considerations.

It is not a national problem. There have been problems arising. States have treated it differently. They have all revised practically all of their product liability laws in the last 15 years. These State legislatures come up and say, "For Heaven's sake, leave us alone." They testified before the Commerce Committee. The Association of State Supreme Court Justices, a bipartisan group says,

> For Heaven's sake, let us not put this thing in where we have to take all of these words of art and interpretation in the 50 States. Leave us alone.

The American Bar Association, a bipartisan group if there ever was one, and a study group of lawyers said we studied it again. It is totally off base. We oppose this bill. Mr. President, 123 legal scholars have come forward and said now you really, in an effort to give what you call common sense or uniformity or fairness—to get the buzzwords going—what you have really done is given the highest degree of unfairness, the highest degree of complexity that you could possibly imagine. They testified. The attorneys general testified against this measure. There it is.

How do I get that over to my colleagues? Well, thank heavens. I know a lot of them would listen to the leadership of the Senator from Tennessee, and I hope they will on this particular score.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I certainly join Senator HOLLINGS with regard to the remarks that have been made by the distinguished Senator from Tennessee and the distinguished Senator from Mississippi.

The Senator from Mississippi talked about the fact that here we are really going with this, a product liability to, in effect, change all civil actions; changing the tort laws. All of a sudden, we have adopted the Dole amendment which extends to all civil actions affecting commerce. Of course, under the

laws pertaining to commerce, it does not say "interstate commerce." It says "commerce." I mean some people resent the decision pertaining to the Lopez case that was handed down. But this does not say "interstate commerce." It says affecting "commerce"—the language in the Dole amendment.

I wonder, how far does this go? Of all civil actions? Civil actions, if there are civil rights cases, based on State law? Is it covered by this? Does this apply to that? If there are civil rights cases under Federal law, are they affected by this? There are so many questions that are raised. There have been, for example, longstanding railroad laws pertaining to FELA cases. Are they affected by that? There are longstanding admiralty laws which are civil cases; are they affected by these amendments? Is the Jones Act, which is another matter pertaining to seafarers, affected by this act? There are so many things that just immediately come to mind that raise concerns in my mind.

Consider, for example, the antitrust laws that are enacted by States. You have the standard of three times damages, and as the bill is now amended, it is reduced down to two times.

Economic? If there are no noneconomic damages, then it is reduced down to twice. Are we changing the antitrust laws in reducing the penalties pertaining to those?

Senator COCHRAN mentioned that here we are attempting to change all of these laws on the floor of the Senate.

I said there have been groups that have studied the tort law. There is the American Law Institute that has published the restatement of torts. They have published the restatement of a great number of various fields of law. This product liability bill, the underlying bill, has no resemblance to that study group which has over the years included defense counsel, plaintiff's counsel, professors, scholars, and people who have worked on the concept of tort law, including product liability law. But this has been written by lawyers that are interested in trying to save themselves money, and they are trying to save themselves money at the expense of injured people. And now it is being extended to all civil actions.

Now, I am not exactly sure what the Thompson amendment does, and I would like to sort of engage in a colloquy and ask the Senator some questions pertaining to it.

From what I have been able to read and in listening to my colleague speak, really the Senator's amendment, as I understand it, limits the application of the underlying bill as now amended to Federal courts only. Is that correct?

Mr. THOMPSON. That is correct, I say to the Senator.

Mr. HEFLIN. In other words, it is not controlling on actions that are tried in State courts, such as the Senator's State and such as Senator COCHRAN's State.

Mr. THOMPSON. That is correct.

Mr. HEFLIN. It does not impose any of those provisions that are in the underlying bill, as amended, upon the State of Tennessee, the State of Mississippi, the State of Alabama, the State of New York, or any other State—it does not impose those provisions on them; is that correct?

Mr. THOMPSON. That is absolutely correct.

Mr. HEFLIN. All right. Now, the provision dealing with the interpretation of the court of appeals, which is in the underlying bill, the court of appeals that might interpret a district court and the Federal courts, that decision that is made relative to the underlying bill, as amended, would not affect proceedings in a State court?

Mr. THOMPSON. Under my amendment, that is correct.

Mr. HEFLIN. As I understand it, the Senator's amendment does not create a new cause of action or a Federal cause of action. Is that correct?

Mr. THOMPSON. That is exactly correct.

Mr. HEFLIN. In other words, the Senator's amendment, in effect, says that the provisions of the underlying bill—you have provisions dealing with punitive damages; you have provisions dealing with misuse and alteration; you have standards that are created relative to punitive damages; you have provisions dealing with intoxication and defenses on that——

Mr. THOMPSON. In the medical area also.

Mr. HEFLIN. You have the biomaterials provision and all of that in the product liability bill. Are those provisions limited strictly to cases that are tried in Federal district courts?

Mr. THOMPSON. That is correct.

Mr. HEFLIN. All right. So, now, if I understand it from the Senator's speech and also Senator SIMON's speech, the Senator's idea is that this would be an experiment, in effect a pilot program for a period of time in which you would determine how it would work, and from it, State courts could use the experience. State could learn from that experience? And, of course, Congress could look at the same thing and learn from the experiences that might be contained therein; is that correct?

Mr. THOMPSON. Yes, that is correct.

It occurs to me on that point that States have learned, for example, from the Federal Rules of Civil Procedure and I believe also perhaps the Federal Rules of Criminal Procedure. Federal courts adopted rules that proved to be effective, and after a period of time States like Tennessee and others adopted State rules that resemble very much or in some cases are identical to the Federal rules, because over a period of time they proved to be salutary and desirable.

Mr. HEFLIN. All right. The distinguished Senator from Tennessee, I am sure, knows of the doctrine which came out of a case in the Supreme Court called Erie versus Tompkins. Now, Erie versus Tompkins basically says that State law prevails in diversity cases and prevails in Federal cases in the event that the Federal law is not written to approach it. In other words, if there is a void in Federal law, then the concept is that State law will be followed under the doctrine of Erie versus Tompkins in the Federal courts.

Mr. THOMPSON. Yes. The Federal court can follow the substantive law of the State.

Mr. HEFLIN. The Senator is correct in regard to substantive law. So if this particular bill, as amended, is silent relative to a State law and is not preempted, then a Federal court would continue to apply State substantive law in a case brought in the Federal courts? Is that correct?

Mr. THOMPSON. That is absolutely correct. In other words, in other diversity cases not covered by the provisions of this amendment or the underlying bill, Erie would apply and the substantive law of the States as always would still apply in those cases.

Mr. HEFLIN. Basically, I have a reservation on the philosophical viewpoint. I think, No. 1, as the bill presently stands, as it is amended, the Senator's amendment is an improvement. I do have reservations as to whether or not from a philosophical viewpoint we ought to be legislating in an area that has been left to the States for many years. And so it is a question of federalism. I am in somewhat of a conflict as to whether or not I would support the Senator's amendment, and that is something I am going to think about and give a little more thought to.

Mr. THOMPSON. If I could respond to that point just a moment, I think the Senator is reflecting a conflict that is going on within a lot of us. A lot of us understand the concern of our constituencies that businesses, and so forth, have legitimate complaints. A lot of us are also concerned about this rush to judgment, where the U.S. Congress and the Federal Government are on the verge of supplanting 200 years of State law, at a time when many of us are saying in other areas, whether it be welfare reform, regulatory reform, taxes, or unfunded mandates, we are all saying get the Government out of the States' business. States are where the innovation is going on. Let them take care of themselves. So we are all engaged in that conflict.

Product liability has been discussed in the Chamber of this body for many years, long before I arrived. The Senator, I am sure, has engaged in those debates over the years. I think there is a feeling that this is an area wherein there is more justification for our involvement on the Federal level because

of the inherent interstate nature of the activities. Seventy percent of all manufactured goods now travel in interstate commerce.

If I had my desire, if I could write the legislation, or I could come to the conclusion, perhaps this is not where I would be. But I see the freight train going down the tracks, and I think we at some point have a responsibility to at least try to make sure that we wind up in as good a position as we can. And for me, that is carving out an area and saying, look, if we are going to do this, let us not go all across the board. Let us not usurp all State laws across the board dealing in these areas without knowing what we are doing.

The Senator from Alabama mentioned and in 5 minutes raised a dozen questions that nobody knows the answers to. The answers will be decided through reams and reams and reams of court decisions throughout this Nation over the next several years. We will create more lawyer work than we ever dreamed of because of what is going on here.

So what I am saying is, let us take the basic part of the original underlying legislation, which has to do with products liability, which has more of an interstate nature to it than what goes on in some small law office, what goes on in some accountant's office, what goes on in some doctor's small office or any of these other areas, and couple that with the interstate nature of most of products litigation, and that is diversity cases.

Incidentally, I disagree with my distinguished colleague from Washington concerning the number of diversity cases filed in Federal courts. Last year, the Administrative Office of the U.S. Courts reported that 22,000 products cases were filed—tried or disposed of—in Federal courts. That represents approximately 45 percent of all products cases.

So, close to half of all products cases, under my amendment, would get the benefit of this new Federal rule and legislation that we are proposing. But at least we would not be, in one fell swoop, supplanting all of the State law that has been developed over 200 years.

I believe that it is justified and it makes some sense in this area and would allow us to take a deep breath and look and see what we have wrought, whether or not it is working, whether or not insurance rates are being affected, whether or not this is something that States want to emulate or something that we, as the U.S. Congress, want to backtrack on and say we made a mistake. Under this, we could unscramble the Federal egg a whole lot better than if we changed all the laws in the States, got years of decisions, new decisions based on those laws, learned that we were wrong, got a new group in the majority in this body and in the House and had them come in and impose their will and their concept of justice and respond to their clients and their constituents.

I think it would be a mess. I think we are asking for a real mess down the road. What I am trying to avoid with this amendment is that kind of result, which I think would wreak havoc with our court system in this country.

(Mr. HATCH assumed the chair.)

Mr. HEFLIN. Mr. President, the Senator keeps using the word "interstate." As I read the language that we have now adopted, it is applied in regard to punitive damages in any civil action whose subject matter affects commerce, not interstate commerce, but commerce. Actually, it seems to me that commerce is affected almost by every conceivable type of action if there is a transaction. That, to me, under this language that is now in here, makes it so broad. It affects commerce and affects that aspect of it.

Now, under the Senator's amendment, he would allow for actions that are transferred, removed from the State courts to the Federal courts. And that is what is known as a removal action.

It is my understanding today that I think we passed in the Senate some bills that would enlarge the jurisdiction. But the present jurisdiction is that if the suit is for $50,000 or less, you cannot remove it from the State court to the Federal court. So, therefore, those types of cases of a frivolous nature seeking small damages relative to this matter would stay in the State court if they are $50,000 or less. Does the Senator interpret it that way?

Mr. THOMAS. Yes, I do.

Mr. HEFLIN. Now, if you are seeking punitive damages, you are limited in the amount that you claim with regard to the removal. So, chances are, you are not going to have many punitive damage cases that are affected, since there is a limit in the amount of money that you sue for, in the removal of those small type cases. Does the Senator agree with that?

Mr. THOMPSON. I am sorry, I missed that.

Mr. HEFLIN. I was just saying that, looking at punitive damages, we look upon that as being in big figures. But if the suit is only for $50,000, then the amount that you sue for includes if you seek punitive damages and it puts a cap on it. You cannot recover more than you can sue for and if you do not sue for more than $50,000, then you stay in the State courts and it is not removable to the Federal court.

Mr. THOMPSON. I think that is correct.

Mr. HEFLIN. All right.

Now, I am not sure that I understand this provision, the last one, which is No. 8. It reads:

In section 102(c), add the following new paragraph:

(8) create a cause of action or provide for jurisdiction by a Federal Court under section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

Now, that provision in there, I believe, is in the bill that was introduced. That is to prevent saying: "Create a Federal cause of action," and therefore leaves it strictly to the preemption that is in this bill as amended and does not create a separate cause of action at the Federal courts; is that correct?

Mr. THOMPSON. That is correct.

Mr. HEFLIN. I thank the Senator. I appreciate the distinguished Senator from Tennessee responding to my questions relative to these matters. I have a better understanding relative to what his amendment attempts to do.

I might just ask him, too, in this regard, I believe if we look at the Federal law and the Federal Rules of Civil Procedure that apply, the distinction between equity and civil cases is now combined into civil cases.

So in the Federal law that we have today under the Federal Rules of Civil Procedure, cases that we used to make a distinction between—we used to have really three types of cases. You would have criminal cases, you would have civil cases, and equity cases.

But the Federal Rules of Procedure, of course, which are not affected by Erie versus Tompkins, are now combined and you have equity and civil cases in it. So, basically, under the present Dole amendment, basically what we are looking at are really two types of cases—criminal cases and civil cases.

Under this, in regard to the Dole amendment as to punitive damages, in other words, the only thing it really excludes is criminal cases. Would the Senator agree with that?

Mr. THOMPSON. That seems to be the result of it.

Mr. HEFLIN. I yield the floor.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I, too, share the concern of the Senator from Alabama concerning the application of the commerce clause to some of the amendments that we have already adopted. I suppose the courts will have to determine whether or not there is sufficient interstate commerce with regard to some of these matters in the future.

In response to some of the comments made by the Senator from Washington, I have already pointed out that according to the American Bar Foundation, which is an independent body, separate from the American Bar Association, that if you include all the product liability cases filed in Federal court, plus those removed to Federal court—in other words, the subject of this amendment—you have approximately 45 percent of the product liability cases that were filed last year. So this is not a situation where only a handful of

cases would be brought in Federal court.

Second, the amendment which I propose is not, as it has been characterized, a killer amendment designed to oppose any kind of reform. We started off early on in this body dealing with frivolous lawsuits. The only provision in any of this debate that actually deals with frivolous lawsuits is the one Senator BROWN proposed concerning rule 11. I supported that. We need a stronger rule 11 to take care of frivolous lawsuits.

Beyond that, it would be easy enough to simply oppose any legislation because it interferes with States' legitimate rights in these areas. We are not doing that. We are trying to strengthen this and come up with something that not only will pass but will not cause us to regret our actions later. Our amendment will give us an opportunity to see whether or not these broad-range measures work in the Federal court system, which is the system that we ought to be concerned with and with which we can legitimately deal.

The question arises: Why would anybody ever file a lawsuit in Federal court anymore under the Thompson amendment? There are several reasons. For example, the underlying bill, I believe, has a 20-year statute of repose. Tennessee has a 10-year statute of repose. If it is past 10 years since the product was manufactured, you would certainly bring the case in Federal court, not State court, because you would want to get the benefit of that statute of repose.

Also, the State of Washington and other States have no punitive damages at all. A plaintiff would certainly not want to bring a case in State courts in Washington if he had an opportunity to do otherwise.

On the preemption of State law, perhaps we are just passing in the night, as far as our conversation is concerned, but the underlying bill certainly preempts State law with regard to the subject matter covered by the underlying bill. So you have a Federal circuit determining what the interpretation of that law is and then the States have to follow that Federal court interpretation of that Federal law in cases that are decided before them.

On the question of forum shopping, under the underlying bill, you could have 50 different sets of rules in 50 different States. For example, with regard to caps, they are only caps. States are free to do more restrictive things if they are within those caps. They cannot do more liberal things, as far as plaintiffs are concerned. They can do more restrictive things.

You can have 50 different sets of rules. You can have plaintiffs shopping through 50 different States in some situations under the underlying bill. At least under this amendment, there will be many cases that are properly removable to Federal court. When those cases are removed, we will have one Federal standard.

So, Mr. President, I respect my distinguished colleague from Washington and what he is trying to do in his strong fight for a products bill. I suggest to him that what we are doing here, in the long run will strengthen his efforts instead of diminish them. I certainly hope this amendment gets full consideration in this body. Thank you. I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Utah.

Mr. HATCH. Mr. President, I am proud the Senator from Tennessee is on the Judiciary Committee working with us on many issues. With regard to this amendment, I am very concerned about it because I believe this amendment would undermine much of what our tort reform efforts on the floor of the Senate really are about and undermine what we have been trying to do this week.

Senator THOMPSON's amendment, as I view it, would strictly limit the coverage of tort reform legislation and, in my opinion, would take the whole substance out of this legislation.

Only 4 to 5 percent of tort cases are filed in our Federal courts. That is still a significant number, but it is still only 4 to 5 percent. That is according to the Department of Justice figures. Thus, under the Thompson amendment, the vast majority of litigation abuses in this country would go unchecked if his amendment is adopted. Plaintiffs would be able to sue in State courts to avoid having their suits subject to the Federal law. Although in some cases defendants might be able to remove State-filed cases to Federal courts, plaintiffs' lawyers will surely plead their cases in ways to prevent removal to Federal courts. The end result is that defendants may be subjected to vastly different substantive legal standards, depending on the whims or designs of plaintiffs, and that simply is not fair.

Under the Thompson amendment, parties would be uncertain about what laws would apply to their conduct. If sued in State court, one rule would apply. If sued in Federal court, an entirely different set of laws could apply. That uncertainty will not address the harmful effects on our economy today and the harmful effects that this bill is trying to cure. For example, higher liability insurance rates have been a problem in this country for years due to abusive litigation. Under the Thompson amendment, insurance companies will not be able to significantly reduce liability insurance rates because they will have no idea what risks they are going to face. They will have no idea where businesses and other groups they insure will be sued. The rates will continue to remain high, and all of those higher rates will continue to be passed on to you and me as consumers.

So the people who really lose, if we do not pass this tort reform legislation, this product liability legislation, as amended in its current form, will be every consumer in this country. Consumer losses amount to trillions of dollars over time, and I think it is time for us to face up to these problems.

Look, I have been a trial lawyer. I have tried hundreds of cases in my legal career, many of which are cases involving torts. I have to tell you that I think much good is done by trial lawyers who try to stand up against some of the evils in society by bringing litigation with regard to torts that are committed. However, we really in this country have gone way over to one side to the point where the deck is stacked. This bill is an attempt to try to bring our laws back to the middle where people are treated fairly, where lawyers can still win their cases, where lawyers can still win substantial verdicts, but where lawyers no longer get these runaway verdicts. These runaway verdicts really are happening in this country with greater frequency.

I might add, this kind of legislation, as evidenced by the Thompson amendment, is highly unusual. It is one thing to apply different procedural rules to cases brought in Federal or State courts. It is entirely another question to apply a different substantive rule. Ever since the landmark decision in Erie versus Tompkins, it has been clear that Federal courts sitting in diversity cases apply the substantive rules of State law.

This amendment would present a striking, perhaps even unprecedented, application of a Federal law. The very same tort case would proceed in State court under one substantive law, but if removed to Federal court in the same State, because of diversity, a different substantive law would apply to it. In my view, this does not make sense.

Senator THOMPSON acknowledges that the commerce clause clearly empowers Congress to act over product liability cases. This is not an area in which Congress ought to stay its hand, because the high cost of litigation abuses cross State lines and because they are a serious problem. I personally believe this is an area in which a limited Federal solution is amply justified.

Now, I have had judges all over this country come to me and say, "You must do something about punitive damages"—from the highest courts of this land—because they try not to be activist judges and do not believe that they can resolve this problem, and it is going to take congressional enactment to do so.

In the last amendment, the Dole-Exon-Hatch amendment, we made a great effort—and it did pass—to try to

resolve some of these punitive damage problems. I think that amendment will help us to get those problems resolved. If we bifurcate the system saying that amendment only applies to the Federal courts and not to the State courts, we will continue this runaway system of punitive damages that is hurting everybody in America. And in the process, we will be hurting the Federal courts as well and the right of people to go to Federal court.

As a trial lawyer, I went to both State and Federal courts on a regular basis. I have to say that I enjoyed both of them, and I found competent people in both courts. But there were areas of the law where the Federal courts were better. There were areas of the law where the State courts were better. I tried, in the interest of my clients, to do the best I could by bringing the cases, when I could, in either of the courts and made the choice.

As a trial lawyer in those days—true, I am arguing for a time past, 19 years ago as a trial lawyer—our major claims were for economic and noneconomic damages, compensatory or noneconomic damages. We were able to get substantial verdicts by presenting our cases on those two theories. You very seldom alleged punitive damages unless there was egregious or intentional or willful conduct that justified punitive damages. But in this day and age, it is almost malpractice to not plead punitive damages, even in simple negligence cases in some of these States where the laws have gone awry and where the courts have in essence been captives of certain trial lawyers who literally are hurting the practice of law throughout this country by their voracious desire to make money at all costs, under the guise that they are helping consumers and those who are injured, when in fact the people who are primarily being helped are really those particular trial lawyers who have been doing this.

I can remember in one State, in a contest over a Supreme Court nomination, where there was a reformer running for the Supreme Court and the other person was a total captive of certain trial lawyers in that State. In one evening, 15 trial lawyers raised over $1½ million for their clone, for their captive, for the person who would rule for the plaintiffs no matter what the law said, or no matter what the law meant. Now, that is wrong. We are trying to resolve these problems with this particular bill.

My colleague from Tennessee is very sincere in this amendment. I have some feelings about it myself, because I personally do not want to see injured parties unable to receive adequate compensation for the injuries they suffered. On the other hand, I do not want to see everybody else in America irked because we will not curtail some of the abuses that really go on in trial practice every day.

I am also very concerned because I think some of these lawyers are really hurting my beloved profession. To some of them, these problems do not mean anything. It is just a voracious desire to make money at the expense of really virtually everybody. I think it is time to get some system that works, that is fair, that still protects the injured parties, but does not run away, like our current system has been doing in a great number of States.

Now, there are few States where it is just outrageous, and in a great number of States we are finding outrageous punitive damage awards from time to time. In some States, it is almost all of the time. As I said, it has become a rule rather than an exception to plead for punitive damages, even in cases where formerly there would be no real claim at all. I think it is time to do something about this. I hope our colleagues will vote against this amendment, as sincere as it is, and as well argued as the distinguished Senator from Tennessee has done it.

I respect him, I respect what he is trying to do, I respect our profession, and I respect trial lawyers. Most trial lawyers are very decent, honorable people who want to do the job for their clients. They want to do what is right. But there are a few who are distorting the profession and I think making a mockery out of trial law and out of the damages system of this country. That is what we are trying to resolve and trying to solve with this legislation. There is no simple way of doing it. This is the best way I know how.

To that degree, I want to praise the two leaders on the floor, Senators ROCKEFELLER and GORTON, for the excellent efforts they have made in order to try to keep this bill together, get it passed, and to get legislation that might help solve some of these vicious tort problems in our society today.

I yield the floor.

Mr. ROCKEFELLER. Mr. President, I thank the Senator from the State of Utah for his very nice closing sentence and also his general argument.

Mr. President, I have been—in case nobody has noticed—trying to enact what I call moderate product liability for many years—8 or 9—because I am convinced that consumers and businesses alike are ill served by the current disjointed State-by-State legal system.

Under this patchwork system of State laws that we have—glorified by those who propose this—victims are forced to wait far too long for compensation after their injury, and far too often it is the lawyers who benefit more from the awards, the settlements received, than the victims, which is not what I thought America was about.

This is simply unjust. I am absolutely convinced that the flow of goods in interstate commerce is severely hampered by the patchwork of product liability laws across this Nation. Businesses of every size and type simply have no way of knowing, under the current system, what rules they need to follow. How could they? They have 50 States to deal with. Businesses are hard pressed these days, small businesses in particular. This is especially onerous on those same small and start-up enterprises which, in my State of West Virginia and most of the rest of the Nation, are in fact the backbone of the economy. I daresay that the Presiding Officer would say that that is true for his State of Montana.

The amendment by the Senator from Tennessee, the very distinguished Senator THOMPSON, seeks to limit the bill's application to only those cases brought in Federal court. Make no mistake about it, this amendment would effectively kill product liability reform. It is a bill killer.

The reasons we must reject this amendment are the very same reasons we need product liability reform in the first place. I have stated that many times during the debate. The overwhelming majority—and this was said more ably by my colleague from the State of Washington, Senator GORTON—about 95 percent of product liability cases, are brought in State courts now. He suggests that number might go down closer to 1 percent. They would be totally untouched if this amendment were approved.

Additionally, it is very likely that even fewer cases would be brought in Federal courts because plaintiffs would keep their options open for forum shopping, as we call it, for better rules in some other State courts.

Consumers lose under the current system and that would not change if the Thompson amendment were adopted. Why do they lose? Consumers lose because they receive inadequate compensation under current State law. Consumers lose because they have to wait far too long to receive compensation.

Far too often, injured consumers are forced into poverty while waiting for their cases to be resolved. They have to depend on their own insurance or their own individual resources, if they have any.

Consumers lose because they are forced to pay outrageous legal fees under a State-by-State system. Consumers also lose because the patchwork of State statutes of limitation are so severe under the current law and result in barring legitimate claims. That is the subject I will discuss in a moment.

The underlying bill would correct these problems by replacing the State-by-State patchwork with a far more uniform system. The Thompson amendment would completely unravel that new uniform system.

In earlier debate, I have also set forth why manufacturers lose under

the current State-by-State system. But I think this bears repeating. Manufacturers lose simply because they face unpredictable and escalating costs of litigation. These stifle research, these stifle development, they prevent investment, they cause products to be withdrawn, they cause products not to be improved, and they cost—guess what—jobs.

We have been working hard, very hard. The Senator from Washington and Senators on his side of the aisle and Senators on my side of the aisle have been working very, very hard to find the right balance.

Senator GORTON is not an extremist. The Senator from West Virginia is not an extremist. We are trying to find the right balance between consumers, plaintiffs, and businesses, with a special attention to small businesses, which is the majority of our businesses. We have been working very, very hard to find that right balance, to assure that the rights of the injured are fully protected while we meet the needs of business to manufacture and to invest.

We need both in this country. A person cannot just say, well, it is only consumers that count and business does not count, because if we did not have business, nobody would work. They would have no income. It is also equally silly to say it is only business that counts, because then that might take America back to a day when business practiced differently than they do today.

We have developed, I think, in America, a system whereby we try to protect consumers, and we do in the bill that the Senator from Washington and I suggest. The Gorton-Rockefeller substitute strikes that important balance for consumers and business. The Thompson amendment, I say again, would destroy that balanced solution.

The amendment of the Senator from Tennessee has a familiar and, I think, a very curious ring to it: Familiar because so far, the only suggestion concerning the problems of the product liability maze that I have heard from the opponents to this bill is the idea embodied in this amendment; curious because where is the logic in limiting the surgery proposed in our product liability bill to the equivalent of only one finger, when the problem plagues both hands?

We should face it. This amendment is based on a refusal to acknowledge the ridiculous cost, delays, and burdens of a very big problem called the patchwork of 55 sets of product liability rules and laws across the States and the territories.

I might add at this point that in earlier years, in hearings in the Commerce Committee, those opposing product liability reform always said that there will be this massive confusion if we have some kind of uniformity at the Federal level in certain areas, everything else being reserved to the States, which we do in this bill.

They always say, well, imagine a higher court trying to interpret 50 sets of laws. It is a specious argument. It needs to be said that it is a specious argument.

Right now, we are plagued by the 50 sets of laws, all different, to all States. So people forum shop, and I guess it is fairly well-known that if a person wants to go for punitive damages, there are three States to go to, and that is where most of the amount of the punitive damages come from. If they can find a way to drag somebody in—and Alabama is one of those States, curiously, ironically, interestingly—then people go there and they get very good results. There are two other States, in particular, also.

The point is that the Federal courts will not take very long—and a Federal judge pointed this out a couple of years ago—to figure out when we get uniformity and they have to take these 50 State laws, that there will now only be 1 law in a certain area and 50 laws in other areas.

It will not be confusing very long. It is permanently confusing now because everybody is running all over the place. Judges are smart folks. They do not get there because they cannot pass an SAT test; they get there because they are smart and they have to figure things out quickly. They will be able to do it.

This will actually make the whole process of interpreting State laws easier, more efficient, and better. Let that be said, because it has not been said in this debate. The argument that uniformity somehow confuses this by throwing open all of these State laws is specious. I pick that word for no particular reason.

I suggest to the Senators opposing the bill before the Senate and supporting this amendment, they should both vote against the amendment of the Senator from Tennessee.

Face it: This amendment guts the purpose of this product liability reform bill. We are trying to respond to problems that States on their own simply cannot fix themselves. What can the State legislature of West Virginia, for example, do about the fact that most of my State manufacturers sell their products in other States, where the rules dealing with punitive damages, with joint and several liability, with the statute of limitations, et cetera, come in every conceivable form? It is chaos.

I hear the Senator from Tennessee talk about innovation in the States, and I want to get on to the subject of innovation, since we do not have a time agreement on this. And I think the Senator from Washington and I would be glad to agree to a time agreement if any person shows any interest.

Let me discuss a little bit about product liability. I think the reason why the bill needs to pass and why I think the bill will pass, is that consumers lose, Mr. President, under the current system. Consumers receive inadequate compensation. That is, people who are injured, through product litigation, severely injured people—consumers—only recover about one-third of their actual damages.

Just think about that, severely injured, chewed up in a machine, or something of that sort, and they end up averaging only about a third of what they should actually get. While those who are mildly injured, who are also important, recover approximately five times their economic losses. That is totally unjust. And anyone on this floor who would defend that should choose not to.

Consumers have to wait a long time to get any kind of justice under the current system. Injured consumers in need of assistance must suffer through approximately 3 years of litigation before they receive a nickel of compensation. That is not the American way. And where we can improve it we ought to do so.

Consumers pay outrageous costs. To put it another way, the current tort system which rules the Nation at this point, and which the Senator from Washington and I are trying reasonably and in a balanced fashion to change, pays more to lawyers than it does to claimants. It pays more to lawyers than it does to claimants? Yes. That is wrong. This is America—that is wrong.

If there are those on this floor who choose to defend that and say that is good for injured people, that is good law, that is exactly the way we should leave the law, that we should leave that entirely unfettered so that lawyers make more off of this than do the people who are injured whom they purport to be defending, then let them defend that. Let them defend that. I am interested in their argument. They always talk about something else. They bring up Victor Schwartz, or they bring up some little thing here or there, but they never defend these things because they cannot, because they are dead wrong and they know it.

Another reason we need to change the product liability system in this country is because consumers face closed courthouse doors. What do I mean by that? A lot of people who are injured in this country by a product cannot file a claim because of something called the statute of limitations. I am not a lawyer, but I at least know what that means. And if, for example, I am injured in Virginia, my time for filing a claim runs out after 2 years from the time that I am injured.

I have had several debates with the Senator from California, Senator BOXER, about DES. She has said anybody involved with DES hates this bill.

She has used that word many times—hates this bill. Hates the bill. Hates the product liability reform bill the Senator from Washington and I are trying to get passed.

What I cannot seem to make clear enough is that under our bill, anybody who faced the kind of problems that somebody who faces DES faces, or somebody who faces asbestos, or somebody who faces some other kind of toxic harm or chemical harm—the Persian Gulf war syndrome, agent orange, all of this—wherein they do not discover they are injured for maybe 4 years, 5 years, 6 years, 7 years, 12 years, in our bill we say the statute of limitations, that is the time you can make application to file suit against the manufacturer, that person who injured you or that company that injured you—the two year limitation—should not start until you know that you are injured and you know what caused your injury. Which means all the DES people would have been fine under our bill, while they are completely cut off under the current law if the State has a statute of limitations which runs out, as most of them do, before DES would have been discovered.

I posit that, as lawyers say. I posit that. It is fact. People can say it is not true, I do not like the bill. There is a mindset around here on this whole subject which is very surprising and disturbing to me. I think this is not true—reasonable people, I am just looking at the Senator from Tennessee whom I consider a very reasonable person. I think he is thoughtful, he weighs things. But a lot of people in the fighting of this battle over the years have become so hardline that any kind of a change, any suggestion of a new fact, any suggestion that maybe the law could be improved, brings 100 percent disapproval and anger.

It is like somebody just puts out an idea and somebody is afraid the idea might be good so they immediately squash the idea. They just pound it down into the ground with their fists and crush the idea for fear it might be good or develop into something which is good and useful for the American people and for business.

It is a tendency which I regret in this body, which I do not consider worthy of the U.S. Senate. It is encouraged, I think, by a sort of hard-line mentality, and a lack of civility even, in discussing all of this.

Again, we want to open the courthouse doors through the statute of limitations. The opponents want the courthouse doors closed. Let them explain otherwise. Let them explain otherwise.

States with statutes of limitation that begin to run out at the time of injury, there are four of them: Arkansas, Virginia, Hawaii, Wyoming.

States with statutes of limitation which begin to run when the injury is discovered or should have been discovered, there are 16 of them. So that does not mean when the cause was discovered, that just means when the injury was discovered. That is not enough. It has to be when it was discovered and when the cause was discovered. We know from the Persian Gulf war veterans—and I do not know whether this applies to them or not—but we know they know when they are sick. But we also know that the U.S. Government and Department of Defense says that they are not sick. I go visit them and their hands are trembling, they cannot sleep, they cannot keep their marriages together, they are tired all day, they cannot keep their jobs, and they cannot focus their eyes on a newspaper for more than 5 minutes. But the Department of Defense says there is nothing wrong.

I beg to differ because I visit these people when I go back to my State of West Virginia, because I care about this and this is a cause of mine, to unmask Persian Gulf war syndrome. They know they are sick, but they cannot say why. What caused it? Was it Pyridostigmine? Was it some other kind of vaccine?

So you have 16 States—20 States—automatically where people are shut out. If those who oppose this legislation want to say, "We are for that, let them continue to be shut out," then let them get up and say so. Or if they say I am wrong, the Senator from West Virginia is wrong, then let them get up and say that. Let them get up and say we do not open the courthouse doors and that they do not close them—as they do, the courthouse doors—and keep them closed.

It is cruel. It does not make sense. It is based upon old-time life when it was all machines. Now a lot of the stuff is chemicals, toxins, and all kinds of things. That is where a lot of accidents happen. The industrial age has evolved. Just as you can sue somebody under current law for a piece of machinery that was built in the 19th century and that has passed through 15 different owners, all of whom have altered it. That was made for that time, that generation, that industrial revolution period. That idea is not made for the current times at all.

So we are trying to open the courthouse doors to consumers. Manufacturers lose under this current system. We are talking about people and manufacturers, yes, a balanced bill. Liability stifles research and development. This country is great because of our research and development, our spirit, our entrepreneurial spirit, which is embodied in research and development. Japan does not do basic research. The United States does. Then they come and buy it from us, or we sell it to them, however you want to characterize it. And on that the Senator from South Carolina would agree. We sell them our technology. But we do the basic research. That is the heart of America's greatness, the basic research we have done and the uses to which we put it.

But because of the current law, the fact is that many businesses spend far more money on litigation than they do on research and development. That is bad for business. That is bad for America. The fact remains that many companies these days—I think it is something like 47 percent of companies—have withdrawn products because of litigation fears. And a lot of companies now, if this is possible to believe, are afraid to improve their current products because by the act of improving their current products, it would imply that the previous iteration of that product was somehow defective and, therefore, they could be sued and, therefore, they do not improve the product so they cannot be sued. How ridiculous. How unlike America. If those who oppose this bill want to defend that, then let them go ahead and do that.

Phyllis Greenberger, who is the executive director of the Society for Advancement of Women's Health Research, in testimony before the Senate Commerce Committee on March of this year said:

> Liability concerns are stifling research and development of products for women.

She said:

> Contraceptive development in the U.S. provides an excellent example of how the threat of litigation can devastate an entire industry. Thirty years ago there were 13 companies in this country putting their resources towards research and development of new contraceptives. Today, there are only two.

And then what does she say?

> This is not because there is no market demand. Liability concerns are keeping products which have already been developed off the market despite a known therapeutic need.

I will use an example which I have used before. It is a very good one. It is Benedictine.

> Benedictine is the only prescription medicine ever approved in the United States for the treatment of nausea and vomiting during pregnancy. None other has ever been approved. It was approved by the Food and Drug Administration. The drug was used by 30,000 women until assertions arose that it caused birth defects. While scientific evidence failed to demonstrate any link and the FDA continued to back the product.

Remember this is still Phyllis Greenberger talking:

> While . . . the FDA continued to back the product, the manufacturer voluntarily removed Benedictine from the market due to the overwhelming cost of defending the product. Currently, therefore, there is no approved product available to treat pregnant women who experience severe and prolonged nausea, which can be harmful to the mother and to the fetus.

If that is what the opponents of this legislation want, let them defend it. They are using Benedictine all over the

world—all over the world but not in the good old U.S.A. because of the fear of product liability litigation under our present system, which some of us are trying to change.

I think the United States loses under the current system. Insurance rates disable U.S. manufacturers. American manufacturers pay 10 to 50 times more for product liability insurance than their foreign competitors.

You have the European Economic Community, which has adopted uniform product liability laws. I believe, although I am not 100 percent sure, that 60 affiliated countries have done the same.

So we will continue to pay as a country 10 to 50 times more in insurance because we have all of these State laws, which all compete with each other, and other countries will have a uniform law, and they all will be our main competitors for exports and imports in this world. And who loses? The American people, the American workers, American business. America loses.

In a single year, Mr. President, the liability system cost the State of Texas 79,000 jobs. If that is the case, then let those who want to see that current system continue to get up and defend it. When people run for office, they talk about the need for jobs. Texas is losing jobs because of this. They have a lot of research and development in Texas, which is a very progressive, industrial State. So they are very much hurt by this.

Interestingly, when I say the United States loses under the current system, part of this is that the current system does not enhance product safety. I will have something to say about that. I would beg those listening to listen to this one sentence.

Though the number of torts—that is, suits—in product liability rose dramatically in the 1980's, consumer interest steadily declined during the 1980's as it did during the 1970's. So to link this with product safety is open to some substantial question.

Let me just make some more points. I go back to this problem of injured people having to wait so long to receive compensation. Mr. President, after I ran for Governor of West Virginia, an event little noticed and not long remembered, I gave my inaugural speech on the steps of the capitol. It was on a day in which the temperature was 37 degrees below zero. So in order for me to say it, I had to really mean it because people were just freezing all over the place. I made four promises to the people of West Virginia. I talked about education. I talked about roads. I said I wanted to remove the sales tax from food, at that time 3 percent, which I eventually moved to zero. And I wanted to make the workers compensation system, which at that time we called the workmen's compensation system, more efficient because I was offended that in the State of West Virginia when a worker was injured it took the State 77 days on average to get a check to an injured worker. I said, how can we be a humane State and do that? And I pledged in my inaugural address, which is sort of like your constitution, that I would get it done in 4 days.

Well, I did. I got it down to 4 days. If I am offended by the 77 days it took under the old West Virginia workers compensation system, what am I meant to feel about a 3-year period of time on average for an injured worker under U.S. laws, and State law in particular, to receive compensation for the first time. Three years later.

An Insurance Service Office study found that it took 5 years to pay claims with the average dollar loss and that "larger claims"—that is, the more seriously injured victims—"tend to take much longer to close than the smaller ones."

Now, this is interesting. "Several injured victims cannot afford to wait years to receive compensation." So what do they do, Mr. President? They know they are going to have to wait a long time while the lawyers rake in the money and they wait. They know they are going to have to wait a long time. They know they do not have the resources. So what do they have to do? The delays force them to settle, to not use the system as it is meant to be used but to settle for inadequate amounts of money. That is shameful. That is shameful. If those who oppose this bill want to stand up and defend that, I will be here to hear their argument. That is shameful. They have to settle because they know they cannot go through the business of paying the lawyers the money.

Let us talk about the business of bringing the lawsuit, and costs being so high. The GAO—who I think people respect pretty much throughout this Hill—estimated that 50 to 70 cents of every jury-awarded dollar goes to lawyers and legal costs. Fifty to 70 cents of every jury-awarded dollar goes to lawyers and legal costs. That is wonderful news for the injured person. It leaves him or her maybe 30 cents, maybe 50 cents. They are hurt. They are the ones hurting. The lawyers are just running these things through.

I am not picking on trial lawyers in particular. I have always made a point of saying lawyers on both sides—the trial lawyers and defense lawyers. They are both part of the act. Defense lawyers are very, very good at stringing it out, putting in more paper, asking for more information. They are very, very good at it. But the point is the people do not get the money. The injured person does not get the money. The lawyers and the legal process get the money.

A further illustration came in 1994 in a survey by the Association of Manufacturing Technology. This is hard to follow, so I would ask people just listen. It found that every 100 claims filed against its members result in outlays of $4.45 million in defense costs and $8 million in subrogation paid to employers or their workers compensation insurers. Claimants, therefore, received only $8.35 million of these 100 claims in the Association of Manufacturing Technology survey, and since plaintiffs' attorneys usually received one-third of the awards, injured people get to keep about $2.2 million while transaction and legal costs totaled $8.6 million.

Something that bothers me greatly about the current system is that the current system discourages the development of innovative products.

This is where I got off when I was talking about the amendment of the Senator from Tennessee. I used the word "innovation" in the States. The chairman and CEO of Biogen, Jim Vincent, stated to the Senate Commerce Committee in September 1993 that he has decided not to pursue research into the development of an AIDS vaccine because of the current U.S. product liability system.

The Immune Response Corp. of California is attempting to develop an AIDS vaccine, but in 1992 it had to delay important clinical trials because of liability concerns, and I believe they are not doing it anymore.

An Office of Technology Assessment study found that liability fears are a barrier to research testing and marketing of AIDS vaccines and called for Federal action.

Health Industry Manufacturers Association Vice President Ted Mannon told a House Energy and Commerce subcommittee that joint liability law is having an adverse effect on the ability of medical device manufacturers to obtain biomaterials—the raw materials that make products such as hip replacements and pacemakers.

I will just do one or two more of these.

In 1994, April 25, the New York Times reported:

> Big chemical companies and other manufacturers of materials used to make heart valves, artificial blood vessels, and other implants have been quietly warning medical equipment companies that they intend to cut off deliveries because of fear of lawsuits.

Now, if we simply want to stop that stuff and the people who have pacemakers and all the things that we can do in modern medicine do not matter anymore, then let those who oppose this bill defend that; that the very essence of modern research and the very essence of modern medical innovation is being cut off or cut down or cut back or cut out by the product liability system that we currently have in this country.

One more. The fear of exposure to product liability lawsuits again has diminished investment in basic scientific

research. The reason I mention the word "basic" is because it has always distinguished us from other countries. We are the ones who do the basic research. The other countries do the applied research, particularly Japan, and Asian countries. We do the really hard stuff, which costs a lot of money. You do the basic research and you come up with materials or products or possibilities. Then during the applied research and getting it to commercialization—here the Senator from South Carolina and I would agree completely—that has been our American problem, the commercialization of products. But not basic research. That has been our strength.

Well, Mark Skolnick, who is a professor of biophysics at the University of Texas, has noted that areas where litigation has occurred will not receive support for exploration and development. Producers fearful of possible suits simply make that impossible.

The Conference Board, as I indicated earlier, said that 47 percent of U.S. companies have withdrawn products from the marketplace because of product liability concerns.

Gallup, in a 1994 survey, said that one in five small business executives report that they have decided not to introduce a new product or not to improve an existing one out of concern for product liability litigation.

What are we doing to ourselves, Mr. President? Why is it that such a small group can prevent our country from progressing while, at the same time, we protect our people?

I want to say a word about punitive damages.

I want to discuss the punitive damages concept, what it actually is, so that it becomes clearer.

Again, I am not a lawyer, so I have to look at these things from the point of view of somebody who is not a lawyer. I do not think the Presiding Officer is a lawyer, although he has all the attributes sometimes of that kind of sharp insight. But, as far as I know, I do not think he is a lawyer. There are a few of us in this body who are not.

The U.S. Supreme Court—which I do not consider to be a trivial body—has said that punitive damages have run wild in the United States.

JAY ROCKEFELLER, representing the people of West Virginia, did not say that. The U.S. Supreme Court said that.

There are virtually no standards for when punitive damages may be awarded under the current law and no clear guidelines as to their amount. Good behavior is swept in with bad. The result is uncertainty and instability and a chilling effect on innovation.

Now, I go back to Science magazine, 1992. A Science magazine article reported that at least two companies have delayed AIDS vaccine research and another company abandoned one promising approach as a result of liability concerns.

European parents can place children in built-in baby seats in cars. American parents cannot as easily, because the companies who make baby seats do not want to improve them on the fear that they will get sued because a previous iteration might therefore have been inferred to have been deficient. That's crazy.

So clear, rational rules are needed to promote innovation and responsible manufacturing practices while, at the same time, providing assurances that wrongdoers will be justly punished and deterred from future misconduct.

Please let us not have this as an argument between those who care about business and those who care about consumers. In fact, and I believe my colleague from the State of Washington would agree, those of us who are trying to reform the system care a whole lot more and are willing to do a whole lot more to help plaintiffs who are injured than are those who oppose this. Although they claim that they wear the halo for consumers, they do not. We are trying to help them. They are trying to keep the system as it is. They say that status quo is perfect; just leave it exactly as it is.

I have not done it every year, but I have routinely called in the American Trial Lawyers Association to my office to say: "Is there some way that we can work with you to try to work out some compromise on this subject?" The answer has always been no. Clear, but not encouraging. No. Into which I read, therefore, they want the system to be exactly as it is. Little changes? Big changes? Halfway changes? No. No changes. No changes.

I remember once one of the leaders of one of the consumer groups several years ago brought a woman from West Virginia who had been injured to my office. I guess the idea was to shame me, and to show me what anguish I had caused this woman. She came in and I saw them.

And at the end of the meeting, the woman was in fact sobbing, holding onto my hand, saying, "Your bill would have helped me, perhaps saved me."

Now, the leader of the consumer group was, obviously, at something of a loss. But I have to note that, for the RECORD, this is the case.

So a clear understanding of the nature of punitive damages is an essential prerequisite to meaningful reform. Punitive damages are punishment. They are quasi-criminal in nature and developed in England and the United States to serve as an auxiliary or helper to the criminal law. They have nothing to do with compensating a person who has been harmed and are not in any way intended to make the plaintiff whole. That purpose is served by compensatory damages, which provide recovery for both economic—which is lost wages—and medical expenses.

Let me make a point here, too. A lot of people say, "Oh, economic damages. Persons making $35,000 a year. They are 30 years old. Now they cannot work." Which, of course, is horrible, if it comes to that.

But they say, "Well, gee; I guess that is going to be $35,000 for economic wages." No, no, no. It is $35,000 for every year that that person would have deemed to have been able to work, plus all benefits, plus all retirement, and all the rest of it.

In fact, if you did that, let us say somebody was making $30,000 a year, and is 30 years old. They could work for another 35 years. I am not very good at math, but that would be many, hundreds of thousands of dollars; way above $250,000.

Mr. THOMPSON. Will the Senator yield for a point?

Mr. ROCKEFELLER. Yes.

Mr. THOMPSON. Was the Senator present when I made my statement concerning the family who visited me in my office concerning their 5-year-old daughter recently?

Mr. ROCKEFELLER. I apologize; I was not here.

Mr. THOMPSON. You mentioned the lady who was sobbing in your office. It reminded me of that visit I had last week. It was a family from Nashville who had lost their 5-year-old daughter. She had gone in for a routine tonsillectomy. One error followed another; many, many things went wrong. The clinic was hiring on the cheap. They had a drug addict there administering to this person.

Mr. ROCKEFELLER. Is the Senator discussing product or malpractice?

Mr. THOMPSON. Well, this is part of the underlying bill, as I understand it, the McConnell amendment.

Mr. ROCKEFELLER. I was trying to discuss product.

Mr. THOMPSON. Well, the Senator was talking about punitive damages, and that is the subject of my question.

And then the clinic sought to cover up. Finally, one of them called 911.

They did several things totally, totally that would constitute gross misconduct. They finally called 911, and then tried to cover up the records. They were caught. A lawyer represented them, charged 30 percent, incidentally, financed the litigation out of his own pocket for 2 years because the plaintiffs did not have the money to do that. Finally, they got to court. The defense, the insurance company, would not settle the case until they got to court. The mother broke down in court and they found out what they were up against in there and settled the case for $3 million.

Under this legislation, if this passed, I wonder what the Senator would tell that sobbing mother who was in my office last week in terms of whether or not we ought to tell the State of Tennessee they cannot allow a jury in Tennessee any longer to make that kind of award in a punitive damage case.

Mr. ROCKEFELLER. My answer to the distinguished Senator from Tennessee is that this particular Senator is trying to work to find a way in which there will not be caps as classically defined on punitive damages.

I say to the Senator from Tennessee that I voted, for example, with Senator DORGAN on his amendment to remove caps. And the Senator did that for a very specific purpose, because I think we can find a way, because I do not think we can pass the bill without finding that way, and I am convinced that we can find a way to do this so that I would have been as comfortable or as uncomfortable in that room with your constituent as I was with mine.

Now, I also want to say, when I talk about pain and suffering, the State of Washington has no punitive damages whatsoever. They have no punitive damages. Is it not interesting then that within the last 6 weeks that the State of Washington came down with a jury award for economic and pain and suffering of $40 million?

The only reason I mention that is to say, one, that economic is much more than people think of it as. It is the rest of your life's wages. It includes the raises that you might have gotten. It even presumes promotions you might have gotten, as well as the benefits, insurance, retirement and all the rest of it.

But pain and suffering is where a jury can get very subjective and where a jury does often get very subjective in a proper way and, in this case, a $40 million award. I do not think anybody who opposed this bill could have guessed there would have been a $40 million award out of a State that does not even have punitive damages. That happened 6 weeks ago in Washington.

So, Senator GORTON's and my bill understands and accepts the basic premise that punitive damages are punishment and provides the fundamentals that are part of any criminal punishment; a definition of the crime establishing a level of proof necessary for punishment and making the sentence fit the crime. So let us define the crime.

S. 565 defines the crime as conduct specifically intended to cause harm or conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by the product. The standard is fair and is similar to the standards of many States, in fact. It conveys that punitive damages are to be awarded only in the most serious cases of extremely outrageous conduct.

Level of proof: S. 565 explains how a claimant must prove the crime and requires that the proof be clear and convincing. This standard reflects, I think properly, a middle ground between the burden of proof standard ordinarily used in civil cases, which is proof by a reponderance of the evidence and criminal law standard which is proof beyond a reasonable doubt. So this is in between, clear and convincing.

The U.S. Supreme Court has endorsed clear and convincing evidence burden of proof standards in punitive damage cases. In addition, each of the principal groups to analyze the law of punitive damages since 1979 has recommended the standard, including the American Bar Association, which the Senator from South Carolina mentioned some time ago is bipartisan if anything ever was bipartisan, and the American College of Trial Lawyers.

Recently, the standard was recommended in a 5-year study of scholars by the American Law Institute and, incidentally, the standard is now law in 24 States.

Making the sentence fit the crime: Most importantly, we try to put reasonable parameters on sentencing to make it fit the crime; an established principle of law. Even very serious crimes, such as larceny, robbery and arson have sentences defined with a maximum sentence in statute.

As a result of adopting the amendment by the Senator from Maine and drawing on the interest expressed by colleagues on this side, we modified the bill to allow punitive awards to go as high as two times compensatory damages.

Opponents to this bill have argued that unlimited punitive damages are necessary to police corporate wrongdoing. Absolutely unlimited. This is not necessarily supported by facts. There is no credible evidence that products are any less safe in either those States that have set reasonable limits on punitive damages or in six States—Louisiana, Nebraska, Washington, New Hampshire, Massachusetts, and Michigan—that do not permit punitive damages at all. In fact, Brookings makes no link whatsoever between what is happening in punitive damages and product safety. That is an argument which is used by the opponents often.

Furthermore, plaintiffs in those States have no more difficulty obtaining legal representation than in those States where the sky is the limit.

I am coming to a close.

Bifurcation: This is a general remedy proposed to ease adverse impacts of punitive damages awards that permits a trial to be divided into segments, and this makes sense. The first part of the trial is addressing compensatory damages, the second dealing with punitive damages.

One has to do with helping the person. The second with punishing the manufacturer. Judicial economy is achieved by having the same jury determine liability and amounts of both compensatory damages and punitive damages.

This remedy we give the shorthand name of "bifurcation." Bifurcation trials are equitable because they prevent evidence that is highly prejudicial and relevant only to the issue of punitive damages—that is, the wealth of the defendant—from being heard by jurors and properly considered when they are determining basic liability. Bifurcation also helps jurors compartmentalize the trial, allowing them to easily separate the lower burden of proof required for compensatory damages and the higher burden of proof, clear and convincing evidence, for punitive damages.

So, Mr. President, I will soon yield the floor. First, I simply conclude by saying that product liability reform—the bill before the Senate—is not a child, a stepchild, not even a foster child of the Contract With America. It is the result of people of both sides of the aisle here in the Senate agreeing that the legal system, where it deals with interstate commerce, needs to be fixed, and it is precisely Congress' role, and only Congress' role, to step in where the States cannot do the job on their own, which is why we need to pass the bill.

I thank the Chair and yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I want to make a few remarks on the Thompson amendment. Before that, I want to see whether or not we can accommodate a number of Members. Rather than seeking a unanimous-consent agreement on a vote for a time certain, I hope that we will be able to debate the Thompson amendment fully. At the same time, there is another amendment that will be proposed by the Senators from Michigan and Kentucky. I hope that we will be able to set aside the present amendment and allow them to speak.

I know the Senator from Kentucky is the chairman of the Ethics Committee and must meet with that committee between 4 p.m. and 6 p.m. I would like to know whether or not the proponents of the Thompson amendment will permit that amendment to be introduced, for them to speak, and then speak back and forth on both of them—however they want to utilize their rights to continue debate on in this amendment.

Mr. HOLLINGS. Without objection, I will go along with the distinguished author of the amendment, Senator THOMPSON. I will need a little bit of time. You were asking for a time agreement?

Mr. GORTON. I will not make a motion to table until the Senator from South Carolina has all the time he wishes to speak.

Mr. THOMPSON. Does the Senator from Kentucky need to proceed before 4 o'clock? Otherwise, I believe we can finish in short order. We need a very few minutes. I think that will probably wind us up.

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Mr. McCONNELL. I say to my friend from Tennessee that it is my hope and the hope of the Senator from Michigan as well, with your permission, to call up an amendment we are going to offer for discussion purposes. It could be stacked or laid aside. It will give both of us a chance to discuss this—in my particular case, the need to discuss it some time between now and 4 o'clock, because I will not be available for 2 hours after that. I do not know when these are going to be voted on in any event.

Mr. THOMPSON. How much time does the Senator from South Carolina need?

Mr. HOLLINGS. Ten minutes.

Mr. THOMPSON. I think I will need approximately the same. Would it be all right if we went 20 minutes or so and then brought up the amendment of the Senator from Kentucky?

Mr. McCONNELL. I say to the Senator from Tennessee it is fine with me, provided it is all right with the Senator from Michigan.

Mr. ABRAHAM. That would be fine.

Mr. GORTON. Then I will be relatively short.

Mr. HOLLINGS. I defer to the Senator from Tennessee. He is the author. If the Chair recognizes me, I can proceed——

Mr. GORTON. I think the Senator from Washington has the floor.

The PRESIDING OFFICER. Yes, the Senator from Washington has the floor at this time.

Mr. GORTON. Mr. President, I wanted to speak briefly on the Thompson amendment and will do so only relatively briefly to give him some more ammunition for his wonderful presentation on this subject.

I must start my remarks by confessing that he really had me dead to rights on one of the comments that he made about the impact of his own amendment. I will have to confess error and then say that I believe that error strengthens my case rather than weakens it.

I had said earlier during the course of this debate that the result of the passage of this amendment, giving litigants in every State two choices of different laws to enforce would simply mean, because of the restrictions included in the bill here, that all plaintiffs' lawyers would seek to bring their actions in the State courts in order to avoid the restrictions on punitive damages and on joint liability. And the Senator from Tennessee quite properly pointed out that there are a number of instances in which this bill, the Rockefeller-Gorton bill, treats plaintiffs' claimants more liberally than do the laws of various States. He took the statute of repose, which is 20 years in this bill, 10 to 12 years in most States that have a statute of repose—obviously, if the cause of action was based on a piece of machinery or a product that was 15 years old, the choice would be to go into Federal court and get the advantage of that more liberal provision. He even spoke about my own State, which does not allow punitive damages and, therefore, would impel the plaintiff to go into Federal court if the plaintiff wished punitive damages rather than into the State court.

He is correct. There are certainly some cases in which the claimant would have a better climate in which to bring such an action in Federal Court than in State court. But, Mr. President, one of the great vices of the present system, one of the vices that this bill—to focus on product liability for the moment—is designed to deal with is the myriad of 50 different sets of laws and procedures in the courts of 50 States. The justification, as the Senator from Tennessee pointed out himself, for any legislation in the field of product liability is the interstate commerce clause and the desire to smooth commerce among the several States, to have a degree of predictability.

This bill does not attempt to do what bills a decade ago in this field did, and that is to define negligence and strict liability and deal with a number of other matters of substantive law. It calls for limitations only in the field of a statute of repose and joint liability and punitive damages and allows more restrictive regimes in the various States to remain enforced. But, certainly, as compared with the present status of the law, there will be a greater degree of predictability and a greater degree of uniformity.

As the Senator from Tennessee so eloquently pointed out, if his amendment passes and should become law, instead of having 50 different systems in 50 different States, we would have 100 systems in 50 different States. We would double the complexity of the present system, because he is right—while I am right that in most States most plaintiffs would seek out the State court and attempt to avoid this law, under some circumstances in some States they would seek the Federal court in order to avoid the greater restrictions of State law. Not only would we not increase predictability and uniformity, we would double the degree of complexity. And there would be far more gaming of the system.

I think that every small business in the United States should greatly fear the Thompson amendment, because now at least if the defendant is large and obviously capable of paying a large judgment, many plaintiffs will only sue the manufacturer of a particular product. That manufacturer will be from a different State than the plaintiff, a case which under most circumstances could be brought in Federal court. But if the plaintiff of the future does not want to be in Federal court, we can bet their sweet life if this is a piece of equipment, a stepladder, the subject of lawsuits, the Ace Hardware Store in the hometown of the plaintiff will end up being a defendant.

There will be a lot more small business defendants in product liability litigation in the future if this amendment passes than there are now, because that will be the way to avoid diversity of citizenship and bring the action in State court when the State law is more favorable.

There will be more defendants, Mr. President. There will be twice as many applicable laws—two in every State in the United States rather than one. And there will be less uniformity and less predictability.

Now, Mr. President, it seems difficult for me to imagine any person thinking seriously about the practice of law and uniformity who really wants to overturn the doctrine in Erie Railroad versus Tompkins, in 1938, in which the Supreme Court said: "We are going to end this forum shopping. We will say it does not matter whether a person brings the diverse action in State or Federal court; the same law is going to apply."

This amendment would reverse that doctrine, would double the number of applicable laws in the United States, and increase infinitely the degree of forum shopping on the part of claimants' lawyers.

Mr. HOLLINGS. Mr. President, I want to touch on just two or three things quickly, and I want to yield, of course, to the principal author of the amendment, the Senator from Tennessee, with respect to punitive damages.

The statement was made by Senator ROCKEFELLER that the Supreme Court said that the punitive damages would just run amok. The fact is, the Supreme Court of the United States of America has not turned down or reversed punitive damages.

The most recent case happens to be a West Virginia case of this particular court, dated June 25, 1993, TXO Production Corp. versus Alliance Resources. Actual damages were $19,000, Mr. President. Do you know what the punitive damages were? Punitive damages, $10 million.

Do you think that disturbs the Senator from West Virginia, who says he is here for consumers? He is for corporations. They can get all the punitive damages they want. They are not subject to this bill. Oh, no; as a matter of fact, they are not subject to this bill. The leading case in his own State, $19,000 in actual damages, $10 million in punitive damages, upheld by the U.S. Supreme Court.

Second, with respect to keeping all the products off the shelf, and particularly as the Senator refers to AIDS and AIDS drugs, and how they are all going out of business.

Mr. President, I ask unanimous consent we have printed in the RECORD a

statement by Gerald J. Mossinghoff, president of the Pharmaceutical Manufacturers Association, made last year before the Committee on Energy and Commerce.

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

STATEMENT OF GERALD J. MOSSINGHOFF

Mr. Chairman and Members of the Subcommittee: I am Gerald J. Mossinghoff, President of the Pharmaceutical Manufacturers Association. PMA represents more than 100 research-based pharmaceutical companies—including more than 40 of the country's leading biotechnology companies—that discover, develop and produce most of the prescription drugs used in the United States and a substantial portion of the medicines used abroad. I appreciate the opportunity to appear today at this important hearing on the role of the pharmaceutical industry in healthcare reform.

Our companies support President Clinton's goal of assuring healthcare security for all Americans without sacrificing quality of care. To accomplish this goal, comprehensive healthcare reform is needed. Total healthcare costs are rising too fast. And too many people lack coverage for necessary medical care, including prescription drugs. These problems must be addressed.

The Administration is to be commended for proposing a comprehensive healthcare-reform plan that addresses all elements of an extremely complex healthcare system. We support strengthening consumer choice among competing private plans, rather than mandating a single-Government payer. We support providing comprehensive benefits, including prescription drugs, for all Americans. We support continuous coverage regardless of illness. We support greater emphasis on prevention and medical outcomes. And we support strong safeguards to ensure quality care. We also are pleased that the Administration has indicated that it will remain flexible and open to constructive suggestions on ways to improve its proposal. We believe that there must be greater reliance on the free competitive market in a reformed healthcare system.

WORLD LEADER

For many years, the pharmaceutical industry's success in developing new and better medicines has made it one of the country's most innovative and internationally competitive industries. The industry has a good chance to remain innovative and competitive—if the incentives for pharmaceutical innovation are preserved.

In its 1991 study of the industry, the ITC reported that U.S. firms accounted for nearly two-thirds of the new drugs introduced in the world market during 1940–1988. In his recent study, Heinz Redwood stated, "The American industry has a clear and outstanding lead in discovering and developing major, medically innovative, globally competitive, and therapeutically accepted new drugs . . . Perhaps the most important finding is that the American lead includes all but one of the therapeutic classes." The General Accounting Office, in a September 1992 study, concluded that the pharmaceutical industry maintained its competitive position and strong international leadership during the 1980s, while most other high-technology industries experienced some decline in their position. A report in the March 9, 1992 edition of Fortune magazine placed the pharmaceutical industry at the very top of the list of the country's most internationally competitive industries.

In conclusion, we believe the three principles outlined earlier in this statement—coverage, competition and cures—are fully consistent with the six goals specified by President Clinton for his healthcare-reform plan. Our industry firmly believes we can contribute significantly in helping to meet these worthy goals. We look forward to working with this Subcommittee in your efforts to achieve healthcare reform in a way that will accommodate our major concerns.

Mr. Chairman, that concludes my prepared Statement. I will be pleased to answer any questions that you or other Members of the Subcommittee may have.

Mr. HOLLINGS. Mr. President, I will read two sentences. "For many years"—says the leader of the pharmaceutical industry—

For many years, the pharmaceutical industry's success in developing new and better medicines has made it one of the country's most innovative and internationally competitive industries.

In a study of the industry, the ITC reported that U.S. firms accounted for nearly two-thirds of the new drugs introduced in the world market during the period 1940 to 1988.

Forty-eight years, almost fifty years.

There is Fortune Magazine, there is the head of the industry, speaking for itself. Now we will bring it up to date, to February and April of this year.

February 23, 1995. I hold in my hand an advertisement entitled "Drug Companies Target Major Diseases with Record R&D Investment." It is an advertisement by America's pharmaceutical research companies, and I read:

Pharmaceutical companies will spend nearly $15 billion on drug research and development in 1995.

Remember, the Senator from West Virginia said they are all going out of business on account of product liability, and they could not invest. The overwhelming evidence is the opposite of what the Senator from West Virginia contends.

New medicines in development for leading diseases include 86 for heart disease and stroke, 124 for cancer, 107 for AIDS and AIDS-related diseases, 19 for Alzheimer's disease, 46 for mental diseases, and 79 for infectious diseases.

The pharmaceutical industry categorically refutes the statements made by the distinguished Senator from West Virginia.

Now, going right to less than a month ago, April 5, 1995, another advertisement: "Who Leads the World in Discovering Major New Drugs," put out by the America's pharmaceutical research companies.

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by the U.S. pharmaceutical companies. Here at home, the broad drug industry has been making 9 out of every 10 new drug discoveries. So when a breakthrough medicine is created for AIDS, heart disease, Alzheimer's disease, stroke, cancer, or any other disease, chances are it will come from America's drug and research companies.

That totally refutes the Senator from West Virginia's statement. Now finally, the arithmetic, simple arithmetic, refutes this pose for the consumer, whereby the consumer is not getting the majority of the money; the lawyer is getting the majority of the money. Of course, the inference is that the injured party, the plaintiff's lawyers, get the money. Arithmetic says that 33⅓ percent, which has been agreed to generally in the debate on both sides of the aisle, and parties pro and con, on a particular measure, 33⅓ percent is less than 100 percent and less than 50 percent, so the other 66⅔ percent goes to the client.

Or take the amendment of the Senator from Kentucky on malpractice: A 25 percent limitation there; 25 percent leaves 75 percent for the client.

Now, what are the facts? Why does the Senator use that distorted representation about being so concerned that the consumer is not getting the money he deserves, like every case brought is a winner?

No. 1, according to the Rand study of product liability injuries, of 100 percent injured, we find that only 7 percent of the injured parties consult an attorney; only 4 percent hire an attorney; and only 2 percent file a lawsuit. According to the New York Times, one-half of those filing are losing.

Now, who pays for all of those expenses, except for the plaintiff's attorney? So it gives no regard and no account for our distinguished group of professionals who are willing to take it on a contingency basis, although they are losing half the time, to try to get middle America and poor injured parties their day in court.

I can tell you now, come to this town and get injured, do not go downtown on billable hours. I tried to point that out with my particular amendment. You could not afford to hire the lawyer and we all know that. But they are being derided here as somehow the lawyers are running off with all the money.

Where does the money go? According to the National Consumers Insurance Organization, according to this survey, in our hearings,

For every dollar paid to claimants, insurers paid an average of an additional 42 cents in defense costs while for every dollar awarded a plaintiff, plaintiff pays an average contingent fee of 33 cents out of that dollar. Thus, in cases in which the plaintiffs prevail, out of each $1.42 spent on litigation, half of that goes to attorney's fees, with the defendants' attorneys on average paid better than plaintiffs' attorneys.

They go take it down to where they are getting 56 percent.

Now here are the poor plaintiffs' lawyers. They are not even seen but in 2 percent of the product liability injury cases, and of the cases they file they are only recovering in half. So they are taking the expenses of the others. You

can bet your boots when they finally prevail and get their third, that is still 66⅔ percent going to the client and 33⅓ percent going to the lawyer. So the lawyers they are interested in trying to restrict and with their amendments have voted to limit, they are the ones already in a sense losing.

The Senators stand here and say it is shameful? It is shameful to misrepresent the idea that this crowd sponsoring this bill is for the consumer. They know they are for the corporations. They know they are for the insurance companies. They know the drive. It is corporate America: Business Round Table, Conference Board, NAM—National Association of Manufacturers—they have been sponsoring this bill for 15 years and they know it. No consumer organization has come forward with this bill. All the consumer organizations of size and repute absolutely oppose the bill. To come up here and talk about shame, and the consumers are not getting the money, and misrepresenting the facts with respect to percentage when simple arithmetic shows no one gets over a third, and if limited by a vote, 25 percent. That leaves 75 percent for the client if they win.

And on that contingent fee, that trial lawyer who is representing the injured party has to assume all the costs and all the burden and all the risk. Otherwise that poor injured party would not have a lawyer because they cannot afford it. They found out $50 an hour was not enough. I tried to limit it here in my amendment. So they come forward here in this town with $100 an hour billable hours and going on up to $500 and more. They could just never get their day in court. We know that is being cared for back home.

That is why I am so interested in the amendment of the Senator from Tennessee, because we can stop this pell-mell march to Washington with the Washington bureaucrats administering and determining, not hearing any of the facts, disregarding the 12 jurors sworn to listen to the facts, bureaucrats who say,

> Forget about you, you all are runaway. You do not know. You have not heard. There is no relief. And it is a national problem and we are going to correct it with this mishmash bill.

I favor the amendment of the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I thank the Senator from South Carolina for his remarks, which were eloquent as usual. I do think it is important that we refocus on what we are about here. The debate most of this afternoon has gotten off onto who is making the money, who is supporting who, scare tactics and figures taken out of thin air. I do not know where most of these figures are coming from.

I would like to refocus on what we are about here. We are about our judicial system in this country. There is nobody on the floor here who does not want a fair system, one that is fair to all parties. We certainly all recognize that manufacturers and sellers of products ought to be treated fairly and should not be put in a position where they cannot reasonably manufacture products and send them in interstate commerce and not be put out of business unfairly. We also understand that there are innocent people out there, children, other innocent people who sometimes are injured through the negligence and sometimes through the willful misconduct of large companies. And they need to be protected. We all know that.

We are talking about a system here. We are not talking about good guys and bad guys. We are talking about a system. What is the system that is best designed to produce a good system of justice across the board for this country?

Traditionally, we have had a system where States determine what their laws are. They learn, they change laws, a lot of innovation is going on in a lot of different States as has been pointed out here today. Changes are being made. Radical changes, in some States, are being made.

It has been suggested now that in the area of products liability, primary, we need to take a little bit different look. I am trying to take a little bit different look.

My amendment is called a killer amendment. This is the first time, I guess, in the history of the Senate, where we have ever gotten a product liability debate on the floor. I was one of the ones who said I will not support a filibuster. I will support bringing this up on a motion to proceed. I, and people like myself, presumably carried the day and we got this debate here. And I am suggesting now an approach that makes sense from the standpoint of what we as a U.S. Congress ought to be about. Not rewriting all the State laws in this country. That is against our basic philosophy. That is what I campaigned against, the Washington-knows-best attitude.

The Senator from West Virginia makes an eloquent plea for a 2-year statute of limitations. He is entitled to his opinion on a 2-year statute of limitations. I may agree with a 2-year statute of limitations. But why should the people of Tennessee have to follow the dictates of the Senator from West Virginia as to what the proper number of years for a statute of limitations is? It is just not right. I cannot go down that road.

Perhaps we can involve ourselves in an area that involves interstate commerce, that involves products; 70 percent of them which travel in interstate commerce and which also involves interstate litigants, if you will. And that is litigants who are in the Federal court because of diversity of jurisdiction, because you have citizens of various States.

To me, that makes some sense. That makes some sense. That is not a killer. That is an attempt to legislate in an area that we properly legislate in. I hope we do not, in this area or any other, rush to judgment to change longstanding rules or longstanding procedures that the States have enacted over the years, over 200 years, simply because of pressures and editorials in newspapers and some rush to judgment.

I support the Contract With America. I have simply pointed out that this is the only provision in the Contract With America that goes against our basic philosophy. All the rest of the Contract With America is limiting the Federal Government. It has to do with limiting one branch or another: Term limits, line-item veto. It has to do with limiting the Federal Government with regard to the States. How do we handle our welfare system? With regard to individuals, how much in taxes do we take from them or not? It all has to do with limitations on the Federal Government except this one thing.

What I am suggesting is that with regard to these cases that can legitimately be called interstate in nature, with regard to litigants who are legitimately interstate in nature—not because of what I thought up but because of what has been the law of this country for many, many years—let us apply some of these things, which are really broad and far-reaching in many respects, but let us go ahead and do it. Let us go ahead and try it and see and experiment, if you will, and see if this is going to save the world as we think it is.

I think we have to get straight on our statistics. We keep hearing a figure, some low figure of tort cases that are brought in Federal court, and that is true. But the indications from the Administrative Office of the U.S. Courts, an unassailable source, are that approximately 45 percent of products liability cases are either brought in Federal court or removed to Federal court because you have diversity of jurisdiction.

So is it suggesting that we apply these rules to 45 percent of the cases gutting this bill? Or is it saying instead of going 100 percent overnight, interfering in areas that people who are concerned about States rights and intrusive Federal Government are concerned about, that we take one step at a time. Under my amendment we would have uniformity in Federal courts in all States. Under the underlying bill you have caps in various areas but States are still free within those caps, as long as they do not go over the caps, to pass what legislation they want.

You still have 50 different States and 50 different State laws. That is not uniformity under the underlying bill. At least with regard to the diversity cases you would have uniformity. Is it bad for small business because they would be joined in order to defeat diversity? Would you have complete diversity? Would you join an interstate defendant? That is happening now. That is what is happening now. The courts have to determine. Are they properly joined in? So be it? You follow the legal consequences from that. If they are, you are in State court. If they are not properly joined then the court throws them out, and you have diversity and you can go to Federal court, if you want to.

Applying this to 45 percent of the cases before we rush pell-mell to take over State law in this country is not a killer amendment.

I must say that I understand the legitimate points of both sides of this argument. I understand the problems the manufacturers have. I am trying to redress the legitimate problems that manufacturers have in this country. I understand the proponents believe that we need to level the playing field some. But for me it is trying, I say to my friends on the other side, let us at least acknowledge that this is the case and this is what we are doing, and we are trying to level up the playing field.

Let us not try to convince the American people that this is a consumer's bill. This is not a consumer's bill. They say this is a consumer's bill because of attorney's fees. Most of the attorney's fees do not go to the litigants. Why is that? Often the defendant company or the insurance company representing them will string out a case for 2 or 3 years knowing it is a meritorious case causing costs to rise, having to pay defense attorney's fees and all of that, and then settle a case. Then they complain about the cost of the system.

That is what happened to the family that came into my office last week. They had a clear-cut situation where a clinic, if they had been trying to kill their 5-year-old daughter for a routine medical procedure they could not have done it any more efficiently. There was one mistake after another. A drug addict working on the premises who later OD'd. A comedy of errors; had to call 911; then covered up their activities. I cannot imagine of a more clear-cut case. Yet, it took 2 years, a lawyer having to finance that lawsuit out of his own pocket as often happens because they have been dragged around and deposed all around, running all the expenses up.

Anybody who has ever been involved in this knows the way it happens. Only when the mother got on the witness stand and broke down they said, OK, let us settle this case for $3 million. Should we be terribly impressed with the defense costs and the court costs and also what was involved in that particular piece of legislation? Whose fault is that? The parents of that little girl last week in my office who have no further ax to grind, they have no monetary or economic interest in this anymore, in this system, did not think that it was a consumer piece of legislation. They were saying please do not get into a situation where in this unusual case—thank God it does not happen every day. But it does happen. And when that does happen, let us make sure that we set an example that it does not pay for a clinic or a manufacturer to hire on the cheap, operate on the cheap thinking that they have a situation out here that is going to favor them in court, and they do not have to worry about it too much.

Some say it is a consumer bill because of the delays. You are going to have more delays under this underlying bill, if it passes, without this amendment than you have ever had before because we are creating new law. In all of the circuits this new law is going to have to be interpreted. There is all kinds of language in there. Every word of it will be subject to court interpretation, new interpretation, new law in every circuit which will then, with regard to that legislation, be binding on the States.

Other points that were made: The fact that we have a system with 50 different sets of laws in this country with 50 different States. That we do. It is called a Federal system. I kind of like it. I thought most of my colleagues kind of liked it. I may have a different idea about what the statute of limitations ought to be in Tennessee than the Senator from West Virginia. People in Tennessee might have different ideas about a lot of things than other people of other States. They have a right to address those things.

The suggestion was made that we could under the present system forum shop and go to Alabama, I believe the State was mentioned, and get a favorable situation there. Of course, the practical difficulties of that are well known. To anybody that has gone in the system you are a long way from home. You hire another lawyer. You expand your expenses—all of that. But assuming that does happen on occasion, my amendment would prevent that. If a fellow from Tennessee decided he wanted to get favorable State law from Alabama and went to the State of Alabama to sue an Alabama defendant, there would be diversity jurisdiction. They could go into Federal court and have the Federal standard apply, not the Alabama State standard.

The point is made that products are being restrained from the marketplace under our present system. I am sure that is true to a certain extent. It was said we could have all of these other products and people are now making products because of liability laws. Of course, there are no statistics on that. All of this is what somebody said. But I will take it at face value. So we do not have all the products that we otherwise would have if we had a different system.

I asked the question. What do we do about that? Assuming that is true, what do we do about it? Has anybody come up with a solution other than just wringing our hands and saying that products are being restrained? Are we going to say that beforehand you cannot sue these companies? Are you going to say that we can only bring x number of lawsuits a year—citizens of the United States of America—against these companies? Of course, not. You cannot do that.

On the other hand, are we going to say what these questions are going to be like if anybody gets hurt without any proof of negligence, without any proof of responsibility? Of course, not. We are not going to say that either.

What is the solution? The solution has always been let them manufacture their products with the knowledge that if they are manufacturing a product that affects human life, if they are proven to be negligent and they kill somebody, they are going to pay damages. And if they knew that they were likely to kill somebody, they are going to pay a lot of damages.

I do not know that any of this legislation addresses that problem except to put some caps on the amount of damages. I do not know a way in a free judicial system other than the way we have where we let juries decide these things under the supervision of a judge, under the supervision of the court of appeals, under the supervision of the State supreme court. I do not know that anybody has come up with a solution that is perfect that will make sure the right number of products come to market and no good products are restrained but bad products are kept off the market. The U.S. Congress cannot solve that problem. What we can have is a fair, open, responsible, judicial system with fair rules for everybody across the board.

Texas has lost how many jobs; how many thousands of jobs because of its product liability? I do not know where you get these figures. But my suggestion is that Texas changes law. As a matter of fact, from what I read in the paper, Texas has made and is in the process of making substantial changes in its tort law as we speak. Do we need to do that for Texas? Do we know more about what Texas needs than Texas does?

The Senator from Utah a while ago pointed out that only 5 percent of the tort cases are filed in Federal court. That is not the product liability cases which is the major thrust of the underlying bill and my amendment. But that proves their point, does it not? Most tort cases do not belong in Federal

court because you do not have diversity. But 35 percent of product liability cases are in Federal court because you do have diversity, and you are more properly in an area that we can legislate in.

So, Mr. President, I would conclude simply by saying let us refocus on what this is about. The basic question is do we have a problem? How bad is it? And what do we do about it? I suggest that we do have some problem. It is certainly not in the dimension of the world coming to an end that we have heard on the Senate floor.

For anybody who knows anything about the system, looks at any of the statistics, it is just not there. But let us address the problem that we do have. Let us do it in a responsible manner, and let us not lose our philosophical integrity, those of us who have campaigned on the basis of limited Federal Government, having States do more in the areas of welfare, having States do more in the areas that affect the people who elected the members of the State legislatures who write those laws, and have Federal Government do a lot less. I suggest that having these reforms in this area involving interstate commerce, with regard to litigants who are involved in interstate commerce is a reasonable approach to a problem that will allow us to see whether or not it works, how it works, perhaps will wind up in uniformity if States desire to go in that direction, but does not represent a wholesale takeover of 200 years of State tort law in this country.

I yield the floor.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I would like to speak to another amendment that will be offered by the occupant of the chair at some time in the next 30 minutes or so dealing with the question of joint and several liability.

Put another way, Mr. President, we all know what that means. That is the looking-for-somebody-with-a-deep-pocket problem which is a pervasive problem in American litigation.

Interestingly enough, the mayor of the city of New York was before a subcommittee of the judiciary yesterday, and I obtained a copy of his testimony. It is really quite interesting. The mayor outlined the problems of the city of New York in recent years with regard to our tort system, which has clearly run amok. It is very interesting that last year New York City paid out $262 million in tort cases on roughly 8,000 claims which either proceeded to settlement or verdict.

And the mayor goes back and compares that to earlier years. In 1977, the mayor pointed out, the city paid out $24 million as compared to $262 million last year. In 1984, the city paid $84 million compared to $262 million last year. In 1990, the city of New York paid out $177 million—that was just 5 years ago—compared to $262 million in tort cases last year.

Most of these, of course, Mr. President, are cases where the plaintiff was trying to get into the pockets of the taxpayers of the city of New York. The mayor in his testimony proceeded to describe it in another way that kind of brings it home for all of us.

There has been a lot of talk here about whether statistics do or do not exist in various areas of this debate. The mayor put it this way. He said—and this was just yesterday before a Senate Judiciary Committee subcommittee. "With just half of our annual tort payments," said Mayor Giuliani, "the city could hire 2,900 additional police officers or firefighters or more than 3,700 teachers." The city could have hired 2,900 additional police officers or firefighters or more than 3,700 teachers for the money they paid out in tort claims in the city of New York last year alone.

The mayor went on. He said, "In terms of our operating budget, the amount we spent on these cases is more than 61 of 75 agencies of city government spent over a year."

Let us go over that. They spent more in tort cases in the city of New York than 61 of 75 agencies of the city of New York spent last year and more than the combined amount budgeted to sustain the operation of the DA's, district attorneys, in all five boroughs of the city of New York. They spent more money in tort claims last year in the city of New York than the amount of the district attorneys' budgets of all five boroughs of the city last year.

The mayor proceeded to say that New York City's personal injury payout is an enormous expense no matter how you look at it and falls squarely on the taxpayers, he says, the consumers in the city of New York.

The mayor went on. It is kind of interesting the way he put it. He says, "As individuals, Americans are the most generous people in the world. They are equally generous with their hard-earned tax dollars, but they would like to know that their money is being put to use wisely. When they learn, however, their money is being wasted, Americans rightly demand an accounting. I submit the time has come," said the mayor of New York, "for an accounting of the waste associated with the tort system as we know it."

What he was talking about, Mr. President, is the deep-pocket issue. "Municipalities and other public entities are often viewed as deep pockets that can easily afford to pay extra sums to plaintiffs claiming to be injured." He also mentioned a few of those cases.

I thought I might relate to the Senate the mayor of New York yesterday mentioned one case in which a subway mugger was caught in the act and shot by an alert transit cop. What did the robber do? Why, he sued the city and he won $4.3 million. The robber sued the city.

Here is another interesting one that New York experienced. He said in another case an 18-year-old student in direct contravention—direct contravention—of a teacher's instructions jumped over a volleyball net. The teacher said, "Don't do it." And the 18-year-old student did it anyway. The student suffered tragic injuries. But the city's liability for the teacher's effort to supervise cost the city $15 million.

The mayor cited another case. The city was ordered by a jury to pay a woman's estate $1 million after she entered a closed city park, ignored all the instructions, entered a closed city park and drowned in 3 feet of water.

So there you have it, Mr. President. That is the kind of thing that is going on all across America under the concept of joint and several liability, and it is clearly costing taxpayers, consumers, a lot of money.

The Senator from Michigan on behalf of himself and myself will bring up shortly with the permission of the Senate the Abraham-McConnell joint and several liability amendment which would permit an injured plaintiff to collect a full judgment from any defendant found to be liable for any part of the injury.

Mr. President, the doctrine of joint liability permits an injured plaintiff to collect the full judgment from any defendant found liable for any part of the injury. It means that no matter how remotely connected a defendant is to the events leading to plaintiff's injury, a defendant could be required to satisfy the entire judgment.

That is the kind of thing I was seeking to illustrate in referring to the testimony of the mayor of New York just yesterday.

The result is that lawyers for the plaintiffs add a whole host of defendants to a lawsuit in an effort to ensure the plaintiff can get the full judgment paid. With joint liability, it does not matter if you had anything to do with the events leading up to the plaintiff's injury. Instead, the chances of your getting sued depend upon how deep your pockets are. The deeper the pocket, the more likely to be sued.

For example, if a drunk driver injures an individual on someone else's property, the property owner will be joined in the lawsuit. It happened to the Cincinnati Symphony Orchestra, only it was not even the property owner. The accident happened near one of the orchestra's performance facilities. And the orchestra, a nonprofit entity, was needless dragged into a $13 million lawsuit and put at risk for the judgment.

Nonprofit organizations, municipalities, and small businesses can be hardest hit by joint liability. Although we do not think of these defendants as wealthy or rich, they are usually adequately insured, which also makes them good candidates to be deep pockets. New York City, to which I just referred, spends more on personal injury awards and settlements—$262 million in the last fiscal year—than it spends on funding public libraries.

One industry that is severely impacted by joint liability is the engineering profession. Often engineering firms are small and entrepreneurial. The American Consulting Engineers Council reports that of its 1,000 members, more than 700 are involved in lawsuits. The typical case involves a drunk or reckless driver speeding down a road that is undergoing construction. Although the road is well marked with a detour sign, an accident occurs. The driver sues everybody involved with the road: the local government, the highway department, anybody who owns adjoining property and, of course, the engineers who designed the road improvement. While the engineers—and any of the other defendants—may ultimately prevail, the costs of defense can be staggering. The Consulting Engineers report that in 1993, they paid out more than $35 million in awards and settlements. That is a huge amount of money, especially considering 80 percent of the engineering firms employ fewer than 30 people.

What does it mean for consumers and taxpayers? Higher prices and more taxes, since the engineering firms will have to pass their costs on to their customer. The local governments who hire engineers to build their roads and bridges will pay more and the American people will pay higher taxes to cover these lawsuits.

So, make no mistake about it. The tort tax is real. Every American lives with it. And every potential defendant has to take account, in the prices they set, for the possibility of being dragged into a lawsuit.

I recently received a letter from the institute for the National Black Business Council, an association of minority business owners. Mr. Lou Collier, the president of the council, writes in support of expanding the product liability bill.

Without an expansion of the joint and several liability reform, Mr. Collier states, "Millions of small businesses—restaurants, gas station owners, hair stylists, nearly every small business you can think of, would still face the threat of bankruptcy. That includes most African-American firms." The latest census data shows that 49 percent of all black-owned firms are service firms, and Mr. Collier, on behalf of minority small business owners, asks us to improve the climate for small business, "Small business owners and entrepreneurs have to overcome staggering odds to build a successful company. They shouldn't have to face a legal system where one frivolous lawsuit can force them to close their doors."

Now, that is Mr. Collier on behalf of the minority businesses of this country.

The amendment offered by Senator ABRAHAM and myself, by eliminating joint liability for noneconomic damages, would relieve some of those burdens.

Injured plaintiffs would still recover their full economic loss. But for the subjective noneconomic loss, each defendant would be responsible only for his or her proportionate share of harm caused.

This amendment is fair and consistent with principles of individual responsibility. It will put an end to the gamble taken by the trial bar when they join everyone in sight of an injury.

Let me just say in conclusion, Mr. President, having chaired a number of hearings years ago as chairman of the Courts Subcommittee of the Judiciary Committee, I had a hard time ever getting any plaintiff's lawyer to make a good argument in support of joint and several liability, because it is obviously not just. It violates any standard of American justice to require that someone who contributed little or nothing, just a little bit of what may have caused the harm, to end up getting assessed 100 percent of the damages simply because they are able to pay. That is not just. That does not have anything to do with civil justice.

It is astonishing to me, Mr. President, that our tort system in this country has evolved to the point where essentially innocent parties can end up being assessed all of the damages for a harm that they did not cause.

That is what the Abraham-McConnell amendment will be about when it is subsequently offered. I hope that I will be able to come back to the floor and speak again on this amendment at the appropriate time.

I wish to commend the occupant of the chair, the Senator from Michigan, for his great leadership in this tort reform field. He has been in the Senate now about 4 months, and I cannot remember anybody who has taken a subject and made a difference on it any more quickly than he has. I have enjoyed working with him.

We have another issue that we may be talking about later in the debate, something called an early offer mechanism, which I do not have the time to address at this point.

I just want to say how much I have enjoyed working with him. We are greatly in hope that the Senate will decide that changing the way we handle joint and several liability will be in the best interest of the American people.

Mr. President, I believe no one is about so speak. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for approximately 2 minutes.

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

NOMINATION OF DR. HENRY FOSTER, TO BE SURGEON GENERAL

Mrs. MURRAY. Mr. President, I say to Members of the Senate, the Senate Labor and Human Resources Committee has just a few minutes ago concluded its testimony from Dr. Foster, who is the nominee for Surgeon General. I wanted to take this opportunity to personally thank Senator KASSEBAUM, chair of that committee, for doing an outstanding job of giving Dr. Foster the opportunity to present himself to the Senate and to the United States of America. I felt that the hearing was very fair and very well conducted by both Senator KASSEBAUM and all the members of the committee.

I also wanted to take this opportunity to commend Dr. Foster who, for the last several months, has been a person we have only known as a cardboard cutout; who, in the last day and a half has, I believe, really presented a very strong image to this country of a man who is caring, who is compassionate, and who can be a very forthright Surgeon General, to speak to the issues of the day that are of concern to so many of us; who will be a person, I believe, who will speak to women's health care issues in a way that needs to be done in this country today; who will speak to the issue of teen pregnancy and provide leadership; and a man who I think is a person who we can all look up to in terms of being a model public servant; who understands that we cannot just sit in our houses and close our blinds and shut our doors, but we need to personally get out and work with young kids today and be a personal role model for all of them.

I think he has done an outstanding job of answering all the questions that have been brought to him, and I believe that both Dr. Foster and the committee deserve a debt of gratitude from the Senate.

I look forward to having an expeditious vote on his nomination and to being allowed, as a U.S. Senator, to vote up or down on his nomination very soon on the floor of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 600 TO AMENDMENT NO. 596

(Purpose: To provide for proportionate liability for noneconomic damages in all civil actions whose subject matter affects commerce)

Mr. ABRAHAM. Mr. President, I ask unanimous consent to lay aside the pending Thompson amendment so I may offer an amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM], for himself, Mr. MCCONNELL and Mr. KYL, proposes an amendment numbered 600.

Mr. ABRAHAM. I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

Strike out section 109 and insert in lieu thereof the following new section:

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC DAMAGES.

(a) FINDINGS.—The Congress finds that—

(1) because of the joint and several liability doctrine, municipalities, volunteer groups, nonprofit entities, property owners, and large and small businesses are often brought into litigation despite the fact that their conduct often had little or nothing to do with the harm suffered by the claimant;

(2) the imposition of joint and several liability for noneconomic damages frequently results in the assessment of unfair and disproportionate damages against defendants that bear no relationship to their fault or responsibility;

(3) producers of products and services who are only marginally responsible for an injury risk bearing the entire cost of a judgment for noneconomic damages even if the products or services originate in States that have replaced joint liability for noneconomic damages with proportionate liability, because claimants have an incentive to bring suit in States that have retained joint liability; and

(4) the unfair allocation of noneconomic damages under the joint and several liability doctrine disrupts, impairs and burdens commerce, imposing unreasonable and unjustified costs on consumers, taxpayers governmental entities, large and small businesses, volunteer organizations, and non-profit entities.

(b) GENERAL RULE.—Notwithstanding any other section of this Act, in any civil action whose subject matter affects commerce brought in Federal or State court on any theory, the liability of each defendant for noneconomic damages shall be several only and shall not be joint.

(c) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic damages allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person, including the claimant, responsible for the claimant's harm, whether or not such person is a party to the action.

(d) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) give rise to any claim for joint liability;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the applicability of joint liability to any kind of damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or of a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(e) FEDERAL COURT JURISDICTION NOT ESTABLISHED.—Nothing in this section shall be construed to establish any jurisdiction in the district courts of the United States on the basis of section 1331 or 1337 of title 28, United States Code.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "commerce" means commerce between or among the several States, or with foreign nations.

(3)(A) The term "economic damages" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of obtaining replacement services in the home (including, without limitation, child care, transportation, food preparation, and household care), costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic damages" shall not include noneconomic damages.

(4) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(5)(A) The term "noneconomic damages" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic damages" shall not include economic damages or punitive damages.

(6) The term "punitive damages" means damages awarded against any person or entity to punish such persons or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

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

Mr. ABRAHAM. Mr. President, the amendment I have proposed with my esteemed colleague from Kentucky would extend the joint liability reforms of S. 565 to all cases whose subject matter affects interstate commerce. This extension is necessary, in our view, to realize the basic goals of the bill.

In its traditional form, the doctrine of joint liability allows the plaintiff to collect the entire amount of a judgment from any defendant found to be at least partially responsible for the plaintiff's damages.

Thus, for example, a defendant found to be 1 percent responsible for the plaintiff's damages could be forced to pay 100 percent of the plaintiff's judgment.

This example is not merely theoretical. In the case of Walt Disney World versus Wood, the plaintiff sought recovery of damages resulting from a collision between her go-kart and another driven by her fiancee. The jury found the plaintiff 14 percent responsible, and her fiancee 85 percent responsible, for the plaintiff's damages. Thus, between them, the plaintiff and her fiancee were 99 percent responsible for her damages.

Unfortunately for Disney, however, the jury found it 1 percent responsible for the plaintiff's damages and, under the doctrine of joint liability, Disney was forced to pay 86 percent of the plaintiff's judgment.

The Disney case underscores the fact that unreformed joint liability forces defendants to pay judgments on the basis of their resources, not their responsibility. Thus, a largely blameless defendant can be punished for the actions of a truly culpable defendant simply because the former defendant has greater assets than the latter.

This unfairness is aggravated when noneconomic damages are awarded.

Noneconomic damages are awarded to compensate plaintiffs for subjective harm, like pain and suffering, emotional distress, and humiliation. Since noneconomic damages are not based on tangible losses, however, there are no objective criteria for calculating their

amount. As a result, the size of these awards often depends more on the luck of the draw, in terms of the jury, than on the rule of law.

Thus, when defendants are held jointly liable for noneconomic damages—as they are under the unreformed version of joint liability—they can be forced to pay enormous sums for unverifiable damages they did not cause.

Apparently forgotten amid all this is the old idea that the law is supposed to yield predictable, fair, and equitable results.

In cases where the doctrine of joint liability is applied, then, we depart from the fundamental concept, rooted in simple justice, that tort law liability should be based on fault. This departure yields a number of undesirable consequences.

First, determining liability on a basis other than fault often leaves people with an overwhelming sense of helplessness. No matter how careful they might be, actors are no longer masters of their own fate with regard to the extent of their exposure to liability.

For example, one of my cousins operates a baseball batting cage. Patrons of the cage pay money to swing at pitches hurled by a pitching machine. Obviously, a fast-pitched baseball can cause injury, so the small business posted warnings that the cage should only be used by experienced batters, and that only one person should be in the batter's box at a time. On one occasion, however, two patrons squeezed into the batter's box, including one who had never hit a fast-pitched baseball before. The inexperienced batter was struck by the ball and injured. The business was sued for this injury, although the plaintiff and her accomplice were largely responsible for it.

Thus, because of joint liability, and despite their best efforts to act responsibly, my cousin's business faced the prospect of paying for all the plaintiff's damages.

A second and related point is that basing liability on criteria other than fault erodes incentives for responsible behavior.

As Karyn Hicks has explained in a leading law review article,

> [u]nder joint and several liability, whether the actor is 1 percent responsible or 100 percent responsible for an injury, his actual cost potential for involvement in the activity will always be the same. He will, therefore, have little incentive to expend his resources in accident avoidance behavior, such as equipment maintenance or taking the time to act carefully, if * * * he will still have to pay the same as he would if he had made no expenditure to avoid the accident in the first place.

Thus, by reducing or eliminating an actor's reward for acting carefully, we likewise reduce or eliminate the incentive for shouldering the extra costs associated with careful conduct. The result, of course, is more accidents and injuries.

In truth, Mr. President, to the extent that joint liability requires parties to provide compensation for harms they did not cause, it acts like an accident insurance system. But this system is remarkably inefficient. Less than half of every dollar paid out in damage awards goes to the injured party—the remainder goes to court costs and attorney fees.

Of course, the costs imposed on defendants by unreformed joint liability are not limited to damage awards. In case after case, deep pockets organizations and individuals are made defendants for no reason other than their financial resources. For example, George McGovern operated a country inn that was sued by a man who got into a fistfight in its parking lot.

Mr. McGovern had a security man on duty at the time, and he managed to win the case. But he only did so after, in his words, "the expenditure of a great deal of time, effort and money."

In another case, a McDonald's restaurant was sued by a driver whose car was struck by a car driven by a drive-in patron of the restaurant.

The plaintiff argued that McDonald's had been negligent by failing to warn its patron of the dangers of eating while driving. The case was a patent attempt to extort a settlement from McDonald's by means of the threat of joint liability, but McDonald's prevailed only after 3 years of costly litigation.

Although not reflected in any damage award, the costs of these two cases should be attributed to the lure of joint liability because, absent that doctrine, the cases almost certainly would not have been brought.

Now, some may ask why we should reform a doctrine that has been around as long as joint liability. That is a fair question, but it has a ready answer.

Joint liability was designed for a fundamentally different body of law than that in place today. As Ms. Hicks explains, "the evolution of joint liability took place at a time when the contributory negligence of the plaintiff was a complete defense to any negligence action." But the vast majority of States have now abolished contributory negligence as a complete defense.

By failing to reform joint liability as well, we have moved, as Ms. Hicks explains, "from a situation where a wrongdoer compensated an innocent victim to one in which an actor responsible to a degree as minute as one percent * * * may, in fact, be confronted with paying the entire damage costs to a plaintiff who may have been considerably more responsible and in a far better position of cost avoidance than was he." Thus, Mr. President, joint liability reform is necessary to bring the doctrine into alignment with the reforms made to related, background principles of law.

S. 565 would reform joint liability in the product liability context by allowing it to be imposed for economic damages only, so that a defendant could be forced to pay for only his proportionate share of noneconomic damages. As a result, plaintiffs would be fully compensated for their out-of-pocket losses, while defendants would be better able to predict and verify the amount of damages they would be forced to pay. This reform thus would address the most pressing concerns of plaintiffs and defendants alike.

But this reform needs to be extended beyond the product liability context, because entities other than manufacturers and sellers are among those hardest hit by unreformed joint liability.

The impact of our current system on nonprofits and local governments, for example, is well-documented: Individual Little League Baseball leagues have seen their liability insurance premiums soar 1,000 percent over the past 5 years alone; the city of New York now pays out almost $270 million in tort awards each year, which is double the amount of funding for city libraries; and well-grounded fears of liability thwart the recruitment efforts of volunteer organizations.

Extending this bill's joint liability reforms beyond the product liability context is also critical to the bill's goals of enhancing economic growth and competitiveness.

Small businesses are the engine of that growth, generating 2 of every 3 new net jobs in our economy since the early 1970's. To a significant extent, however, small businesses are forced to direct their resources not to job creation, but to costs associated with lawsuits.

Liability insurance premiums paid by American businesses, for example, are now 20 to 50 times higher than those paid by foreign firms.

But the bill as currently written fails to pare these costs adequately because many if not most of the lawsuits involving small businesses do not concern product liability.

Instead, small businesses are routinely ensnared in suits for slip and fall, misconduct by employees, patrons, and the like. Since a majority of small business owners take home less than $50,000 per year a determination of joint liability in even one such lawsuit can cripple a small business or force it to close its doors. To be serious about enhancing economic growth, we have to address that threat.

Mr. President, it is clear that the American people, men and women alike, demand joint liability reform. According to a recent poll conducted by the Luntz Research Co., 71 percent of Americans believe that joint liability reforms should be extended to all lawsuits, not just product liability cases.

In summary, Mr. President, we can no longer afford to overlook the heavy

burden that unreformed joint liability imposes on our society. I say our society, rather than simply "defendants," because we all know that the costs of our current system are passed on to all of society, rich and poor alike, in the form of lost jobs, higher taxes, reduced community services, and rising prices. Without our amendment, we can address only a small fraction of those costs. With it, we can make a difference in the lives of all Americans.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GORTON. Mr. President, this is merely in the nature of an announcement to confirm what I had said earlier. At approximately 5:45 I will ask for regular order at the direction of the majority leader and move to table the Thompson amendment. And I am certain there will be a rollcall on that motion.

So I would urge Members who wish to speak to the Thompson amendment, or for that matter the Abraham and McConnell amendment, to do so. The majority leader is working with the Democratic leader with respect to what will happen after that time and for tomorrow. But for the attention of all Members, at approximately 5:45 there will be a vote on the Thompson amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I have just read a copy of the Abraham-McConnell-Kyl amendment. I would like to discuss some of the language that I find in here.

Basically it says: Notwithstanding any other section of this act, in any civil action whose subject matter affects commerce brought in a Federal or a State court on any theory that liability of each defendant for economic damages shall be several only and shall not be joined.

So this is a much broadening of the issue than what was in the underlying product liability bill. It says in any civil action whose subject matter affects commerce—it does not say "interstate commerce," it says "commerce"—brought under any theory. I want to include that in my discussions with Senator THOMPSON on what is a civil action. We concluded that any action which is not a criminal action is a civil action.

This in effect preempts State law. State laws have many aspects that affect noneconomic damages. Noneconomic damages are defined herein as meaning subjective nonmonetary damages resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society companionship, loss of consortium, injury to reputation, and humiliation. That would mean, for example, that all suits that we might be talking about that are nonmonetary, including libel, defamation, slander, etc.

If there is one or more publication by a writer or contributing writer, all of those, then under this amendment you would have to pick the percentage of harm or the percentage of fault on each defendant. It would also mean that in the punitive damages in calculating the Snowe amendment, which is now a part of the underlying bill, you would have to consider this. And you would have to pick out each defendant. There is also the provision that does not allow for you to introduce any evidence of punitive damage or wrongdoing in a case at chief.

So I gave the illustration this morning of the truck company that knows that the driver has had four drunk driving charges, two reckless driving charges, and, therefore, you could not prove that evidence because that would be punitive as to the driver and as to the owner of the trucking company, and all that might be the owner of the trucking company, in calculating the damages. You would not be able to do it. It might well be that they say, "Well, the truck owner has just 5 percent of the damage," because the jury did not know anything about the fact that he had knowledge of those four convictions, and, therefore, it can affect it in a lot of different ways.

But I want to get also into what this includes. I just read it. I have not had time to do adequate research. But I do have questions, and I think they ought to be answered. Does this include noneconomic damages such as pain and suffering, or the emotional distress that could occur to an American with a disability or a State law that has certain disability acts? Does this apply to those States that have laws against sexual harassment? Sexual harassment is not a type of injury that you show in economic terms. It is a subjective damage that you have to evaluate. The discrimination cases that come up in employment, sometimes you may be able to prove monetary damages on that. But there are other elements of emotional distress, pain and suffering, and humiliation.

Then I also wonder what about antitrust litigation under a State law? There are so many unanswered questions about how this would apply. You wonder to what extent it would go. This amendment particularly seems to be, as it was under the product liability underlying bill, directed toward the non-wage earner, the retired person, the elderly who are going to spend, hopefully, their days in their retirement, their sunset years in life with emotional peace and enjoyment. And yet they are deprived of that, and you have someone over here that you cannot even prove the gross negligence or the recklessness or the wanton conduct in a trial in chief in trying to calculate whatever the noneconomic damages might be.

The woman who is deprived of the right to bear children comes under noneconomic damages—whether or not it occurs from a product or whether it would occur from the automobile accident or any type of cause of action that might arise pertaining to this amendment.

This is a very broad, sweeping amendment that covers so many aspects of the tort laws of the States, and we have had, I suppose, no hearings on this, as far as I know. I do not know whether this amendment was ever the subject of a hearing beyond the scope of the underlying product liability bill. I would like to ask the distinguished chairman of the Commerce Committee, were there any hearings ever held outside of product liability as to the effect of eliminating joint and several liability for noneconomic damages for all civil actions?

Mr. HOLLINGS. On behalf of the distinguished chairman of the Commerce Committee, Senator PRESSLER, the answer is no.

Mr. HEFLIN. I still refer to the Senator as my chairman, but I realize that all of a sudden we have had change.

So no hearings have been held in regards to the sweep of this. I would like to also ask the ranking member, have any hearings been held as to the broad sweep and the encompassing aspects of all civil actions pertaining to punitive damages outside of the field of product liability?

Mr. HOLLINGS. No. What is particularly disturbing, in the accelerated hearings—I say accelerated—actual markup took place, when and even before, unbeknownst, I would say, to most members of the committee they added on the matter of rental cars, they added on the matter of component parts, and a lot of other things. And it has been like a sheep dog with the taste of blood, gobble up anything. Anything you can think of, put it on. We have had no hearings on any of this.

Mr. HEFLIN. In other words, we have an expansion to all civil actions on any theory as to changes in the area of punitive damages and the elimination of joint and several liability. And the

amendment does not limit its application to interstate commerce. We as a deliberate body, the U.S. Senate, are going to attach our stamp of approval to language that has such a far-reaching, encompassing aspect without having a single witness or law professor or defense lawyer, or anybody to advise us as to its potential effect.

I do not know where and how it affects Americans under the Disabilities Act or a State law that has a disability act. I do not know how it affects—and from this one cannot tell—what it does pertaining to all of the various State laws dealing with the environment. There are some States that have had Superfund-type cleanup laws. What happens where there are numerous parties which might have contaminated the environment?

It certainly seems to me that these things ought to be subject to some hearings and some investigations rather than coming here without having really any great knowledge as to its ultimate impact.

Now, it seems to me that this matter of rendering a separate judgment against each defendant as to the amount to be determined, pursuant to the preceding sentence, which is that they be in direct proportion to the percentage of responsibility of the defendant.

Now, in a trial of a case where you might have 10, 15, or more defendants, there are really no standards, no real directions that are given as to how you, in effect, will determine the placing of damages, no real instructions or standards, or various criteria to be used.

There are just so many unanswered questions, it seems to me that the Senate ought to give certainly a lot of careful thought to this amendment before we move forward.

The overall concept in the past has been that the wrongdoers, if a judgment is obtained, do the apportionment of the damages amongst themselves. Some States have what they call contribution among joint tort feasors. This has not been a real problem that I have heard of any great consequence—and I practiced law for 25 years—where there were those who really suffered as a result of joint tort feasor action. There may be some illustrations and there may be some instances to be pointed out, but I think they would be rare, indeed. Of course, if a person does not have any money, and the person who is injured only has a judgment against somebody that does not have any money, he cannot collect. The injured party is left holding the bag. He is the one who is really suffering. In other words, what you are doing with this amendment is benefiting the wrongdoer.

Now, under the underlying bill, you also have this matter of determining the percentage of fault. You have the situation of the employer's responsibility, co-employee's responsibility, and in the underlying bill, which is designed and it seems to be for such an advantage, that the harm can be placed against a nonparty. He does not have to be a defendant. You come up with somebody. And there are a lot of people you cannot sue. They are in bankruptcy, and so therefore, if they are in bankruptcy they have no money. Everybody wants to put all the fault off on him, on the person that might be in bankruptcy. Sometimes you cannot get service on someone in order to file a suit. So there are all sorts of considerations that should given to the impact of this far reaching amendment.

This underlying bill, seemingly, in determining the fault of the employer and the co-employee, is designed to give a particular emphasis to that. And it has language in the bill which says the last issue that shall be presented to the jury is the issue of the amount of fault that falls on the co-employee or the employer.

So you, therefore, try to have that fresh in the minds of the jury rather than somebody being able to present the case in a manner which they consider to be the proper way to do it. It ends up that you are required to try to emphasize and put the emphasis on the employer's fault, the coemployee's fault. And in most States you cannot sue the coemployee, who cannot be a party to the lawsuit because the employer is protected by workmen's compensation and the coemployee is protected by workmen's compensation.

So, all of these things are involved in this amendment which to me raises many questions. It just seems to me that it is already faulted with the fact that we have got that in the underlying bill. But to add it to all civil actions under any theory is grossly, in my judgment, unfair.

I yield the floor.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Michigan.

Mr. ABRAHAM. Thank you, Madam President.

I would like to try to answer several of the questions that were raised by the distinguished Senator from Alabama in his comments a moment ago. I was out of the Chamber for a minute, so I am trying to recapitulate all of his remarks. But I will go to the ones I think I understand.

One question that has been raised is the issue of whether the Senate has had an opportunity to consider some of the arguments that are involved in this effort to expand the underlying bill, the substitute bill, through such things as hearings and so on.

I would just say that I think there have been several efforts to do that. It is my understanding that in the Commerce Committee the notion of broadening legislation in that regard was discussed at least by one of the witnesses. A Mr. Ted Olson discussed the notion of broadening.

Also, obviously the principles of changing from the joint and several system that has preexisted were discussed in the context of the underlying bill itself. We discussed to some degree the same issues in a hearing that was held in the Judiciary Committee on punitive damages as well as in a subcommittee hearing that was conducted yesterday by Senator GRASSLEY on the cost of the legal system. To my knowledge, those are at least several venues in which these discussions have been the subject of hearings.

In addition, I guess I would just point out to the Chair that these are certainly not new issues. I believe the notion of reforming the legal system has been, as I understand it, at least before the Senate on previous occasions in various committees. So I think that we have had previous discussions as well.

Another point I want to address is the question that was raised as to whether the amendment we are proposing would apply to such things as the Civil Rights Act and so on. This amendment expressly does not alter or supersede Federal law. So in the case of any Federal law, whether it is the Civil Rights Act or others, I guess, that were referenced, I was out of the Chamber at that time, where provision for joint and several liability is provided, this amendment would not supersede. Those provisions would remain in place.

Let me just comment a little more broadly on some of the other points that were touched on by the Senator from Alabama in his remarks.

As far as noneconomic damages go, he, I think, did a very good job of outlining the broad definition of what constitutes noneconomic damages. And there is no intent on the part of our amendment to change that definition or to confine in any way the types of noneconomic damages which people might be able to recover.

The purpose of our amendment is to say that, while you may recover noneconomic damages, you should only recover them from a defendant to the extent the defendant is responsible for those noneconomic damages. And in the sense that so many of the noneconomic damages that were referenced tend to be in areas that are very subjective in terms of calculation, very hard to discern, it strikes me at least to be a fundamental principle of fairness that we not hold defendants who are not responsible for the negligence involved for damages over which it is very difficult, if not impossible, to calculate. As a sense of fairness, I think the type of amendment we are offering is responsive.

I would close with one final thought. We heard, I thought, a good point made with respect to some of the people who

could conceivably be plaintiffs in actions of this sort; references to the elderly who might be injured and be seeking a form of recovery and not be somehow able to because we assign damages on the basis of responsibility.

But it seems to me that it is equally possible that the type of elderly individual referenced by the Senator from Alabama could be a defendant—an elderly individual who has saved his or her entire life for his or her retirement, who has a certain amount of fixed assets unlikely to get greater because of the fact that they have stopped working, who, because of joint and several liability, finds themselves, unhappily, the deep pocket in some type of multiple defendant situation and, consequently, even though they have only participated in a small degree in terms of the responsibility for an injury, end up holding the bag for the entire amount of the injury because the other defendants, even though more blameworthy, are judgment proof.

In short, I think you can see it from both perspectives.

The notion of our amendment is to try to place responsibility for resolving noneconomic damages on the shoulders of those who are most responsible for the damages in the first place, on the basis of their apportioned share of negligence.

So, for those reasons, I think our amendment is a sensible expansion of the underlying legislation. As I said earlier, I strongly hope that Members of the Senate will support it.

Madam President, I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Madam President, I was interested in what the distinguished Senator from Michigan had to say, particularly with regard to the reversal of where he made the elderly individual the defendant.

Most elderly persons in our country over the years, at least, I think the biggest majority of them, believed in having a home and buying a home and paying for their home by the time they reach retirement age. Most of them have what the insurance industry calls a homeowner's policy.

Now, how does that affect the illustration that he gave of the elderly defendant?

Practically every homeowner's policy has a provision known as the comprehensive liability provision. And those comprehensive liability provisions which insurance companies have sold over the years are indeed very comprehensive. I commend the insurance industry for the way they have sold these policies and their breadth. They cover pretty well any type of action that might be brought, unless it is specifically excluded.

The elderly individual probably in almost every case will have insurance to protect them from any liability that they might incur. Certainly, if they are driving an automobile, they carry insurance.

So I think the opportunity of saying the reversal—if you leave out the element of insurance—most of them are insured relative to this matter.

I just wanted to point that out in regard to this.

I have talked a lot about the Snowe amendment and severability and provisions on punitive damages in the underlying bill. Since Senator SNOWE is in the chair, it might be of interest to her, and I will recite it again.

Under the provisions of the underlying bill, if a person brings a suit and demands punitive damages, there is a provision that says if you demand it, either party can demand a separate hearing for punitive damages. I think that increases transaction costs, but that is not the point I want to bring here.

In that separate hearing, there is other language in the underlying bill which says that a party cannot introduce evidence of the conduct which would be admissible under a punitive damage trial, but in the suit for compensatory damages. So, therefore, a person who might be really, under several liability involved in this, 85 percent at fault but could not present the evidence of conduct which would constitute conduct recoverable under punitive damages in the trial in chief, you might have a situation where that person is 85 percent at fault really but because of this protection ends up with only about 5 percent in the noneconomic damage aspect of it.

So when you attempt to double that, you have a problem. That language pertaining to the fact that you cannot introduce in the compensatory damages part of a trial, the conduct of a defendant who is willful or conscious and flagrantly indifferent, but who could come under the punitive damage portion of a trial, prohibits such evidence from being introduced in the trial in chief. Therefore, the severability aspect of this comes into play, and it can well be that the defendant who is the greatest at fault and, therefore, you would have the severability as it would apply to the noneconomic damages, would be, in effect, able to escape relative to these matters.

So it is something she might want to look into as this bill goes forward. I feel like there is a major problem that might be there. I just mention that again.

I think I will yield the floor at this time.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Madam President, I just wanted to add a couple more points to my opening remarks on this amendment, because I think they elaborate a little more fully on some of the concerns I raised at that time.

As I mentioned in my comments, the need, in my judgment, for expanding the underlying substitute is based on my belief that there is a need to provide the same sort of protections to nonprofit organizations and civic organizations, and so on, that we are trying to provide to product manufacturers. I just wanted to enter into the RECORD a couple of examples that have been brought to my attention in recent days in the context of this debate.

The first is a case of a battered women's shelter in Evanston, IL. A few years ago, the Junior League of Evanston sought to establish such a shelter. An exhaustive search of liability insurance coverage revealed that no insurance company would provide coverage until the shelter operated for 3 years without being sued. No one was willing to serve on the shelter board unless it had liability insurance. So the shelter was never established.

That is the kind of, I think, unhappy outcome which the current system with respect to joint and several liability has created.

A similar incident involving the Cincinnati Symphony Orchestra illuminates the problem as well. A situation occurred recently where traffic was backed up on the exit ramp leading to the Cincinnati Symphony Orchestra's facility prior to a recent performance. A drunk driver, speeding above posted limits, rear ended a car in the traffic jam injuring the driver of that car. The injured driver filed a lawsuit and made the orchestra a defendant only after learning that the drunk driver was uninsured. The owner of the land on which the facility was situated was also made a defendant.

The plaintiff argued that the orchestra and the landowner were negligent in allowing the traffic jam to occur. After litigating the case all the way through trial, the orchestra and landowner were found to be 20 percent at fault between them. However, through the application of joint liability, the orchestra and the landowner were made responsible for all the plaintiff's damages, even though, by any commonsense measure, they had done little or nothing to cause them.

This is really the principle that caused me to bring this amendment in to expand the underlying substitute, because I think we have instance after instance where these types of outcomes are produced and, as I said in my opening statement, they happen regardless of the extent to which the defendant may have tried to protect against injury. We know that no situation is without its risks. Nobody who operates a business can operate it risk free. They can and should have as much incentive as possible to minimize the risks that they create.

Under a joint/several liability approach, however, there is not as much

incentive to limit risk because, as I stated in my earlier comments, no matter how successfully one insulates themselves, even to exclude certain risks and possibilities of liability from happening, they still may be found responsible and pay the entire damages involved in an injury simply because of joint and several liability.

I do not think that is the kind of incentive system we want, and I think that set of incentives ought to apply across the board. Therefore, I believe the expansion of the legislation through my amendment from the product area exclusively to other areas, as indicated in the amendment, is a sensible and wise addition to this bill.

Madam President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Madam President, once again, we are back now to the joint and several question with the Abraham amendment. I remember a few years ago this issue of competitiveness in Europe, for example, that they did not have this and we pointed out at that particular time, and I read again article V of the Directive of the Official Journal of the European Community:

Where, as a result of the provisions of this directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.

So if they get on to the matter of competitiveness, I wanted to answer that in the first question, because the trend for joint and several without competitors is just that. The United States gives overwhelmingly predominant treatment—and in fact they call it fair treatment with respect to economic loss. Let us not misunderstand here. They characterize in the majority report what is fair. They use that word—and you can use—in the majority language of the report of the committee.

Section 109 introduces fairness and uniformity to the law concerning joint and several liability and product liability actions by adopting the California rule, which holds that defendants are responsible only for their fair share of a claimant's subjective nonmonetary losses, including pain and suffering awards.

Well, is that fair? It was on an initiative, Madam President—proposition 51. That State of California is as goofy as it can come. They had, I remember, proposition 13 on property tax and wrecked the State. They can sell anything out there, mostly. They get a lot of money and a lot of advertising and a lot of TV and get a temper up and everything else like that. So they are ruining a magnificent school system. You could not get a license to build down in the capital, in Pasadena and Sacramento. I remember many instances, from friends out there, that it never has been the same since. They removed property tax support for general government and rolled it back, and now they have gone to an 8 percent sales tax and they have gone to a special gas tax for highways and everything else, and they have been struggling ever since with multibillion dollar deficits. They call it fair, the California rule. It is not the usual rule in the several States of America. It is the unusual rule, in this Senator's opinion, the unfair one.

Why did we say that it is unfair? We go right to the idea as to economic loss. It should be joint and several. Now, that is a hypothesis; that is the premise of the amendment of the distinguished Senator from Michigan. He agrees that is sound. In fact, the majority of the committee agrees that is sound. In fact, the major sponsors, the Senators from West Virginia and Washington, the principal sponsors here of product liability, all agree that joint and several is sound and fair. But only for economic damages.

What they are really doing is savaging the women and family population, savaging the women and family population of our country. That crowd that came to town with the family bill got a contract, and they are going to build a family. The majority of women, thank heavens, are the builders of the family, producing the family, caring for the family, and all without a salary—noneconomic loss, all with no compensation, so no compensatory situation. The family. Everybody I know down in my backyard, they have the big movement, the religious right and everything else. But they all say, "I am for the family, the family, the family." But I can tell you here and now that they are gutting the family.

Let us see what Professor Finley said with respect to the distinctions between economic loss and noneconomic loss damages harming women:

Provisions that make distinctions between economic loss and noneconomic loss, favoring the former and disfavoring the latter, disadvantage women for several reasons. Noneconomic loss damages, which include compensation for loss of reproductive capacity, impairment of sexual function, harm to dignity and self-esteem, and emotional or psychic harm, are crucial category of damages for women, because many injuries that primarily or especially affect women are compensated largely, if at all, through noneconomic loss damages. For example, reproductive harm, including pregnancy loss, or infertility, is compensated primarily through noneconomic loss damages, because the greatest impact of these sorts of injuries is not on the ability to earn a paycheck, but rather on the ability to be a whole, fully functional female. Sexual harassment, sexual assault, sexual improprieties by health care providers are also examples of injuries that have profound impacts but are compensated primarily through noneconomic loss damages.

Noneconomic loss damages are especially crucial to women in the area of drugs and medical devices. Unfortunately, far too many of the modern health and product liability disasters in the drug and device area involve products designed to be used in women's bodies, usually in connection with reproduction or sexuality: The anti-nausea drug thalidomide, which produced horrifying birth defects; the ineffective anti-miscarriage drug DES, which causes cervical cancer and infertility; the Dalkon Shield and Copper-7 IUDs, which caused sometimes fatal or sterilizing pelvic inflammatory disease and uterine perforations; silicone breast implants, which can cause debilitating autoimmune diseases and permanent disfigurement; the acne treatment drug Accutane, which if taken during the early stages of pregnancy causes serious birth defects; the drug Ritodine, which is prescribed to prevent premature labor, but has proven fatal to some women; the contraceptive Norplant, which is turning out to have serious side effects and to require expensive and dangerous invasive surgery to remove. The greatest extent of injuries caused by these products is to reproductive capacity, to the ability to bear a whole and healthy child, to intimacy and normal sexual functioning, to self esteem and dignity—all aspects of injury which are compensated by noneconomic loss damages. Studies also demonstrate that the prospect of liability can be a factor to encourage drug companies to more adequately include women in clinical trials of drugs and to perform more extensive testing of drugs and devices to be used in women's bodies.

If you go with this Abraham amendment, I can tell you here and now, you have cut off clinical trials of women in this drug field, because there is no loss there. They have written that off now as a care in this society—the family crowd that has come to town wanting a family bill, a family tax cut, and a family this and that, and they want to savage the family here with this joint and several prohibition, or noneconomic damages.

Going further with Professor Finley—and to make it absolutely clear, she is an outstanding professor. Lucinda M. Finley is her complete name. She says:

Noneconomic loss damages are also of particular importance to women because a growing body of empirical research demonstrates that women recover far less than men for economic loss damages, and it is primarily thanks to the noneconomic loss category that women's tort recoveries move closer to the average for men. Women recover less under the economic loss category because on the whole they earn less than men; because their household labor, while recognized, is valued very low; because economic loss damages are often calculated using tables that presume that women earn less and will stop work earlier; and because so many injuries that happen to women have low economic loss value and injure primarily in noneconomic ways.

These inequities in economic loss damages are also true for other social groups that earn little or less on average than white men: The elderly and retired, blacks, and Hispanics. Noneconomic loss damages can also make the tort recoveries of these economically less well off social groups more commensurate with what white men receive for similar injuries.

Indeed, the nonpecuniary loss aspects of damages may be even more crucial for the elderly person or for the poorly paid minority clerical or domestic worker, because they are less likely than high wage earners to have disability and health insurance, a pension plan, or investments that can provide a security net in the event of catastrophic injury.

For all these reasons, full recognition of noneconomic loss damages is of fundamental importance to ensuring that the tort system provides adequate compensation to women for reproductive and sexual harm, and to the elderly and lower paid or impoverished members of society.

Madam President, I think it is clear cut. I could go on. There is no question in my mind what the intent here is. Again, the manufacturers bill is not for consumers. We have to have Senators on the floor saying, "Oh, I am worried about the consumers." The manufacturers bill, again, limits their liability and limits their cost so they can make more money and safety can decline in the United States.

What do we do when we provide for that several proof in noneconomic loss and the degree thereof? I read again from Professor Finley:

> Joint liability does not mean that part of the injury was caused by the independent actions of one defendant, while another part of the indivisible injury was caused by another defendant's actions. In many product cases, the injuries are an indivisible whole, and cannot meaningfully be parceled out in this way. For example, when a defective IUD causes an infection that renders a woman permanently infertile, one cannot meaningfully ascertain that the manufacturer's failure to test the tail string caused half the infertility, while the failure of the manufacturer of the copper or string filament to test its effects when introduced into the uterus caused the other half of the infection.

Now, here is an initiative to simplify the uniformity for less bureaucracy, causing what? If they want to know why there are so many lawyers, I can say now, having tried cases, that is going to put another 2 days of trial on my case, and we will spend more time and there will be more dispute and there will be more bureaucracy and there will be more cost.

That is all in the name of, really, punishing the poor, the minority, the women in our society, particularly family members. I think it ought to be rejected out of hand. They do not reject it. They adopt it with the word "fair" for economic loss.

It is not 1 percent in economic loss who has only 1 percent contributing, we will say, to the wrongful act or injury and the other 99 percent having gone bankrupt, and I only had 1 percent contribution to the particular verdict and finding of that jury. Yes, if it is only 1 percent for economic, then let the 1 percent pay the 100 percent. Let the 1 percent pay the 100 percent. They adopt that with the word "fair." They think that is fair, joint and several, for that. That is fair.

When it comes to the injuries for the women in our society, the aged in our society, the minorities in our society, the nonbreadwinners in our society, if they cannot prove economic loss, then what do they do? They list it out.

They want to make absolutely sure in that particular amendment—if I could find my copy of that Abraham amendment, they talk and they decide exactly what they do not want to pay for. They find, yes, joint and several for everything else, but the term "noneconomic damages" means "subjective, nonmonetary loss resulting from harm, including pain, including suffering, including inconvenience, including mental suffering, emotional distress, loss to society and companionship, loss of consortium, injury to reputation, and humiliation."

Throw all of that out under this amendment. Forget it. We will not be able to prove the several. And we have to start proving that while, at the same time, there has been proof by the greater weight of the preponderance of evidence that there has been wrongdoing and that there has been injury and the burden now is the injured party is to be injured further with the Abraham amendment. They are really putting the burden on here, and they come in the same breath and say, "We are interested in the injured parties—namely, consumers."

Now, if anybody believes that, well, I see we are getting around the time when we can vote and others want to speak, but I hope that Members will study this amendment very, very carefully and understand that it is not the California rule, like something is wonderful. I run in the other direction when I hear about the California rule.

If a person wants some liberal things happening and everything else of that kind, go to the State of California. I have many, many friends out there and they have a big time, but to bring this into rule of the United States of America and to reverse the majority State laws in our Nation and not to reverse it on joint and several for economic loss, which they term "fair" and sound but only for noneconomic loss, these particular people in our society, particularly families and those who produce and build the families and say that they are for families, they are caught off base on this. I hope they vote against their own amendment.

AMENDMENT NO. 681 TO AMENDMENT NO. 596

(Purpose: To make improvements concerning alternative dispute resolution)

Mr. KYL. Madam President, I am simply going to make a unanimous-consent request. I ask unanimous consent to lay aside the pending amendment and offer an amendment, which I send to the desk and ask for its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Arizona [Mr. KYL] proposes an amendment numbered 681 to amendment No. 596.

The amendment is as follows:

> In section 103, strike all after subsection (a) through the end of the section.

Mr. KYL. Madam President, just a moment to explain what this amendment is. I know we are getting close to the time to vote, and the Senator from Connecticut wishes to speak, as well.

This section 103 is titled "Alternative Dispute Resolution Procedures." It establishes that in a jurisdiction where an alternative dispute resolution procedure is provided for, that either the claimants or the defendant may utilize such procedure. That is point one. Of course, that does not change anything or add anything to existing law.

The second part of this provides how the procedure shall be utilized. Again, that adds nothing to the existing law.

The third part of section 103 establishes that if the defendant refuses to go along with or to accept the plaintiff's request and certain other conditions are satisfied, then the defendant shall be found liable for attorney's fees and costs. That is, in effect, the British rule, the loser pays. But there is no such provision for plaintiffs.

I thought this was merely an oversight. Obviously both parties to a litigation should be accorded the same rights under the rules of procedure. But it is not an oversight. I am told that certain Members of the body require this dichotomy in the rules in order to vote in favor of the bill.

Madam President, if that is what it takes we should not be doing it. This is grossly unfair. It would be an absolute and total departure from everything that our legal system stands for. All parties to litigation plead their cases, defend their cases, prosecute their cases under the same set of rules. We do not have rules that apply to one side but that do not apply to another; particularly where we are trying to avoid litigation in the first place by providing for alternative dispute resolution.

So, where a State has such a procedure we ought to be encouraging both parties to go through such a procedure. If there is to be a penalty attached, then that penalty should be the same for either party. If there is not, that is the business of the State jurisdiction. But the Federal Government should not be interceding and saying if a State has such a procedure it only applies to the defendant; plaintiff is under no obligation to go through with it if requested by the defendant.

So, Madam President, we will talk more about this tomorrow but I wanted my colleagues to know that this gross unfairness does need to be corrected in

the bill. It is a very simple amendment, but I will be asking my colleagues to support this amendment tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Madam President, I wanted to send an amendment to desk to get in line here. I ask unanimous consent to temporarily lay aside the pending amendment.

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

AMENDMENT NO. 682 TO AMENDMENT NO. 596

(Purpose: To provide for product liability insurance reporting)

Mr. HOLLINGS. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 682 to amendment No. 596.

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

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

The amendment is as follows:

SEC. . PRODUCT LIABILITY INSURANCE REPORTING.

(a) REPORT TO CONGRESS.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers, and risk retention groups.

(b) COLLECTION OF DATA.—To carry out the purposes of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) REGULATIONS.—Within 120 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paperwork and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts, and the National Center for State Courts.

(d) SUBPOENA.—The Secretary may subpoena witnesses and records related to the report required under this section from any place in the United States. If a witness disobeys such a subpoena, the Secretary may petition any district court of the United States to enforce such subpoena. The court may punish a refusal to obey an order of the court to comply with such a subpoena as a contempt of court.

Mr. HOLLINGS. Madam President, this is simply the amendment we had on previous product liability bills. It was actually proposed by the distinguished colleague, Senator ROCKEFELLER from West Virginia. It has to do with product liability insurance reporting.

Not to delay the Senator from Washington or the Senator from Connecticut, both of whom I thank very much for yielding, I will debate it later on.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 618 TO AMENDMENT NO. 596

Mr. GORTON. Madam President, I had earlier announced I would move to table the Thompson amendment at 5:45. I do see on the floor my distinguished colleague and cosponsor, the Senator from Connecticut, who has not spoken on any of these issues today.

I ask him if he would like to do so? I am going to certainly defer my motion to table.

Mr. LIEBERMAN. Madam President, replying to my friend and colleague from Washington, I would appreciate the opportunity to speak for just 4 or 5 minutes, if I may at this time, on the Thompson amendment.

Madam President, we have proceeded, now, for several days on the topic of product liability reform. Those of us who have sponsored the underlying bill, a bipartisan group, have argued that the current system of product liability litigation is costly, it is unfair, too much of the money put into the system goes to those who are operating it instead of the victims of actual negligence.

We have proceeded and brought several important issues to votes, not only on product liability but on the general topic of medical malpractice, punitive damages—a creative approach offered and accepted by more than 60 of our colleagues, by the occupant of the chair, the distinguished Senator from Maine.

I think we have a consistent pattern in which a majority of Members of the Chamber, of this Senate, have spoken in favor of reform, acknowledging that the status quo in the civil justice system, when it comes to tort law, is just not working as it should. It is not working in the interests of the American people. It is not working in the interests of the American consumer who is paying too much and getting too little. It is certainly not working in the interests of American business and American workers because it is denying us products. It is making us less competitive. It is denying employment opportunities. I say all of that as a preface to saying just a few brief words about the amendment offered by the Senator from Tennessee, Mr. THOMPSON, joined also by Senators SIMON and COCHRAN.

With all respect to my three colleagues, the record will note that they have not been, generally speaking, among those who have voted for the reform effort, the tort reform effort. I would say, respectfully again, that a vote for this amendment will have the effect of making hollow the effort to achieve genuine product liability reform—genuine tort reform. It would make it hollow in taking unto itself the banner of federalism and States rights, as it were—but it does so in a way that is not true to the actual content of the bill before us and is not really true to federalism either.

The fact is, the underlying bill leaves almost all of the fundamental questions of liability still with the States but it acknowledges that this area of our law has national implications. It is a national problem and it requires a national solution. By restricting the impact of these reforms to the Federal courts, this amendment essentially eviscerates—it guts the bill. It will not any longer be true reform.

There are some who have described the underlying bill as too weak. We like to say it is moderate. It is balanced—I believe it is. It is the way it ought to go forward. But if this amendment is agreed to, there will be very little left and it will be much less than moderate.

Madam President, let me just say specifically that the impact of this amendment would be to enable attorneys, plaintiff's attorneys, to shop for appropriate jurisdictions in which to, even more than under the current law, file their suits in State courts. But more significant and perhaps a point that has not been mentioned enough, plaintiff's attorneys here will be motivated to immediately add resident defendants to the complaint so as to avoid removal to Federal court. Under current legal practice, under current law, any time there is a defendant in a suit from the same State as plaintiff, diversity of jurisdiction, which is a prerequisite to obtaining Federal court jurisdiction, is defeated. Thus, plaintiffs can easily control here whether Federal law will apply and can frustrate the attempt to finally, after 18 years of attempts in this Senate, in this Congress, to reform. They can frustrate that attempt. It also means that more people will be sued, more small businesses will be sued, that lawsuits will cost even more.

So we are trying to achieve a modest level of uniformity in the underlying amendment in an effort to reform the inequitable, costly, slow system we now have. The amendment offered by the Senator from Tennessee will doom any effort to achieve those moderate

results, and, therefore, I strongly urge my colleagues, again a majority of whom have expressed their clear desire for reform, to be consistent with that expressed desire for reform and to vote against the amendment offered by the Senator from Tennessee.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, almost 6 years ago the U.S. Supreme Court decision named Erie Railroad versus Tompkins did all it possibly could to consolidate and rationalize the law relating to actions brought or removed to Federal courts under diversity of jurisdiction by ruling that Federal courts were required to follow State law in such cases. So that it would cut back on forum shopping by lawyers who were looking for a more favorable law than within their own State by choosing between State or Federal courts.

For almost 60 years that has been the law and it has worked well. This bill is designed to reduce further the lack of uniformity, shopping among the various States.

The Thompson amendment instead of having 50 different jurisdictions and rules with respect to product liability litigation would result in 100 because the rule of the Federal court in Connecticut would be different from the rule in the State court in Connecticut. The rule in the Federal court in West Virginia would be different than the rule in the State court in West Virginia or Washington or Maine. So we would have more confusion, more forum shopping, and less uniformity.

That is why primarily the Thompson amendment should be defeated ending this debate.

Madam President, I ask for the regular order.

The PRESIDING OFFICER. The regular order is the amendment offered by the Senator from Tennessee.

Mr. GORTON. I move to table the Thompson amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from Tennessee. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is necessarily absent.

The PRESIDING OFFICER (Mr. BENNETT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 147 Leg.]

YEAS—58

Abraham	Frist	Mack
Ashcroft	Glenn	McCain
Bennett	Gorton	McConnell
Bond	Gramm	Mikulski
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pressler
Coats	Hatfield	Pryor
Conrad	Helms	Robb
Coverdell	Hutchison	Rockefeller
Craig	Inhofe	Santorum
DeWine	Jeffords	Smith
Dodd	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kohl	Thomas
Dorgan	Kyl	Thurmond
Exon	Lieberman	Warner
Faircloth	Lott	
Feinstein	Lugar	

NAYS—41

Akaka	Feingold	Moseley-Braun
Baucus	Ford	Moynihan
Biden	Graham	Murray
Bingaman	Harkin	Packwood
Boxer	Heflin	Reid
Bradley	Hollings	Roth
Breaux	Inouye	Sarbanes
Bryan	Johnston	Shelby
Bumpers	Kennedy	Simon
Byrd	Kerrey	Simpson
Cochran	Kerry	Specter
Cohen	Lautenberg	Thompson
D'Amato	Leahy	Wellstone
Daschle	Levin	

NOT VOTING—1

Pell

So the motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I would like to address some of the underlying provisions in the product liability bill which I feel are unfair.

No. 1 is that in the definition of claimant and person, the language brings within the purview of this bill a Government entity. This means cities, counties, State government, the Federal Government. The statute of repose could be very important as we look at the U.S. Army relative to damages it might suffer.

I think most of the vehicles in the Army we know are designed to last a long time—helicopters, NASA vehicles, and so forth. Why the proponents want to include a Government entity within the provisions of this statute raises a lot of questions to me.

Now they pretty well exempt rental cars, lease property from product liability. I gave an illustration earlier that you might have a situation in which a recall is sent by the manufacturer, but the rental car agency decides to continue to lease the car with knowledge that there are dangers that might be in the car. I just mention that.

Also, in the calculation of several damages in the bill itself and in the Abraham amendment, there is language to the effect that in the several liability and the percentage of harm, that it does not have to be a party to the lawsuit. Therefore, you have situations where there could be companies in bankruptcy where you could not get jurisdiction. And then you could have a situation where, in the absence of service, you could not bring it; or it could be that the statute of limitations has run before someone recognizes that part of it is not to the lawsuit, to get service on, relative to that matter. Under most workman's compensation laws, it not only means that you cannot bring a lawsuit against your employer, but also against coemployees. Yet, you have the right under this, whether party to a lawsuit or not—the jury would be obligated to set a percentage of the fault against that party. And that party would not be there to defend themselves. They would not want to become involved in a lawsuit. They are the only ones who really know their defenses and the amount of their responsibility pertaining to the fault that might occur. So, in effect, therefore, they would gang up against a party who was not a defendant in the lawsuit.

Then there is language in regard to misuse or alteration, which is a defense that reduces the damage. But, again, it is carefully worded for an advantage. It says, ". . . misuse or alteration by any person, regardless of whether they are a defendant in the lawsuit."

And then you have, in this bill, to show you how it is worded, in the lawsuit if you have several defendants and they are not parties—the employer and the employee cannot be made—in most instances, the coemployee cannot be made a party to a lawsuit and is protected because of workman's compensation. Then it says that the last issue to be tried in the lawsuit is the percentage of the fault that falls on the employer or the coemployee.

So they want it to be fresh in the minds of the jury as being the last issue that is tried. That is another slight advantage that they are always working in regard to this. The draftsmen of this are keen people who have represented defendants, and they are knowledgeable about defending lawsuits and are trying to get an advantage rather than trying to be fair to the injured party. And then it has the provision that you cannot settle without the insurance company or the workman's compensation agreement. If

you want to settle for 75 cents on the dollar, the workman's compensation insurer will not let you do that because they want 100 percent. That is another example of the bill's unfairness.

Now, there are a lot of lawsuits on asbestos injury. It would apply to asbestos, except there is some provision pertaining to the statute of repose relative to asbestos, calling it a "toxic" matter.

The bill has a provision for businesses coming under the provisions of the Uniform Commercial Code regarding commercial loss, where businesses are therefore given an advantage. Well, under the Uniform Commercial Code, it has generally, under warranties, a 4-year statute of limitations; whereas, under this bill, the injured worker has only 2 years in a statute of limitations. That is another advantage that is put in there for the benefit of the manufacturer.

Another aspect relates to implied warranty. The bill abolishes the concept of implied warranty as a cause of action. Implied warranty basically is a concept that says that the product is fit for the purpose for which it is sold. But under the language of the bill, there are several implied warranties. There is an implied warranty of merchantability, and other implied warranties are involved. Under this language, it allows the only warranty that you can have a cause of action for or sue on is an express warranty.

So, therefore, all a seller of goods has to do, if he has knowledge of defects, is to keep his mouth shut. He just does not say anything. Under the normal law, if he says nothing, but he has knowledge, then the implied warranty could be found. But unless a seller expressly warrants a product, he is exempt from liability. Then there could be an instance in regard to the Uniform Commercial Code relative to privity of contract. You have to have privity of contract, actual contractual relations; it would be a limited effect where it would come into play, but it is still an advantage the bill's proponents are seeking.

I wanted to mention those. Of course, as the bill presently stands, the drug companies are almost completely immune from any lawsuit. Regarding pharmaceutical companies—drugs—there is just about an impossibility the way it is presently framed to recover against them. The biomaterial section is still one where they have written it in such a manner that it has language that is most unusual. They say that if a material comes in contact with bodily fluids or with tissue and remains for less than 30 days, less than 30 days could be 1 minute. It could be 5 minutes. When it talks about less than 30 days, it says that that comes in contact through a surgical opening.

What is a surgical opening? A surgical opening could be a needle that is stuck into you, a needle, a hypodermic device that goes in the body to draw blood or administer a drug or medicine. That is, in effect, a surgical opening. If it stays there 30 seconds, then it comes under the classification, the way this is written, of being an implant. And, therefore, if you are a component part of the implant under the biomaterials section that we have here, you have just about a complete immunity. The only way you could do it would be that you have to prove that the component part was not made by a different party but was made by the manufacturer, or that the component part was made by the seller—component parts, many times, are made by many and different people—or that it was according to specifications. A lot of times, there are defects relative to specifications on these.

I point out that there are a lot more snakes, as I call them, involved in this. Every time you read it, you discover another one of these snakes wiggling in the grass. Each of them are big issues.

I think we have concentrated too much relative to punitive damages, because there are so many other issues involved in this that are just as big in taking away the rights of injured persons. I wanted to point those out. I thought some others would be on the floor but, as usual, some will leave before too long. Maybe I made a point in that regard.

I yield the floor.

Mr. HOLLINGS. Mr. President, I am afraid the distinguished Senator and myself are probably running them off the floor.

Mr. President, I have submitted an amendment which is presently at the desk. I understand from the managers of the bill that the intent now is to hear about these amendments this evening, and then in the morning, and it is up to the majority and minority leaders.

As they have told me about it thus far, perhaps around 12:15, we would start voting on three amendments: The amendment of the distinguished Senator from Michigan, Senator ABRAHAM; I think it is a second-degree amendment by the distinguished Senator from Arizona, Senator KYL; and my amendment.

With respect to my amendment, entitled Product Liability Insurance Reporting, it struck me at the time of the hearing, the official on behalf of the Government appeared, said that the National Governors' Association policies make three major points about product liability. The first urges Congress to adopt a uniform product liability code; second, the Congress to assess and if necessary enhancing Federal consumer protection and product safety standards; third, calls for more effective oversight of the insurance industry. There is absolutely none.

In fact, the attempts over the years to try to determine anything at all about casualty carriers, their costs, their rates, their losses, the availability of insurance and otherwise, has been a tremendous problem at the Federal level because we have left it generally to the States.

Back 9 years ago in the hearings we were having at that time—because we only had cursory hearings on the bill this time—when we were having hearings in depth, it was a matter of unanimity out of our committee when Senators from Kentucky and West Virginia got together reaching a significant agreement.

I quote the Senator from West Virginia, Senator ROCKEFELLER, the primary cosponsor with Senator GORTON of Washington of this particular bill that we now have before the Senate:

> The Senator from Kentucky and I have reached a significant agreement which I think achieves a significant goal in an eminently sensible manner. The amendment is before you and ensures for the first time that the Secretary of Commerce will collect—not "may collect" but "will collect"—comprehensive product liability insurance data which will be useful to us as policy makers at the Federal and State levels.
>
> The amendment in effect makes it possible that should this issue be revisited, Congress will in fact have the facts before us. Okay. So what is in the amendment?
>
> The amendment would require the Secretary of Commerce to report comprehensive information annually to the Congress on the effect of this product liability tort reform bill, should it pass, on those insurers, noninsurers, reinsurers, self-insurers, risk retention folks, who issue product liability insurance.
>
> Now the Secretary of Commerce will collect data from these folks, and he can collect data from existing insurance statistical agencies. In other words, the bureaucracy factor is minimized, Mr. Chairman, because he can collect it from those who already produce it.
>
> However, a key component of my agreement with the distinguished Senator from Kentucky provides that the committee report—and we crafted our language carefully here—will spell out for the Secretary what information is needed for comprehensive understanding of the issue. For example, insurers premiums and investment income, outlays, overhead, legal expenses, reserves, as well as claims paid as a result of settlement as opposed to claims paid as a result of adjudication.
>
> Included in the report language will be a provision that the National Association of Insurance Commissioners has a set amount of time to work out an agreement with the Secretary of Commerce to require that insurers report data on claims paid out as a result of economic, noneconomic, and punitive damages. That has been an elusive factor, and that information in fact is not now available or at least it is not broken out. As a result of this amendment, it will be, and will be available to us.
>
> I believe, Mr. Chairman, it is a good amendment. I believe it is a fair amendment. It is not the amendment which I had originally suggested, but I believe that it is a reasonable compromise that gets us the same information and in a reasonable manner.

Now, that was presented in the bill and accepted. Thereafter, year before

last, when we had on the last occasion before the Senate product liability, that amendment, word for word, was presented and accepted. Presented by this Senator at that particular time as the chairman of the Commerce Committee and accepted by none other than the two distinguished leaders that we have, the cosponsors and managers of the bill, the distinguished Senator from West Virginia and the distinguished Senator from Washington.

My hope, of course, that the amendment was accepted, it would be accepted again. Perhaps we will have to vote on it. However, it would nonplus this particular Senator that here we have what the managers themselves have not only promulgated but what they have accepted heretofore as a reasonable, proper, and necessary add on to the consideration of product liability and now rejected at this particular time. With that in mind, I yield the floor.

AMENDMENT NO. 599, AS MODIFIED, TO AMENDMENT NO. 596

Mr. HATCH. Mr. President, I ask unanimous consent that the pending amendment be set aside to call up this amendment.

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

Mr. HATCH. Mr. President, I ask unanimous consent that amendment numbered 599, as previously agreed to, be modified with the language which I now send to the desk.

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

The amendment (No. 599), as modified, is as follows:

At the appropriate place, insert the following new section:

SEC. . REPRESENTATIONS AND SANCTIONS UNDER RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out "or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery" and inserting in lieu thereof "or are well grounded in fact"; and

(2) in subsection (c)—

(A) in the first sentence by striking out "may, subject to the conditions stated below," and inserting in lieu thereof "may";

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof the following: "A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party."; and

(C) in paragraph (2)(A) by inserting before the period ", although such sanctions may be awarded against a party's attorneys".

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

Mr. HATCH. Mr. President, this amendment was offered by Senator BROWN and adopted by the Senate earlier this week. We have consulted with Senator BROWN and he has agreed to our modification.

Section (2)(A) of Senator BROWN's amendment would make the imposition of sanctions for a violation of Federal Rule of Civil Procedure 11 mandatory. The current Federal rule gives Federal judges discretion to award sanctions if a violation has occurred. This amendment simply restores discretion to our Federal judges to award sanctions in the appropriate cases.

AMENDMENT NO. 683 TO AMENDMENT NO. 596

(Purpose: To revise the rules regarding claimants who are employees)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendments will be set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 683 to amendment No. 596.

Mr. GORTON. I ask unanimous consent further reading be dispensed.

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

The amendment is as follows:

On page 2, strike lines 4 through 14 and insert the following:

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

On page 25, line 15, strike "CONSENT" and insert "NOTIFICATION".

On page 25, beginning with "subparagraph" on line 16 strike through line 25 and insert "subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.".

Mr. GORTON. Mr. President, this is a corrective amendment with respect to the subrogation provisions of the workmen's compensation section. I have checked this out with the distinguished Senator from South Carolina. It is not controversial.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 683) was agreed to.

AMENDMENT NO. 684 TO AMENDMENT NO. 596

(Purpose: To modify the rented or leased products provision)

Mr. GORTON. Mr. President, I send another amendment to the desk for immediate consideration, and I ask the pending amendment be set aside.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], proposes an amendment numbered 684 to amendment No. 596.

Mr. GORTON. I ask unanimous consent further reading be dispensed.

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

The amendment is as follows:

On page 16, line 21, after "but" insert "any person engaged in the business of renting or leasing a product".

Mr. GORTON. Mr. President, this falls under the same category, dealing with the definition of a rental.

I have checked it out with Senator HOLLINGS and it is acceptable and agreed to and not controversial.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 684) was agreed to.

UNANIMOUS CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the vote on or in relation to the Abraham amendment No. 600, occur at 12:15 on Thursday, May 4, followed by a vote on or in relation to the Kyl amendment No. 681, to be followed by a vote on or in relation to the Hollings amendment No. 682, to be followed by a motion to invoke cloture on the Gorton substitute No. 596.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Reserving the right to object, is the Kyl amendment relative to alternate dispute resolution proceedings?

Mr. GORTON. Yes, it is.

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

Mr. DOLE. I further ask that all votes occurring in the stacked sequence following the first vote be limited to 10 minutes in length.

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

Mr. DOLE. I further ask that following the first cloture vote, if not invoked, the time following the vote at 2 p.m. be equally divided in the usual form for debate only; at 2 p.m. the Senate proceed to vote on the second cloture motion; and the mandatory forum under rule XXII be waived for both cloture votes.

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

ORDER OF PROCEDURE

Mr. DOLE. For the information of all Senators, there will be no further votes tonight. However, Senators who wish to offer their amendments may do so tonight.

Also, Members should be aware that second-degree amendments must be filed 1 hour prior to the cloture vote under the provisions of rule XXII.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 685 TO AMENDMENT NO. 596

(Purpose: To toll the statute of limitations in certain actions brought against a product seller as manufacturer)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 685 to Amendment No. 596.

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

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

The amendment is as follows:

On page 16, between lines 14 and 15, insert the following: "For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer."

Mr. GORTON. Mr. President, this is the third in a series. This is a technical amendment that tolls the statute of limitations in connection with a possible claim against a wholesaler when a manufacturer is bankrupt or judgment proof. It has been cleared by Senator ROCKEFELLER and by the opponents to the bill.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 685) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF PROPOSED LEGISLATION ENTITLED "THE IMMIGRATION ENFORCEMENT IMPROVEMENTS ACT OF 1995"—MESSAGE FROM THE PRESIDENT—PM 44

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary.

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Immigration Enforcement Improvements Act of 1995." This legislative proposal builds on the Administration's FY 1996 Budget initiatives and complements the Presidential Memorandum I signed on February 7, 1995, which directs heads of executive departments and agencies to strengthen control of our borders, increase worksite enforcement, improve employment authorization verification, and expand the capability of the Immigration and Naturalization Service (INS) to identify criminal aliens and remove them from the United States. Also transmitted is a section-by-section analysis.

Some of the most significant provisions of this proposal will:

—Authorize the Attorney General to increase the Border Patrol by no fewer than 700 agents and add sufficient personnel to support those agents for fiscal years 1996, 1997, and 1998.

—Authorize the Attorney General to increase the number of border inspectors to a level adequate to assure full staffing.

—Authorize an Employment Verification Pilot Program to conduct tests of various methods of verifying work authorization status, including using the Social Security Administration and INS databases. The Pilot Program will determine the most cost-effective, fraud-resistant, and nondiscriminatory means of removing a significant incentive to illegal immigration—employment in the United States.

—Reduce the number of documents that may be used for employment authorization.

—Increase substantially the penalties for alien smuggling, illegal reentry, failure to depart, employer violations, and immigration document fraud.

—Streamline deportation and exclusion procedures so that the INS can expeditiously remove more criminal aliens from the United States.

—Allow aliens to be excluded from entering the United States during extraordinary migration situations or when the aliens are arriving on board smuggling vessels. Persons with a credible fear of persecution in their countries of nationality would be allowed to enter the United States to apply for asylum.

—Expand the use of the Racketeer Influenced and Corrupt Organizations (RICO) statute to authorize its use to pursue alien smuggling organizations; permit the INS, with judicial authorization, to intercept wire, electronic, and oral communications of persons involved in alien smuggling operations; and make subject to forfeiture all property, both real and personal, used or intended to be used to smuggle aliens.

—Authorize Federal courts to require criminal aliens to consent to their deportation as a condition of probation.

—Permit new sanctions to be imposed against countries that refuse to accept the deportation of their nationals from the United States. The proposal will allow the Secretary of State to refuse issuance of all visas to nationals of those countries.

—Authorize a Border Services User Fee to help add additional inspectors at high volume ports-of-entry. The new inspectors will facilitate legal crossings; prevent entry by illegal aliens; and stop cross-border drug smuggling. (Border States, working with local communities, would decide whether the fee should be imposed in order to improve infrastructure.)

This legislative proposal, together with my FY 1996 Budget and the February 7th Presidential Memorandum, will continue this Administration's unprecedented actions to combat illegal immigration while facilitating legal immigration. Our comprehensive strategy will protect the integrity of our borders and laws without dulling the luster of our Nation's proud immigrant heritage.

I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 3, 1995.*

REPORT OF PROPOSED LEGISLATION ENTITLED "THE ANTITERRORISM AMENDMENTS ACT OF 1995"—MESSAGE FROM THE PRESIDENT—PM 45

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary.

To the Congress of the United States:

Today I am transmitting for your immediate consideration and enactment the "Antiterrorism Amendments Act of 1995." This comprehensive Act, together with the "Omnibus Counterterrorism Act of 1995," which I transmitted to the Congress on February 9, 1995, are critically important components of my Administration's effort to combat domestic and international terrorism.

The tragic bombing of the Murrah Federal Building in Oklahoma City on April 19th stands as a challenge to all Americans to preserve a safe society. In the wake of this cowardly attack on innocent men, women, and children, following other terrorist incidents at home and abroad over the past several years, we must ensure that law enforcement authorities have the legal tools and resources they need to fight terrorism. The Antiterrorism Amendments Act of 1995 will help us to prevent terrorism through vigorous and effective investigation and prosecution. Major provisions of this Act would:

—Permit law enforcement agencies to gain access to financial and credit reports in antiterrorism cases, as is currently permitted with bank records. This would allow such agencies to track the source and use of funds by suspected terrorists.

—Apply the same legal standard in national security cases that is currently used in other criminal cases for obtaining permission to track telephone traffic with "pen registers" and "trap and trace" devices.

—Enable law enforcement agencies to utilize the national security letter process to obtain records critical to terrorism investigations from hotels, motels, common carriers, storage facilities, and vehicle rental facilities.

—Expand the authority of law enforcement agencies to conduct electronic surveillance, within constitutional safeguards. Examples of this increased authority include additions to the list of felonies that can be used as the basis for a surveillance order, and enhancement of law enforcement's ability to keep pace with telecommunications technology by obtaining multiple point wiretaps where it is impractical to specify the number of the phone to be tapped (such as the use of a series of cellular phones).

—Require the Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms to study the inclusion of taggants (microscopic particles) in standard explosive device raw materials to permit tracing the source of those materials after an explosion; whether common chemicals used to manufacture explosives can be rendered inert; and whether controls can be imposed on certain basic chemicals used to manufacture other explosives.

—Require the inclusion of taggants in standard explosive device raw materials after the publication of implementing regulations by the Secretary of the Treasury.

—Enable law enforcement agencies to call on the special expertise of the Department of Defense in addressing offenses involving chemical and biological weapons.

—Make mandatory at least a 10-year penalty for transferring firearms or explosives with knowledge that they will be used to commit a crime of violence and criminalize the possession of stolen explosives.

—Impose enhanced penalties for terrorist attacks against current and former Federal employees, and their families, when the crime is committed because of the employee's official duties.

—Provide a source of funds for the digital telephone bill, which I signed into law last year, ensuring court-authorized law enforcement access to electronic surveillance of digitized communications.

These proposals are described in more detail in the enclosed section-by-section analysis.

The Administration is prepared to work immediately with the Congress to enact antiterrorism legislation. My legislation will provide an effective and comprehensive response to the threat of terrorism, while also protecting our precious civil liberties. I urge the prompt and favorable consideration of the Administration's legislative proposals by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 3, 1995.*

MESSAGES FROM THE HOUSE

At 12:46 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 655. An act to authorize the hydrogen research, development, and demonstration programs of the Department of Energy, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 53. Concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States.

The message further announced that the Speaker appoints Mr. PACKARD as an additional conferee on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

At 3:47 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that pursuant to the provisions of 22 U.S.C. 276h, the Speaker appoints the following Members of the House as members of the United States delegation of the Mexico-United States Interparliamentary Group for the First Session of the 104th Congress: Mr. BALLENGER, vice chairman, Mr. GILMAN, Mr. DREIER, Mr. SALMON, Mr. HAYWORTH, Mr. BROWNBACK, Mr. DE LA GARZA, Mr. GEJDENSON, Mr. COLEMAN, Mr. MILLER of California, and Mr. RANGEL.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 655. An act to authorize the hydrogen research, development, and demonstration programs of the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following measure was read and placed on the calendar:

H. Con. Res. 53. Concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-794. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on a program of research outcomes of health care services and procedures; to the Committee on Finance.

EC-795. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on the activities of the Nonproliferation Disarmament Fund; to the Committee on Foreign Relations.

EC–796. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on Hong Kong; to the Committee on Foreign Relations.

EC–797. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential Determination relative to the U.S. Emergency Refugee and Migration Assistance Fund; to the Committee on Foreign Relations.

EC–798. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of corrections to treaties; to the Committee on Foreign Relations.

EC–799. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties; to the Committee on Foreign Relations.

EC–800. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties, and background statements; to the Committee on Foreign Relations.

EC–801. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties, and background statements; to the Committee on Foreign Relations.

EC–802. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Audit of the D.C. Taxicab Commission Assessment Fund—Fiscal Years 1992, 1993, and 1994"; to the Committee on Governmental Affairs.

EC–803. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of the District of Columbia Board of Education's Personnel Screening Procedures for New Hires"; to the Committee on Governmental Affairs.

EC–804. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–805. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–806. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report on the Panama Canal Commission's financial statements for fiscal year 1994; to the Committee on Governmental Affairs.

EC–807. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of the financial audit of the Federal Deposit Insurance Corporation's financial statements for calendar years 1993 and 1994; to the Committee on Governmental Affairs.

EC–808. A communication from the Executive Director of the Advisory Council On Historic Preservation, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–809. A communication from the Chairman of the Christopher Columbus Fellowship Foundation, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–810. A communication from the Director of the Office of Government Ethics, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–811. A communication from the Secretary of Housing and Urban Development's Designee to the Federal Housing Finance Board, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–812. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–813. A communication from the Chairman of the U.S. Nuclear Regulatory Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–814. A communication from the Executive Officer of the National Science Board, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–815. A communication from the Executive Officer of the Federal Labor Relations Authority, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–816. A communication from the Executive Secretary of the Harry Truman Scholarship Foundation, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–817. A communication from the Acting Secretary of Agriculture, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–818. A communication from the Director of the National Gallery of Art, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–819. A communication from the Chairman and President of the National Railroad Passenger Corporation, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC–820. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC–821. A communication from the Chairman of the Pennsylvania Avenue Development Corporation, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC–822. A communication from the President and Chief Executive Officer of the Overseas Private Investment Corporation, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC–823. A communication from the Chairman of the Board of the Pension Benefit Guaranty Corporation, Department of Labor, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC–824. A communication from the Attorney General, transmitting, pursuant to law, the report on the private counsel debt collection project for fiscal year 1994; to the Committee on Governmental Affairs.

EC–825. A communication from the Office of the Independent Counsel, transmitting, pursuant to law, the report on audit and investigative activities for the period April 1 through September 30, 1994; to the Committee on Governmental Affairs.

EC–826. A communication from the Treasurer of the Army and Air Force Exchange Service, transmitting, pursuant to law, the report of the actuary for calendar year 1993; to the Committee on Governmental Affairs.

EC–827. A communication from the Executive Director of the Martin Luther King, Jr. Federal Holiday Commission, transmitting, pursuant to law, the report of the Office of Inspector General for fiscal year 1994; to the Committee on Governmental Affairs.

EC–828. A communication from the Director of the U.S. Trade and Development Agency, transmitting, pursuant to law, the report of the annual audit for fiscal year 1994; to the Committee on Governmental Affairs.

EC–829. A communication from the Chairman of the PCA Retirement Plan, First South Production Credit Association, transmitting, pursuant to law, the report of the annual pension plan for calendar year 1994; to the Committee on Governmental Affairs.

EC–830. A communication from the Employee Benefits Manager, Farm Credit Bank of Columbia, transmitting, pursuant to law, the report of the farm credit retirement plan for the period September 1, 1993 through August 31, 1994; to the Committee on Governmental Affairs.

EC–831. A communication from the Director of the Morale, Welfare and Recreation Support Activity, Headquarters U.S. Marine Corps, Department of the Navy, transmitting, pursuant to law, the report on the retirement plan for calendar year 1993; to the Committee on Governmental Affairs.

EC–832. A communication from Secretary of Health and Human Services, transmitting, a draft of proposed legislation to extend the authorization of appropriations for programs under the Native American Programs Act of 1974, and for other purposes; to the Committee on Indian Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SPECTER, from the Select Committee on Intelligence:

John M. Deutch, of Massachusetts, to be Director of Central Intelligence.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second time by unanimous consent, and referred as indicated:

By Mr. BURNS (for himself, Mr. CRAIG, Mr. SIMPSON, and Mr. THOMAS):

S. 745. A bill to require the National Park Service to eradicate brucellosis afflicting the bison in Yellowstone National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MOSELEY-BRAUN:

S. 746. A bill to amend the Social Security Act to provide certain reforms to welfare programs, and for other purposes; to the Committee on Finance.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 747. A bill to require the President to notify the Congress of certain arms sales to Saudi Arabia until certain outstanding commercial disputes between United States nationals and the Government of Saudi Arabia are resolved; to the Committee on Foreign Relations.

By Mr. MCCAIN:

S. 748. A bill to require industry cost-sharing for the construction of certain new federally funded research facilities, and for other purposes; to the Committee on Governmental Affairs.

By Mr. AKAKA (for himself and Mr. ROCKEFELLER):

S. 749. A bill to amend title 38, United States Code, to revise the authority relating to the Center for Women Veterans of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans Affairs.

By Mr. PACKWOOD (for himself and Mr. MOYNIHAN):

S. 750. A bill to amend the Internal Revenue Code of 1986 to properly characterize certain redemptions of stock held by corporations; to the Committee on Finance.

By Mr. EXON:

S. 751. A bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization; to the Committee on Finance.

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 752. A bill to amend the Harmonized Tariff Schedule of the United States to restore the duty rate that prevailed under the Tariff Schedules of the United States for certrain twine, cordage, ropes, and cables; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. LEAHY, Mr. LUGAR, Mr. DASCHLE, Mr. CRAIG, Mr. BURNS, Mr. CAMPBELL, and Mr. HATFIELD):

S. 753. A bill to allow the collection and payment of funds following the completion of cooperative work involving the protection, management, and improvement of the National Forest System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KENNEDY (for himself, Mr. SIMON, and Mrs. BOXER):

S. 754. A bill to amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural delays in removing illegal aliens from the United States, providing wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, and for other purposes; to the Committee on the Judiciary.

By Mr. DOMENICI (for himself, Mr. FORD, Mr. JOHNSTON, Mr. CAMPBELL, Mr. THOMAS, and Mr. SIMPSON):

S. 755. A bill to amend the Atomic Energy Act of 1954 to provide for the privatization of the United States Enrichment Corporation; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 756. A bill to expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, and for other purposes; to the Committee on Finance.

By Mr. COCHRAN:

S.J. Res. 33. A bill proposing an amendment to the Constitution of the United States relative to the free exercise of religion; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 113. A resolution to authorize representation by Senate Legal Counsel; considered and agreed to.

By Mr. HATCH:

S. Res. 114. A resolution to refer S. 740 entitled "A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton" to the chief judge of the U.S. Court of Federal Claims for a report thereon; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURNS (for himself, Mr. CRAIG, Mr. SIMPSON, and Mr. THOMAS):

S. 745. A bill to require the National Park Service to eradicate brucellosis afflicting the bison in Yellowstone National Park, and for other purposes; to the Committee on Energy and Natural Resources.

THE YELLOWSTONE NATIONAL PARK BISON ACT OF 1995

Mr. BURNS. Mr. President, I rise to introduce legislation that is important to the future, I think, of the livestock industry, not only of Montana, but Washington, Idaho, and Wyoming and, also, I think to the Nation. Wherever the Government has a large concentration or a large presence, I think it has to be called upon to be a good neighbor. This legislation, which is long overdue, is as a result of the ineffectiveness of the Federal Government—especially the Park Service—to follow up on the work that it has been directed to complete. This bill will require the National Park Service to effectively manage a disease ridden herd of bison within the boundaries of the Yellowstone Park.

Mr. President, for years, the bison within the Yellowstone Park have carried brucellosis. It is a disease which causes cattle or bovines to abort their calves. When transmitted to humans, the disease can create a very painful and incurable disease known as undulant fever. This is a disease which the Animal Plant Health Inspection Service of the Department of Agriculture has targeted for complete eradication from the United States by 1998. The bison herd in Yellowstone Park is the only remaining major free-roaming herd in the Nation where nothing has been done to eradicate the disease.

Brucellosis is a disease which the livestock industry in the United States has spent untold millions of dollars to eliminate, done on a State-by-State program. In my State of Montana, the stockgrowers have spent almost $70 million to eradicate the disease and set up barriers in order to protect their herds. Yet, due to the continual delays in the Yellowstone National Park Service to address the remedy of the situation there in that park, the future of the livestock industry in Montana, the Nation, and the region, continues to be threatened by disastrous results which are a direct consequence of the disease. In addition, to the cost incurred by the livestock industry, there has been a cost to the State of Montana to protect its borders from the wandering herds of bison which roam outside the park every winter seeking forage.

These bison carry the disease and threaten the grazing lands and the herd on private lands in and around the park.

Now, I could stand here today and give a complete history of the terrible problem faced by States like Montana, Idaho, and Wyoming. For the sake of time, let me talk about this past winter and just exactly what happens.

In November, we had major snows in the park. It did not take long, but within a few weeks, up to five feet of snow had accumulated in Yellowstone Park, which effectively covered all the forage opportunities for the animals in the park.

When this occurs, the bison within the park turn and do exactly what is natural—they will start drifting between the lower meadows just for food. These large creatures are doing just exactly what their instincts tell them to do.

In order to protect livestock in our part of the country—and livestock industry and livestock agriculture is the No. 1 industry in Montana—we had to find it necessary to bring down these animals that we could not chase back into the park. This past winter, this number exceeded almost 400 head.

Nobody likes to see this happen, especially when an animal is following its own natural instincts for preservation and survival. However, it is necessary also to protect an economy and the safety of my State of Montana. If the disease were to be transmitted to any herd in the State, Montana would lose its brucellosis-free status that was granted by APHIS and the Department of Agriculture.

Already this year, the action of nine States has adversely affected the well-being of my cattle industry in the State of Montana. These nine States right now are requiring that any cattle transported from the State of Montana be tested for brucellosis, which basically, up until this incident, had been eradicated and certified free.

At the time, the industry is already reeling from a lower market. We are having to test all the breeding animals that leave the State of Montana, at a cost of $20 to $30 a head, a cost which we thought we spent money on to get rid of up until last year.

The language of this will require the National Park Service to face up to the seriousness of maintaining poor health and bad health practices for the herd of buffalo or bison in Yellowstone Park.

The animals will be tested and those that will test positive for the disease will be culled from the herd. Those that will test negative will be retained, and the younger animals will start on a program of being vaccinated. Doing this, over time, will finally eradicate the disease from the park.

When this herd was first introduced into the park by the U.S. Army, it was thought that there would be some sort of management plan to control the population. However, in the mid-1960's, the National Park Service developed a hands-off policy in relationship to the number of bison that could run in Yellowstone Park.

This action has increased the size of the herd and also increased the outbreaks of the disease. By increasing the herd size, the management of the park has increased the movement of the herd outside the park. The land mass within the park boundaries cannot sustain a herd of present size.

Anybody who would drive across the park would say that range conditions and the carrying capacity, we just have too much livestock in that part of the world, that little corner of the world, to sustain that herd. I think our estimated population went up to around 4,300, and by anybody's estimate it should be around 1,500. The provision of this bill will allow the Park Service to manage the size of that herd.

Mr. President, I appreciate the time to address this issue. This legislation is very important, not only, I think, for the livestock industry that would be affected in the States of Montana, Wyoming, and Idaho; I think it also shows that wherever Government has a presence, and is required to be or called upon to be a good neighbor, just like not asking the Park Service to do anything that we do not ask of an individual producer in the State of Montana, should this disease break out in a private herd. They, too, are asked to test, to cull, and to vaccinate, to get on a herd health program that takes this disease out of the livestock industry.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. YELLOWSTONE NATIONAL PARK BISON.

(a) TESTING, CULLING, VACCINATION, AND RELOCATION.—The Secretary of the Interior, acting through the Director of the National Park Service, shall—

(1) perform a blood test of each bison in the herd inhabiting Yellowstone National Park for brucellosis;

(2) in consultation with the Secretary of Agriculture, acting through the Administrator of the Animal and Plant Health Inspection Service and the State Veterinarians of the States of Idaho, Montana, and Wyoming, vaccinate and restrain under quarantine restrictions each bison that tests negative for brucellosis in accordance with a protocol established under the law of the States of Idaho, Montana, and Wyoming, to prevent transmission of brucellosis to susceptible animals;

(3)(A) slaughter or neuter each bison that tests positive for brucellosis, each bison that cannot be tested, and each bison that tests negative but cannot be restrained under quarantine restriction; and

(B) make the carcass or neutered bison available for use by Indian tribes and other suitable recipients;

(4) engage the services of a team of independent range scientists to determine the optimum population of bison that the land available for the heard in Yellowstone National Park is capable of sustaining;

(5) in consultation with the Secretary of the Interior, appropriate officials of Indian tribes, the States of Idaho, Montana, and Wyoming, and other interested parties, identify locations outside the Park that would be suitable for sustaining herds of bison created from any excess number of bison in the Yellowstone herd that are certified as being free of brucellosis, in accordance with standards established under the law of the States of Idaho, Montana, and Wyoming; and

(6) after brucellosis has been eradicated, continue to reduce the population of the Yellowstone herd to a number that is approximately 500 below the optimum population by transferring the excess number of bison to locations identified under paragraph (5).

(b) TIME FOR ACTION.—The Secretary of the Interior shall—

(1) initiate action under subsection (a) as soon as practicable, and in any event not later than December 31, 1995; and

(2) complete all of the actions required by subsection (a) not later than December 31, 1998.

(c) NO SURPLUS BISON.—After December 31, 1998, the Secretary of the Interior shall take all action necessary to ensure that the number of bison in the Yellowstone herd does not exceed the optimum population determined under subsection (a)(4).

By Ms. MOSELEY-BRAUN:

S. 746. A bill to amend the Social Security Act to provide certain reforms to welfare programs, and for other purposes; to the Committee on Finance.

THE ECONOMIC OPPORTUNITY AND FAMILY RESPONSIBILITY ACT OF 1995

Ms. MOSELEY-BRAUN. Mr. President. today I am introducing the Economic Opportunity and Family Responsibility Act of 1995. This bill seeks to reform the current welfare system in a way that protects children, supports families, and facilitates the transition from welfare to work, and it acknowledges what the debate in Congress has heretofore overlooked, moving recipients from welfare to work costs money, requires job creation, and will fail without transitional support services like health care and child care.

My bill also acknowledges that it takes two to make a baby and it includes strong child support provisions. At the same time, it acknowledges that some fathers would like to participate financially in the lives of their children, but cannot, due to under or unemployment. The bill provides assistance for them, too.

For me, the bottom line is ensuring that children are protected. The one question we must ask ourselves when evaluating various welfare reform proposals is, "what about the children?" Every provision in my bill seeks to improve the condition of children through economic opportunity for families and maintaining a minimum safety net for children. This country's future prosperity will be based on the accomplishments of all of our children. We do not have a child to waste.

I developed this legislation in conjunction with an advisory panel composed of Illinois academicians, advocacy organizations, State officials, and recipients. Their work and insight has been invaluable to this effort.

I wish to thank them for all their help.

The Senate Finance Committee has completed hearings on welfare reform and will soon consider specific proposals. Those on both sides of the aisle are committed to reform. The current system is broken and significant changes are necessary. Over 5 million families receive AFDC. While most leave welfare within 2 years, many cycle back on and off, and a small number are chronic welfare recipients. Recipients want to work, and I believe work is both a policy and moral necessity. Unfortunately, the current welfare system is fraught with disincentives.

There are disincentives to work and disincentives to marry. The system also forces States to spend too much time on administrative and process issues. The incentives, Mr. President, are in the wrong places and work is not a requirement for receipt of the benefit. I think on these things we all agree.

Where there is disagreement, but hopefully an opportunity to build some consensus, is how to devise and implement a system that will accomplish the goal.

The House has chosen to turn the problem over to the States by ending the entitlement status of AFDC and other programs that provide assistance

to low-income families and replacing them with block grants to the States. I believe the House action was taken hastily and fails in many respects to identify proposed solutions to the underlying problems of our Nation's welfare system.

The Economic Opportunity and Family Responsibility Act, which I am introducing today, recognizes that welfare is simply a response to poverty. In 1993 in this country, 39.9 million Americans were poor; 22 percent of all children live in poverty, and more than half of all female-headed households, or 53 percent, are poor. Female-headed households account for 23 percent of all families.

This Nation and this Government cannot give up on improving living conditions for the poor. We cannot abdicate our responsibility for ensuring that America provides an opportunity for all Americans to experience a better way of life. Welfare reform cannot be successful if it exacerbates poverty rather than instituting measures to combat it. Being poor is not a sin, and blaming and punishing the poor for the social ills of this country is a misguided approach. Poverty is not a genetic issue, it is an economic issue. Creating new economic opportunities is a critical part, therefore, of any sensible welfare reform legislation, and it is the focus of my bill.

If the Senate is going to make headway on a proposal that can garner bipartisan support, everybody in this body, I think, must acknowledge the facts and not give in to unfounded rhetoric. The current welfare debate must not be framed by misconceptions and prejudices. The real problems that cause bloated welfare rolls, growing poverty, the lack of jobs in poor communities, the lack of health care and child care, should not get lost in the crossfire.

The facts are:

First, more AFDC recipients are white than are black.

Second, two-thirds of the recipients, 9 million of the total 14.1 million people, are children.

Third, the average family size is 2.9, which is similar to the national family size average.

Four, the average national monthly benefit is $373 a month for a family of three which, of course, is far below the poverty line, the official designated poverty line of $1,026 per month.

Finally, that the bulk of the recipients, over 40 percent, stay on welfare for only 2 years or less.

In order to make a dent in the welfare problem, which is really an economic one, I believe we must first create jobs. Even though unemployment rates are declining nationally in our Nation's poor communities, the unemployment numbers are staggering. For example, Mr. President, in Chicago's Robert Taylor Homes, which is a section on the south side of the city, there is 1 percent private sector employment—1 percent. No wonder that, even in a period of low national unemployment, in Chicago in this area 80 percent of the youth between the ages of 16 and 19 are unemployed and 55 percent of the 20- to 24-year-olds are out of work. Mr. President, this is not only a local problem, this is a national calamity, and it represents the kind of economic meltdown that has given rise to the welfare chaos that we see.

In addition to creating jobs, we must also do better to match job opportunities to recipients. While some have advocated a public works program, I believe that we have to build public/private partnerships to build jobs in the private sector. My bill offers several ways that this can be done.

In the first instance, it encourages banks to make equity investments in companies that are willing to locate in poor communities. Companies receiving these funds will be required to hire and train welfare recipients.

It allows welfare recipients to save money in what are called qualified asset accounts so they can start their own businesses and begin to prepare for their future.

It provides funding for job support demonstrations to help recipients in private sector jobs to maintain them.

And it provides funding for one-stop shopping career centers that coordinate services for welfare recipients, including job placement and job training.

Mr. President, while creating private-sector jobs in some areas may be difficult, and while we may not be able to create enough jobs to employ all welfare recipients immediately, I believe we must take this step. The dearth of private sector jobs is one of the greatest unacknowledged truths in this welfare debate. Instead, many have focused on cuts in funding and time limits. Requiring responsibility is important, but requiring time limits is ludicrous if there are no jobs for the recipients.

In addition to job creation, I believe we have to invest in families. Our current program has focused on providing subsistence to needy families. I believe we have to move from this philosophy to one of investment in families.

We can start, I think, with eliminating marriage disincentives.

Further, we have to eliminate barriers to working. It makes no sense to reduce benefits to recipients after 4 months and then again after 12 months, effectively eliminating incentives to work. I believe States do need flexibility to make changes like those permitted in my home State. Illinois allows recipients to keep $2 for every $3 of income. This is much easier administratively and allows recipients to earn money and to support a household.

Also, I believe we also have to encourage the working poor to take full advantage of what is already available to them. Nearly a quarter of those eligible for the earned income tax credit did not take advantage of the program. Less than one-half of 1 percent of families collecting EITC used the advanced payment option, which effectively functions as a negative income tax. I believe we need to do more to encourage people to take advantage of the programs that are already in place.

Also, Mr. President, we must do more to help those who get off welfare to stay off welfare. The majority of AFDC recipients leave within 2 years and 50 percent leave within 1 year. The problem is that a good chunk of those, 50 percent, who receive welfare tend to cycle on and off. The principal reason that most women leave their jobs and return to welfare is the lack of health insurance. A temporary response until we have real health care reform and, hopefully, universal coverage is to allow States to extend Medicaid health care coverage to women who want to get off welfare and out of the trap of welfare.

Another critical element is the provision of child care. While there are child care programs for low-income families, the dollars, frankly, are scarce. If we are to move women from welfare to work, we cannot forget about the children. Child care must be available and affordable. There is no other way unless we want to encourage child abandonment so moms can go to work to feed them. I believe we should block grant many of the child care programs, allowing the States to construct their own systems of funding. At the same time, I believe it is important to maintain the child care guarantee for those receiving assistance and to make certain that the assistance is adequate.

What the American people, I believe, wanted and what this Congress should deliver is not a program that throws money at the problem or that pulls the rug out from under the feet of poor children. We must design a program that makes every dollar productive.

In designing reforms, we should not ignore our past experience. We have existing programs that have been successful in moving recipients from welfare to work.

Wisconsin and Riverside, CA have been widely touted as the most successful welfare-to-work programs in the Nation. What both of these programs have are several things in common: An immediate requirement to find a job or participate in job search activities, increased funds for necessary support services like job training, counselors, and child care, and more caseworkers to deal more directly and comprehensively with the needs of individual recipients.

Moving recipients into jobs is expensive and time consuming. It can be done, but not on the cheap. Investing in people is more expensive, but far

more rewarding, than just giving them a check. My bill costs money, but I believe it is an investment in the future. As the Chicago Tribune wrote in a recent editorial "a society that does not invest long term is one that always will have problems in the short."

I believe the Senate must also pledge to do no harm. We recently pledged to reject any legislation that increases the number of hungry and homeless children. Poorly thought out welfare reform does just that. When Michigan eliminated general assistance, jobs were not forthcoming and the number of homeless and hungry people increased. We must learn from past errors, and not enact reforms that ultimately hurt more poor children and families than are helped.

My bill, the Economic Opportunity and Family Responsibility Act, focuses on economic opportunity, family investment and transitional support. I believe these are the components for real welfare reform. I also believe that a greater dialog on these aspects of welfare reform should serve as a base for a wise and realistic Senate welfare reform effort.

Mr. President, I ask unanimous consent that a summary and a section-by-section analysis of its provisions be printed in the RECORD.

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

SUMMARY

The Economic Opportunity and Family Responsibility Act of 1995 focuses on welfare reform solutions that seek to reduce poverty in America. The key elements follow:

Investment in poor communities through private sector job creation; improves work incentives; provides state flexibility; encourages marriage and family stability; encourages parental responsibility; targets teen parents; acknowledges and encourages the participation of the non-custodial parent; reduces recidivism.

1. PROVIDES INCENTIVES FOR PRIVATE SECTOR JOB CREATION

Equity Investment Proposal—Targets the use of the banking system to create equity investments in companies located in or near poor communities. The Federal Reserve would be required to pay interest on the over $30 billion that banks and thrifts have on deposit at the Federal Reserve. Instead of cash interest would be paid in the form of certificates equal in value to the interest each bank and thrift "earned" each year.

Banks and thrifts could turn the certificates into cash by making investments in qualified companies—qualified companies are those willing to locate in or near high-unemployment/poverty zones. Qualified companies must agree that 50% of their employees associated with the investments will come from the ranks of the unemployed residents of the zone and particularly the long term unemployed and those eligible for AFDC, Foodstamps, and General Assistance.

Job Support Demonstration—Demonstration funds are available to entities in poor communities that have developed agreements with the private sector to provide jobs and relevant training to AFDC recipients. Funds could be used for necessary support services.

Coordination of Services—Allows funds for several demonstrations for states to develop One-Stop Career Centers in poor communities that would provide information on and/or assist recipients in obtaining job training, education, support services and matching job skills with existing or anticipated jobs.

2. PROVIDES INCENTIVES TO WORK

Increase Income Disregard—Allows states the flexibility to set their own income disregards.

Qualified Asset Accounts—States may allow recipients to save up to $10,000 for education, self-employment, and work related expenses.

Advanced EITC—Requires the Secretary of the Treasury to develop an Advanced Earned Income Tax Credit demonstration program.

Tax Assistance Program—Expands government efforts to provide funds for tax assistance to low income families targeting AFDC, Food Stamp recipients, the homeless, and those families that receive child care assistance through the At-Risk program.

3. PROVIDES STATE FLEXIBILITY

Allows states to move from process and administrative activities to moving recipients into work by:

Allowing states to require participation in JOBS immediately.

Allowing states the flexibility to determine what activities constitute participation in JOBS and the hours of recipient participation.

Consolidating several child care programs into a capped entitlement block grant.

Liberalizing earned income disregard rule.

Increasing JOBS funds.

4. ENCOURAGES MARRIAGE AND FAMILY STABILITY

Elimination of Marriage Disincentives:

Work histories—Removes the AFDC provision that requires principal wage earners in two parent families to have record work histories.

100 hour rule—Removes the AFDC provision that denies eligibility in the wage earner works 100 hours or more in a month.

6 month limit—Removes the AFDC provision that allows States to limit the participation of two-parent families in AFDC to only 6 months in any 12 month period.

Stepparents—Exempts stepparents from current deeming rules when their income is less than 130 percent of poverty.

5. REQUIRES PARENTAL RESPONSIBILITY

Expands Federal Locator Systems—Establishes a national network based on comprehensive statewide child support enforcement systems, allowing states to locate any absent parent who owes child support and coordinating child support enforcement between states.

Federal Child Support Order Registry—Establishes a federal child support order registry at HHS.

National Child Support Guidelines Commission—Establishes a Commission to develop national child support guidelines for consideration by the Congress.

Civil Procedures for Paternity Establishment would be Strengthened—Streamlines civil procedures used to establish paternity.

Hold on Occupational, Professional, and Business Licenses—Denies/withholds occupational, professional, business, and drivers' licenses for noncompliance with child support orders.

6. TARGETS TEEN PARENTS

Teen Schooling and Employment Requirements—Requires teen AFDC recipients to participate in educational activities leading to completion of high school or the equivalent, or participate in job preparation and job search activities. For those teens who do not meet these requirements a portion of their AFDC grant will be cut.

Teen Case Management—Requires states to establish a system that provides intensive case management services to teen parents on AFDC.

Minor Teenage Parent Residency Requirement—Requires teen parents receiving AFDC to live at home with parents or in another supervised setting, except under certain circumstances.

7. ACKNOWLEDGES THE ROLE OF THE NON-CUSTODIAL PARENT

Allows states to use a portions of JOBS funds for non-custodial parents:

Child Support Demonstrations—Provides funding for state demonstrations to establish programs for non-custodial parents who are unable to pay child support due to under or unemployment.

Teen Noncustodial Parents and Child Support—Gives states the authority to temporarily waive the right to collect child support obligations of teen noncustodial parents who are participating in a state educational or employment preparation program.

Provides grants to states for access and visitation programs.

8. REDUCES RECIDIVISM

Allows states to extend transitional child care and Medicaid:

Six child care programs are block granted. The child care guarantee remains for those receiving AFDC and those transitioning off of AFDC. Additional funds are made available for the block grant.

SECTION-BY-SECTION ANALYSIS

TITLE I—WORK

Section 101. Increase in JOBS program funding

Increase funding for the JOBS program to: $1.540 billion in FY96, $1.980 billion in FY97, $2.420 billion in FY98, $2.860 billion in FY99, $3.300 billion in FY00.

Section 102. Increase in JOBS matching rate; continuation of minimum rate

Increase the Federal match rate by 5% in FY96, by 10% by FY2000, with a minimum of 70%.

Other Changes: A portion of JOBS funds up to 5% at a state's discretion can be targeted to non-custodial parents.

Section 103. Increase in required JOBS participation rate

Increase the JOBS participation requirement to: 25% in FY96, 30% in FY97, 35% in FY98, and 40% in FY99.

Other changes: Voluntary activities for parents of young children (head start centers, school activities, parenting classes etc) can count toward participation rates.

States are allowed to pay for school at institutions of higher learning, vocational or technical school, if part of employability plan.

Section 104. Additional requirements for JOBS participation

Would establish work requirements from 15 and not more than 35 hours per week.

Section 105. Activities that are considered participation in the JOBS program

Would include volunteer work and training as acceptable activities in the JOBS program.

Section 106. Training and employment for noncustodial parents

Would establish a program to conduct training and employment opportunities for noncustodial parents.

Section 107. Demonstration project for private sector employment

Would create a demonstration program to provide jobs for individuals receiving aid under title IV of Social Security Act.

Section 108. Coordination of services

Allow funds for several demonstrations for States to develop One-Stop Career Centers in poor communities that would provide or offer information and assistance in obtaining:

Aid under the State plan; employment and training counseling; job placement services; child care; health care; transportation assistance; housing assistance; child support services; National Service; Unemployment Insurance; Carl Perkins Vocational programs; School-to-work programs; Federal student loan programs: JTPA; and other types of counseling and support services.

TITLE II—REFORMS OF AFDC AND TREATMENT OF TEENAGE PARENTS

Subtitle A—AFDC Reforms

Section 201. Increased income disregard

Liberalizes earned income disregard requirements.

Section 202. Disregard of income and resources designated for education, training, and employability

Allows AFDC recipients to disregard up to $10,000 of their contributions to "qualified asset accounts". Funds could be used for the following:

the attendance of any family member at any education or training program;

the improvement of the employability (including self-employment) of a member of the family (such as through the purchase of a car);

the purchase of a family residence;

a change of the family residence.

Section 203. Elimination of marriage disincentives

Work histories: Remove the AFDC provision that requires principal wage earners in two parent families to have recent work histories.

100 hour rule: Remove the AFDC provision that denies eligibility if the wage earner works 100 hours or more in a month.

6 month limit: Remove the AFDC provision that allows States to limit the participation of two-parent families in AFDC to only 6 months in any 12 month period.

Stepparents: Exempt stepparents from current deeming rules when their income is less than 130% of poverty.

Subtitle B—Teenage Parents

Section 211. Minor teenage parent residency requirement

Teens would be required to live with their parents or in a supervised living arrangement.

Section 212. Schooling and employment requirements

Require individuals under the age of 20 to participate in an educational program.

Section 213. Planning, start-up, and reporting

The federal government would reduce payment levels if the State's teen participation rate does not exceed established levels.

Section 214. Case management

Would require State to assign a case manager to each teen recipient who is a custodial parent or pregnant.

TITLE III—STRENGTHENING PARENTAL RESPONSIBILITY AND FAMILY STABILITY

Subtitle A—Federal Responsibilities

Section 301. Expansion of functions of federal parent locator service

The functions of the federal parent locator service would be expanded to provide information about an absent parent in order to establish parentage, or establish, modify, and enforce child support obligations. Safeguards would be established to prevent disclosure of information that would jeopardize the safety of either parent, or any child.

Section 302. Expansion of federal parent locator systems

The information collected by the Locator System would be expanded to include the most recent residential address, employer name and address, and amounts and nature of income and assets. The Secretary of the Treasury would be required to provide access to all Federal income tax returns filed by individuals with the IRS. The Secretary of HHS would expand the Parent Locator Service to establish a national network based on comprehensive statewide child support enforcement systems, which would allow states to locate any absent parent who owes child support, and coordinate child support enforcement between states.

Section 303. Federal child support order registry

The Secretary of HHS would establish a federal registry containing all child support orders entered in any state. States would use the registry to enforce interstate orders, update support orders, and track old child support orders.

Section 304. National reporting of employees and child support information

Secretaries of Labor and the Treasury would establish a system of reporting of employees by requiring employers to provide a copy of every employee's W-4 form to the child support order registry. The W-4 would include information about the employee's child support obligations.

Section 305. Federal matching payments

The Federal Matching Rate would be increased to 69 percent in fiscal year 1996, 72 percent in fiscal year 1997; and 75 percent in fiscal year 1998 and each succeeding fiscal year.

Section 306. Performance-based incentives and penalties

To encourage and reward State child support enforcement programs which perform in an effective manner, the Federal matching rate for payments to a State would be increased by a factor reflecting the sum of the applicable incentive adjustments with respect to Statewide paternity establishment and to overall performance in child support enforcement. Amounts range from up to 5 percentage points, depending on Statewide paternity establishment; and 10 percentage points in connection with the overall performance in child support enforcement.

Section 307. Increased federal financial participation for States with unified child support enforcement programs

The quarterly payment would increase by 5 percentage points if the State child support enforcement program is centered at the State level in a unified State agency.

Section 308. New child support audit process

The Secretary of HHS would generate new criteria and standards for conducting reviews of the child support provisions of the Social Security Act.

Section 309. National child support guidelines commission

A commission would be established to develop a national child support guideline for consideration by the Congress.

Section 310. Child support audit advisory committee

A committee of no more than 6 members would be established to assist the Secretary of HHS in developing revised audit criteria and standards.

Subtitle B—Paternity Establishment

Section 311. Paternity establishment procedures

Procedure would be established to make the voluntary establishment of paternity easier, including the use of hospital-based acknowledgement. Due process protection would be established for those individuals who voluntarily acknowledge paternity with extra protection for minor noncustodial parents who voluntarily acknowledge paternity.

Section 312. Enhancing outreach to encourage paternity establishment

Would add an enhanced federal match rate of 90 percent for greater state outreach efforts to encourage voluntary paternity establishment. This outreach could occur through providers of health services, such as prenatal health care providers, health clinics, or hospitals.

Section 313. Strengthening civil procedures for paternity establishment

Civil procedures used to establish paternity would be streamlined through such activities as expediting procedures for genetic testing upon birth of the child; advance the costs of genetic tests, subject to recoupment from the putative father of a child if he is determined to be the father; prohibit the use of hearings by a court or administrative agency to ratify an acknowledgement of paternity; and allowing the forgiveness of medical expenses associated with the birth of the child if the father cooperates or acknowledges paternity.

Section 314. Penalty for failure to established paternity promptly

The amounts payable to a State for any quarter after the enactment of this act would be reduced by an amount determined from a formula developed by the Secretary of HHS for certain children for whom paternity has not been established.

Subtitle C—Enforcement

Section 321. Access to financial records

Establishes procedures under which the State may obtain access to financial records maintained by any financial institution doing business in the State, for the purpose of establishing, modifying, or enforcing a child support obligation of the person.

Section 322. Presumed address of obligor and obligee

Procedures under which the court would require each party subject to child support order to file the following: the party's residential address or addresses; the party's mailing address; the party's home telephone numbers; the party's driver's license number and the state that issued that license; the party's social security account number; the name of each employer of the party; the addresses of each place of employment of the party; and the party's work telephone number or numbers.

Section 323. Fair credit reporting act amendment

Would allow access to credit reports for a State agency for use in establishing, modifying, or enforcing a child support award.

Section 324. Additional benefits subject to garnishment

Would allow garnishment of Federal death benefits, Black Lung benefits, workers' compensation and veterans benefits to fulfill child support obligations.

Section 325. Hold on occupational, professional, and business licenses

Procedures under which the State or Federal occupational licensing and regulating

departments and agencies may not issue or renew any occupational, professional, or business license of a parent who is the subject of an outstanding failure to appear in a child support proceeding, or an individual who is delinquent in the payment of child support.

Section 326. Driver's licenses and vehicle registrations denied to persons failing to appear in child support cases

The State would not issue or renew the driver's license of any noncustodial parent who is the subject of an outstanding failure to appear warrant, capias, or bench warrant related to a child support proceeding.

Section 327. Liens

The State would place liens on all nonexempt real and titled personal property for child support arrearages, updating the value of the lien on a regular basis.

Section 328. Fraudulent transfer pursuit

Would require agencies to view any transfer of property for significantly less than the market value by a person who owes child support arrearages as an attempt to avoid paying child support arrearages.

Section 329. Reporting of child support arrearages to credit bureaus

Would require the total amount of the monthly support obligation to be reported to credit bureaus.

Section 330. Denial of passports to noncustodial parents subject to State arrest warrants in cases of nonpayment of child support

The Secretary of State is authorized to refuse a passport or revoke, restrict, or limit a passport for any person owning child support in any case that is not less than $10,000.

Section 331. Statutes of limitations

The age through which a State could pursue back child support would be extended until the child to whom the support is owed reaches age 30.

Section 332. Collection of past-due support using tax collection authority

The role of the IRS would be expanded to include collection of delinquent child support orders.

Subtitle D—State Responsibilities

Section 341. Start role

Each State would be required to establish an automated central State registry of child support orders, which, under a phase-in plan, would eventually contain all child support orders entered, modified, or enforced in the State.

Section 342. Uniform terms in orders

There would be a uniform abstract of a child support order developed, for use by the child support order registry. The uniform order would contain all pertinent information for the registry.

Section 343. States required to enact the uniform interstate family support act

Each State must have in effect laws which adopt the officially approved version of the Uniform Interstate Family Support Act.

Section 344. Expedited processes and administrative procedures

Non-compliant States with judicial systems for processing child support cases would be required to convert to administrative system.

Section 345. Due process

Due process would ensure that individuals who are parties to cases in which services are being provided under this part receive notice of all proceedings in which support obligations might be established or modified; and receive a copy of all modifications; and have timely access to a fair hearing of their complaint procedure.

Section 346. Outreach and accessibility

States would be required to use the uniform federal application for child support.

Section 347. Cost-of-living adjustment of child support awards

States would be required to adjust child support orders for cost-of-living increases. The agencies would also be required to notify the individual obliged to pay child support and the individual owed child support of the adjustments.

Section 348. Simplified process for review and adjustment of certain child support orders

States would be required to review a child support order every 3 years at the request of either parent subject to such order.

Section 349. Prevention of conflict of interest

To ensure that States do not provide to any noncustodial parent of a child representation relating to the review or adjustment of an order for the payment of child support with respect to the child, unless the State makes provision for such representation outside the State agency.

Section 350. Staffing

The Secretary of Health and Human Services would conduct a study on staffing for each State child support enforcement program to report to Congress.

Section 351. Training

Would provide federal training assistance and funding for training to States. States would develop and implement a training program under which training is to be provided at least once per year to all personnel performing functions under the State plan.

Section 352. Priorities in distribution of collected child support

Amounts collected as support by a State would be allocated as follows: First, for cash support payments. Then, for payments related to health care insurance coverage of children covered by the order. Finally, for payments of support that are past due, and for payment of unreimbursed health care expenses.

Section 353. Teenage noncustodial parents and child support

The States would be given authority to temporarily waive the right to collect child support obligations of teen noncustodial parents who are participating in a State educational or employment preparation program.

Subtitle E—Demonstrations, Grants, and Miscellaneous

Section 361. Establishment of child support assurance demonstration projects

In order to encourage States to provide a guaranteed minimum level of child support for every eligible child not receiving such support, the Secretary of HHS will make grants to 6 States to conduct demonstration projects to establish system of minimum child support.

Section 362. Establishment of simple child support modification demonstration projects

Secretary of HHS would make grants to not more than 5 States to conduct demonstration projects for the purpose of establishing a simple process for the modification of child support orders based on changed family circumstances.

Section 363. Establishment of demonstration projects for providing services to certain noncustodial parents

Provides funds for state demonstrations to establish programs for noncustodial parents who are unable to pay child support due to unemployment.

Section 364. Grants to States for access and visitation programs

Would enable States to establish and administer programs to support and facilitate absent parents' access to and visitation of their children.

Section 365. Technical correction to ERISA definition of medical child support order

Would amend language in Employee Retirement Income Security Act of 1974.

Subtitle F—Tax Reforms

Section 371. Quarterly advanced EITC

Require the Secretary of the Treasury within 6 months of enactment of this act to develop a quarterly multi-state Advanced Earned Income Tax Credit demonstration program.

Section 372. Expansion of the tax counseling for the elderly programs

Expand the TCE program to also provide funds for tax assistance to low income families targeting AFDC, Food Stamp recipients, the homeless and those families that receive child care assistance through the At-Risk program. Funds could be used to recruit, train, coordinate and provide oversight of volunteers. Funds could also be used to assist low income persons with tax audits, administrative hearings and obtaining assistance through the judicial system. Families at or below 185% of the poverty would be eligible.

TITLE IV—CHILD CARE

Section 401. Child care for needy families block grant

The following programs would be repealed: AFDC JOBS Child Care, At-Risk Child Care, Transitional Child Care, Child Care and Development Block Grant, Child Development Associate Program, State Dependent Care Planning and Development Grants. A new capped entitlement would be created. Each state would receive the aggregate amount of child care funds they received in FY 95. Any additional amounts will be made available to states that maintain state spending levels on child care in FY 95 plus put up $1 for every $4 of new money.

FY 95 would serve as the base year. All states would receive the amount they received in FY 95. No state will receive less—hold harmless provision. The additional funds available through the block grant would be based on a new funding formula.

Formula:

Hold Harmless provision—every state will receive a base amount equivalent to the aggregate amount of the above programs in FY 1995.

All additional funds will be allocated based on each state's proportion of poor children.

Section 402. Repeals and technical and conforming amendments

Related Repeal and conforming amendments

Section 403. State option to extend transitional medicaid benefits

States are permitted to extend Medicaid for 1 additional year.

TITLE V—EQUITY INVESTMENT

Section 501. Short title

This title may be cited as the "Equity Investment Development Act of 1995".

Section 502. Definitions

Defines key terms used in this title.

Subtitle A—Equity Investment Development Zones

Section 511. Designation procedure

Would designate 10 areas as equity investment development zones, using the designation process provided in this section.

Section 512. Eligibility criteria

Establishes criteria for eligibility to be designated as a development zone. These criteria include a limit on population, a limit on size of area, a minimum poverty rate, and other requirements.

Section 513. Period for which designation is in effect

Would allow any designation under this section to remain unless revoked by the appropriate Secretary. The appropriate Secretary would revoke a designation if the average poverty rate of the area equals the States, or if the area has an average unemployment rate that is less than or equal to the average of the State or States in its zone.

Section 514. Subsequent designations

Would allow the appropriate Secretaries to designate no more than 100 additional areas as equity investment development zones within 6 years of enactment of this title.

Section 515. Special Rules

Would require each local government or State that seeks to nominate the same area to comply with all requirements of this subtitle. Would treat an area nominated by an economic development corporation chartered by the State the same as an area nominated by a local government or a State.

Subtitle B—Equity Investments in Qualified Companies

Part I—Certificate Program

Section 521. Calculation of imputed earnings; issuance of certificates

Would establish a single rate of interest applicable to all reserves. The Board would make necessary changes to interest rate, and calculate the imputed earnings on all reserves during the preceding years.

Section 522. Investment in qualified companies

Would issue a certificate to an insured depository institution that could: (1) be used to make an equity investment in one or more qualified companies in the amount equal to the adjusted face value of the certificate; (2) be transferred by the insured depository institution to the Corporation; or (3) be sold by the insured depository institution to a third party.

Section 523. Reimbursement

Establishes procedure for reimbursement relating to direct investment.

Section 524. Transferability of certificates

Would allow each certificate under this part to be fully transferable.

Section 525. Expiration of certificates

Would establish that each certificate expires after two year period at issuance of certificate.

Section 526. Effective date

Would become effective on the date on which all of the initial designations of areas are made.

Part II—Community Equity Investment Corporation

Section 531. Establishment

Would establish a corporation called the Community Equity Investment Corporation.

Section 532. Incorporators; Board of Directors

Designates the board of directors.

Section 533. Restrictions on transferability of corporation stock

Would not allow transfer of corporation stock for 5 years.

Section 534. Dissolution of the corporation

Establishes procedures for the dissolution of the corporation.

Subtitle C—Assistance to Qualified Companies Receiving Equity Investments

Section 541. Wage supplementation program

Establishes procedures for wage supplementation.

TITLE VI—EFFECTIVE DATE

Section 601. Effective date

This Act and the amendments made by this Act shall take effect on October 1, 1995.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 747. A bill to require the President to notify the Congress of certain arms sales to Saudi Arabia until certain outstanding commercial disputes between United States nationals and the Government of Saudi Arabia are resolved; to the Committee on Foreign Relations.

THE SAUDI ARABIAN ARMS SALES LIMITATION ACT OF 1995

Mr. D'AMATO. Mr. President, I rise today, on behalf of myself and Senator MOYNIHAN, to introduce the Saudi Arabian Arms Sales Limitation Act of 1995. This legislation is designed to rectify a wrong that has been placed on an American company with New York roots by the Government of Saudi Arabia.

Specifically, this legislation would modify section 36(b)(1) of the Arms Export and Control Act to require congressional oversight and scrutiny of all arms sales to the Government of the Kingdom of Saudi Arabia until such time as the Secretary of State certifies and reports to Congress that the unpaid claims of American companies described in the June 30, 1993 report by the Secretary of Defense pursuant to section 9140(c) of the Department of Defense Appropriation Act, 1993—Public Law 102-396; 106 Stat. 1939—have been resolved satisfactorily. This would also include the additional claims noticed by the Department of Commerce on page 2 of the report.

The claim of a New York company, Gibbs & Hill, Inc., falls under this legislation. The company, which was a large employer in New York, sought to have its claim paid through the special claims process established for the resolution of claims of American companies which had not received fair treatment in their commercial dealing with the Government of the Kingdom of Saudi Arabia. The Gibbs & Hill claim is the last remaining unpaid claim awaiting resolution under the special claims process. Gibbs & Hill was decimated by financial losses incurred in the design of the desalination and related facilities for the Yanbu industrial city in Saudi Arabia in the late 1970's and early 1980's as a result of the kingdom's failure to honor its contractual obligations and pay for work done for the company.

I and many of my colleagues wrote to Saudi Ambassador, Bandar bin Sultan, who has authority to pay the claim, to express my concern that outstanding United States commercial claims be successfully resolved. In particular, I stated my concern that American companies may learn of the difficulties faced by United States firms in their efforts to achieve just settlements of their disputes and may become reluctant to do business in Saudi Arabia thereby depriving both countries of a valuable form of business exchange.

Now, we have the opportunity to conclude the special claims process established in 1992 for the resolution of claims of American companies for work in the kingdom. The kingdom has made a series of commitments to our Government to favorably resolve the claim for Gibbs & Hill. These commitments date from April 1993 and were reiterated both in Washington and in Riyadh on the eve of the gulf crisis, October 7, 1994, when our Nation once again came to the kingdom's rescue. While we saved the kingdom's assets once again, Gibbs & Hill has yet to be paid.

Administration officials, and numerous Senators and Members of Congress have repeatedly expressed their concern that this claims issue be successfully concluded through payment to Gibbs & Hill. The delaying tactics of the kingdom, which stands in stark contrast to our immediate response to their needs, can no longer be tolerated. Further delay simply casts a shadow over our bilateral relationship that eclipses the good-faith efforts which we have exerted together on the claims issue and indeed on all issues.

I urge my colleagues in the Congress to support this legislation. I also hope that the ensuing discussion of this legislation will focus on additional measures to ensure that the unfair treatment of Gibbs & Hill in its commercial dealings with the Saudi Arabian Government during the course of performing its work on behalf of the Saudi Arabian Government, as well as under the special claims process, is not repeated. It is with the realization of the past unfair treatment of firms such as Gibbs & Hill that I offer this legislation in an effort to fully scrutinize our commercial dealings with the kingdom until such time as the kingdom demonstrates its intention to honor its obligations and commitments.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 747

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NOTIFICATION OF ARMS SALES.

Until the certification under section 2 is submitted to the Congress, section 36(b)(1) of the Arms Export Control Act shall be applied to sales to Saudi Arabia by substituting in the first sentence "$10,000,000" for "$50,000,000", "$50,000,000" for "$200,000,000", and "$2,000,000" for "$14,000,000".

SEC. 2. CERTIFICATION.

Section 1 shall cease to apply if, and when the Secretary of State certifies and reports in writing to the Congress that the unpaid claims of American firms against the Government of Saudi Arabia that are described in the June 30, 1993, report by the Secretary of Defense pursuant to section 9140(c) of the Department of Defense Appropriations Act, 1993 (Public Law 102-896; 106 Stat 1939), including the additional claims noticed by the Department of Commerce on page 2 of that report, have been resolved satisfactorily.

By Mr. McCAIN:

S. 748. A bill to require industry cost-sharing for the construction of certain new federally funded research facilities, and for other purposes; to the Committee on Governmental Affairs.

THE FEDERAL RESEARCH FINANCING IMPROVEMENT ACT OF 1995

• Mr. McCAIN. Mr. President, today I'm introducing legislation to restore fairness and fiscal accountability to the Federal Government's many research and development programs and activities.

The bill would require that commercial interests share the cost of constructing and operating new Federal research facilities that are intended to benefit their industries.

This year the Federal Government will spend $73 billion for research programs, including facility construction. Many of these programs are intended primarily to assist private industries and are sponsored by a host of Federal agencies, predominantly the Department of Agriculture, the Department of Commerce, and the National Research Council.

For example, the Department of Agriculture spends nearly $750 billion per year for 116 centers under the Agriculture Research Service. These federally funded centers are designed to help a variety of agriculture industries, many of which have enormous resources and do not require Federal assistance. I understand the agency is planning to construct even more facilities. Last year, Congress appropriated $26 million to construct a new swine research center at Iowa State University, even though we already have 12 Federal centers dedicated to swine research. This additional facility will cost nearly $10 million a year to operate.

Mr. President, I recognize the importance of research and development to our competitiveness and economic growth, although I seriously question why we need 13 centers dedicated to swine research. Nevertheless, given our serious fiscal condition at a time when we are contemplating significant reductions in practically every area of domestic discretionary spending, I see absolutely no reason why Government research that benefits private industries, many of them quite prosperous, should not be cost-shared by the private sector.

In regard to the Swine Research Center, the pork industry, generates nearly $66 billion per year. Surely, it is reasonable to expect the industry, and the many others that directly benefit from Federal research, to share the cost of that work. I should add that the legislation would not require cost sharing for any research conducted for the purpose of helping industry comply with Federal regulations.

Mr. President, industry is historically more cautious with their resources than the Federal Government. If the private sector will not expend their resources for a program that is intended for their benefit, one must question why we would feel compelled to spend the taxpayer's hard earned money on the same venture. Public-private cost-sharing arrangements for commercially oriented Federal research will ensure that proposed activities are truly cost-beneficial and that the potential outcomes of the research are worth the dollars invested.

Again, I realize and appreciate the importance of research and development. Certainly, activities intended to promote public health and safety should not be compromised. I believe, however, that the legislation I've introduced is a prudent and responsible approach which, no doubt, can be improved, but which should receive the Senate's full and timely consideration. I hope that we can have a hearing in the very near future to examine what I believe is a very important fiscal issue.•

By Mr. AKAKA (for himself and Mr. ROCKEFELLER):

S. 749. A bill to amend title 38, United States Code, to recise the authority relating to the Center for Women Veterans of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

THE TECHNICAL MODIFICATIONS TO MINORITY VETERANS INITIATIVES ACT OF 1995

• Mr. AKAKA. Mr. President, in behalf of myself and Senator ROCKEFELLER, I am offering legislation today that would make certain improvements, largely technical in nature, to provisions affecting minority and women veterans that were enacted as part of an omnibus veterans benefits measure (Public Law 103-446) late last year.

As my colleagues recall, among other initiatives, Public Law 103-446 established within the Department of Veterans Affairs [VA] a Center for Minority Veterans, a Center for Women Veterans, and an Advisory Committee on Minority Veterans. These provisions were adopted in order to ensure that VA appropriately addresses the special needs and concerns of veterans who are women or members of minority groups. The measure we are introducing today would make the following modifications to these initiatives:

First, it would allow the directors of the Center for Minority Veterans and the Center for Women Veterans to have either career or noncareer status. Under the legislation adopted last year, both directors are required to be noncareer appointees. As the Senate sponsor of the legislation that led to the establishment of the two Centers, I had wanted the Secretary to retain the discretion to appoint either career or noncareer individuals to these jobs and believed that there was agreement on this approach with our colleagues in the House. Unfortunately, the career alternative was not included in the final legislation. The provision in the bill we are introducing today would restore that option so that the Secretary will have the option to appoint directors with career status so as to be able to consider the widest possible field of qualified candidates.

Second, it would add an additional function to the list of statutory functions of the Center for Minority Veterans. Specifically, our legislation would require the center to advise the Secretary of the effectiveness of VA's efforts to include minority groups in clinical research and on the particular health conditions affecting the health of minority group members. This provision is consistent with the goals set forth in section 492B of the Public Health Service Act. The Center for Women Veterans is already mandated by law to carry out a similar function with respect to the health of women veterans.

Third, it would explicitly require that the Center for Minority Veterans provide support and administrative services to the Advisory Committee on Minority Veterans. This provision is consistent with the traditional agency role of providing professional and technical support to advisory entities. Again, this provision parallels existing law requiring that the Center for Women Veterans provide support to the Advisory Committee on Women Veterans.

Fourth, it would define the minority veterans for whom the Center for Minority Veterans has responsibility. Specifically, minority veterans are defined as individuals who are Asian-American, black, Hispanic, Native American—including American Indian, Alaskan native, and Native Hawaiian—and Pacific-Islander-American. This definition is identical to the definition included in current law with respect to the Advisory Committee on Minority Veterans.

Fifth, it would extend the termination date of the Advisory Committee on Minority Veterans an additional 2 years, from December 31, 1997, to December 31, 1999. This provision is necessary because delays in establishing the Advisory Committee have reduced its potential working life to significantly less than the 3 years authorized by Congress. Extending the life of the Advisory Committee to December 1999 is not unreasonable, given that all other statutory VA advisory boards, including the Advisory Committee on Women Veterans, the Advisory Committee on Former Prisoners of War, and the Advisory Committee on Prosthetics and Special-Disabilities Programs, are authorized permanently.

Finally, our bill would give the Advisory Committee on Minority Veterans and the Advisory Committee on Women Veterans responsibility for monitoring and evaluating the respective activities of the Center for Minority Veterans and the Center for Women Veterans. Insofar as the Advisory Committees were established to oversee all of the activities of the Department of Veterans Affairs with respect to minorities and women, they necessarily should be tasked with overseeing the work of the very offices that are chiefly responsible for ensuring that the special needs of minority and female veterans are accommodated by VA.

Mr. President, I urge my colleagues to support this measure.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 749

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVISION OF AUTHORITY RELATING TO CENTERS.

(a) SES STATUS OF DIRECTORS.—Sections 317(b) and 318(b) of title 38, United States Code, are each amended by inserting "career or" before "noncareer".

(b) ADDITIONAL FUNCTIONS OF CENTER FOR MINORITY VETERANS.—Section 317(d) of such title is amended—

(1) by redesignating paragraph (10) as paragraph (12); and

(2) by inserting after paragraph (9) the following new paragraphs (10) and (11):

"(10) Advise the Secretary and other appropriate officials on the effectiveness of the Department's efforts to accomplish the goals of section 492B of the Public Health Service Act (42 U.S.C. 289B of the Public Health Service Act (42 U.S.C. 289a-2) with respect to the inclusion of members of minority groups in clinical research and on particular health conditions affecting the health of members of minority groups which should be studied as part of the Department's medical research program and promote cooperation between the Department and other sponsors of medical research of potential benefit to veterans who are minorities.

"(11) Provide support and administrative services to the Advisory Committee on Minority Veterans provided for under section 544 of this title.".

(c) DEFINITION OF MINORITY VETERANS.—Section 317 of such title is further amended by adding at the end the following:

"(g) In this section—

"(1) The term 'veterans who are minorities' means veterans who are minority group members.

"(2) The term 'minority group member' has the meaning given such term in section 544(d) of this title.".

(d) CLARIFICATION OF FUNCTIONS OF CENTER FOR WOMEN VETERANS.—Section 318(d)(10) of such title is amended by striking out "(relating to" and all that follows through "and of" and inserting in lieu thereof "(42 U.S.C. 288a-2) with respect to the inclusion of women in clinical research and on".

SEC. 2 OVERSIGHT OF CENTERS BY ADVISORY COMMITTEES.

(a) CENTER FOR WOMEN VETERANS.—Section 542(b) of title 38, United States Code, is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraph:

"(2) The Committee shall monitor and evaluate the activities of the Center for Women Veterans provided for under section 318 of this title and report to the Secretary the results of such monitoring and evaluation at the request of the Secretary.".

(b) CENTER FOR MINORITY VETERANS.—Section 544(b) of such title is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraph:

"(2) The Committee shall monitor and evaluate the activities of the Center for Minority Veterans provided for under section 317 of this title and report to the Secretary the results of such monitoring and evaluation at the request of the Secretary.".

SEC. 3. EXTENSION OF TERMINATION DATE OF ADVISORY COMMITTEE ON MINORITY VETERANS.

Section 544(e) of title 38, United States Code, is amended by striking out "December 31, 1997" and inserting in lieu thereof "December 31, 1999".●

By Mr. PACKWOOD (for himself and Mr. MOYNIHAN):

S. 750. A bill to amend the Internal Revenue Code of 1986 to properly characterize certain redemptions of stock held by corporations; to the Committee on Finance.

REDEMPTION OF STOCKS LEGISLATION

● Mr. PACKWOOD. Mr. President, recent news reports suggest that corporate taxpayers may be attempting to dispose of stock of other corporations through stock redemption transactions that are the economic equivalent of sales. The transactions are structured so that the redeemed corporate shareholder apparently expects to take the position that the transaction qualifies for the corporate dividends received deduction and therefore substantially avoids the payment of full tax on the gain that would apply to a sales transaction.

For example, it has been reported that Seagram Co. intends to take the position that the corporate dividends received deduction will eliminate tax on significant distributions received from DuPont Co. in a redemption of almost all the DuPont stock held by Seagram, coupled with the issuance of certain rights to reacquire DuPont stock. (See, e.g. Landro and Shapiro, Hollywood Shuffle, Wall Street Journal, April 7, 1995; Sloan, For Seagram and DuPont, a Tax Deal that No One Wants to Brandy About, Washington Post, April 11, 1995; Sheppard, Can Seagram Bail Out of DuPont without Capital Gain Tax, Tax Notes Today, 95 TNT 75-4, April 10, 1995.) Moreover, it is reported that investment bankers and other advisors are actively marketing this potential transaction.

Today we introduce legislation intended to curtail the use of such transactions immediately. We believe the approach adopted in the bill is the correct approach, given the incentives under present law for corporations to structure transactions in an attempt to obtain the benefits of the dividends received deduction. We welcome comments on the bill and recognize that additional or alternative legislative changes may also be appropriate. However, it is anticipated that any legislative change that is enacted would apply to transactions after May 3, 1995.

No inference is intended that any transaction of the type described in the proposed legislation would, in fact, produce the results apparently sought by the taxpayers under present law. The bill does not address and does not modify present law regarding whether a transaction would otherwise be eligible for the dividends received deduction, nor is it intended to restrict the IRS or Treasury Department from issuing guidance regarding these or other issues.

The bill is directed at corporate shareholders because it is believed that the existence of the dividends received deduction under present law creates incentives for corporate taxpayers to report transactions selectively as dividends or sales. No inference is intended that any transaction characterized as a sale under the bill necessarily would be so characterized if the shareholder were an individual.

DESCRIPTION OF THE BILL

Under the bill, except as provided in regulations, any non pro rata redemption or partial liquidation distribution to a corporate shareholder that is otherwise eligible for the dividends received deduction under section 243, 244, or 245 of the Code would be treated as a sale of the stock redeemed. The bill applies to dividends to 80-percent shareholders that would qualify for the 100-percent dividends received deduction as well as to other transactions qualifying for a lesser dividends received deduction. It is not intended to apply to dividends that are eliminated between members of affiliated groups filing consolidated returns. However, it is expected that the Treasury Department will consider whether any

changes to the consolidated return regulations would be necessary to prevent avoidance of the purposes of the bill.

The bill would replace the present-law provision (sec. 1059(e)(1)) that requires a corporate shareholder to reduce basis—but not recognize immediate gain—in the case of certain non pro rata redemptions or partial liquidation distributions.

It is intended that the bill apply to all non pro rata redemptions except to the extent provided by regulations.

The bill retains the existing Treasury Department regulatory authority, contained in section 1059(g) of present law, to issue regulations, including regulations that provide for the application of the provision in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass through entities. Thus, the Treasury Department can issue regulations to carry out the purposes or prevent the avoidance of the bill.

It is expected that recapitalizations or other transactions that could accomplish results similar to any non pro rata redemption or partial liquidation will also be subject to the provisions of the bill as appropriate.

It is also expected that redemptions of shares held by a partnership will be subject to the provision to the extent there are corporate partners.

There are concerns that taxpayers might seek to structure transactions to take advantage of sale treatment and inappropriately recognize losses. It is expected that the Treasury Department will by regulations address these and other concerns, including by denying losses in appropriate cases or providing rules for the allocation of basis.

It is anticipated that the private tax bar and other tax experts will provide input concerning the proposed legislation before its enactment. It is hoped that this process will identify any problems with the proposed legislation and potential improvements. Comment is encouraged in particular with respect to the loss disallowance provision, including whether the loss disallowance should be mandatory. Comment is also encouraged as to whether additional transition should be provided for existing rights to redeem contained in the terms of outstanding stock or otherwise.

EFFECTIVE DATE

The bill would be effective for redemptions occurring after May 3, 1995, unless pursuant to the terms of a written binding contract in effect on May 3, 1995 or pursuant to the terms of a tender offer outstanding on May 3, 1995.

No inference is intended regarding the tax treatment of any transaction within the scope of the bill. For example, no inference is intended that any transaction within the scope of the bill would otherwise be treated as a sale or exchange under the provisions of present law. At the same time, no inference is intended that any distribution to an individual shareholder that would be within the scope of the bill if made to a corporation should be treated as a sale or exchange to that individual because of the existence of the bill.●

By Mr. EXON:

S. 751. A bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization; to the Committee on Finance.

TAX LEGISLATION

Mr. EXON. Mr. President, today I am introducing legislation to repeal an obscurely worded provision in the 1986 Tax Reform Act which makes fundraising proceeds from games of chance conducted by nonprofit organizations subject to the unrelated business income tax [UBIT]. The 1986 change was effective for all States except North Dakota, which received a special exception from the rule. The effect of the change is that nonprofit groups must pay taxes on these proceeds at the corporate income tax rate.

In Nebraska, various churches, charities, veterans groups, and other nonprofit organizations use pull tab lottery cards for fundraising. Locally, these cards are known as pickle cards because they were often held for sale in old, large pickle jars. Pickle card fundraising in Nebraska is limited under State law only to nonprofit organizations. The problem with the 1986 change was that it was so obscure that many nonprofit groups had no knowledge of the new requirement to pay the added tax until 1990. Most, if not all, of the Nebraska nonprofit organizations conducting games of chance had a rude awakening when the Internal Revenue Service informed them of the back taxes they owed along with interest and penalties.

Most of these nonprofit groups are relatively small and they spend the funds raised by gaming each year. You can imagine their shock when they learned that they owed in some cases tens of thousands of dollars for a tax that they did not realize must be paid. In addition to the strain this puts on their finances, the IRS is now challenging the not-for-profits status of at least one Nebraska group based on the amount of funds raised through charitable gaming. Over 200 Nebraska charities have been affected by this confusing change in our law and by inconsistent enforcement by the IRS. I know that this has also been a problem in the past in other States, including Maryland and Minnesota.

The funds that these nonprofit organizations raise are used to support charitable causes and community services. The intention of the unrelated business income tax, enacted in 1950, is to eliminate the competitive advantage of certain tax-exempt organizations that engage in business in direct competition with taxable entities. In Nebraska, these nonprofits are not competing with private companies because, by Nebraska statute, only nonprofit organizations can raise money by selling pickle cards. I believe the solution to this problem is to eliminate the 1986 change, as the bill I am introducing today would do. This legislation would restore fairness and sensibility to our Tax Code and help to ensure that nonprofit organizations are able to continue to provide essential services and support in our communities.

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 752. A bill to amend the Harmonized Tariff Schedule of the United States to restore the duty rate that prevailed under the tariff schedules of the United States for certain twine, cordage, ropes, and cables; to the Committee on Finance.

TARIFF LEGISLATION

Mr. SIMON. Mr. President, today I introduce legislation to correct an error that was made in the 1988 Harmonized Tariff Schedule [HTSUS].

Uni-Pac Equipment, Inc., of Bridgeview, IL, has served as the U.S. distributor of a Swiss company, Peter Born, since 1983. Born manufactures a sophisticated machine for tying the top layers of product-stacked pallets. The Born palletyer requires a highly specialized twine with a high tensile strength in order to operate effectively.

Since 1984, Uni-Pac has been importing the twine used in these machines at a duty rate of 8 percent under tariff 316.5500 [TSUSA]. When the 1988 Harmonized Tariff Schedule came into effect an error was discovered. Due to an oversight by someone at the International Trade Commission when writing the language of the HTSUS, the tariff covering the twine that Uni-Pac imports was accidentally omitted. This was a mistake. The HTSUS was not supposed to change any prevailing duties when it became law. However, because of the omission, the twine imported by Uni-Pac was bumped to the other classification with a duty rate of 27.6 cents per kilogram and a 15 percent duty, a 300-percent increase over the previous tariff. This mistake will cost Uni-Pac over $100,000 in increased duties if it is not corrected.

Uni-Pac has sought several remedies to this problem. The International Trade Commission does not have the authority to fix it. They have looked for other domestic suppliers of this twine, to no avail. There are no U.S. manufacturers of any twine that will work in their machines, and the twine used in these machines is not used in any other machine sold in the United States.

The only way to fix this problem is to amend the 1988 Harmonized Tariff

Schedule to include a classification for the twine imported by Uni-Pac and restore the duty rate that had previously been in effect. This new classification is limited in its scope so that it only covers the twine imported by Uni-Pac for use in the Born palletyer. This legislation also liquidates the increased duties that resulted from the omission of this classification in the 1988 HTSUS.

I am indebted to my colleague in the House, Mr. LIPINSKI, for his work on this issue. This is not a controversial issue, so I am hopeful that we can move quickly to address this problem.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TWINE, CORDAGE, ROPES, AND CABLES.

(a) TARIFF REDUCTION.—Chapter 56 of the Harmonized Tariff Schedule of the United States is amended by striking subheading 5607.50.20 and inserting the following new superior text and subheadings, with the superior text having the same degree of indentation as the article description in subheading 5607.50.40:

"5607.50.25	Not braided or plaited. Three ply twine of nylon having a final 'S' twist; measuring less than 4.8 mm in diameter; containing at least 10% cotton; made of 100% recycled materials	7.9%	Free (IL) 2.4% (CA) 5.8% (MX)	76.5%
5607.50.35	Other	26.8¢/kg + 14.6%	Free (IL) 8.2¢/kg + 4.5% (CA) 13% (MX)	27.6¢/kg 76.5%."

(b) STAGED RATE REDUCTIONS.—

(1) FOR SUBHEADING 5607.50.25.—Any staged rate reduction of a rate of duty for subheading 5607.49.15 of the Harmonized Tariff Schedule of the United States that was proclaimed by the President before the date of the enactment of this Act shall also apply to the corresponding rate of duty set forth in subheading 5607.50.25 (as added by subsection (a)).

(2) FOR SUBHEADING 5607.50.35.—Any staged rate reduction of a rate of duty for subheading 5607.50.20 of the Harmonized Tariff Schedule of the United States that was proclaimed by the President before the date of the enactment of this Act and that would otherwise take effect after the date of the enactment of this Act shall also apply to the corresponding rate of duty set forth in subheading 5607.50.35 (as added by subsection (a)).

SEC. 2. APPLICABILITY.

(a) IN GENERAL.—The amendments made by section 1 apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) RELIQUIDATION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon a request filed with the Customs Service on or before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any goods described in subheading 5607.50.25 of the Harmonized Tariff Schedule of the United States (as added by section 1(a)) that was made—

(1) after December 31, 1988; and

(2) before the 15th day after the date of the enactment of this Act;

shall be liquidated or reliquidated as though the amendment made by section 1(a) applied to such liquidation or reliquidation.

By Mr. BAUCUS (for himself, Mr. LEAHY, Mr. LUGAR, Mr. DASCHLE, Mr. CRAIG, Mr. BURNS, Mr. CAMPBELL, and Mr. HATFIELD):

S. 753. A bill to allow the collection and payment of funds following the completion of cooperative work involving the protection, management, and improvement of the National Forest System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL FOREST SYSTEM LAND LEGISLATION

• Mr. BAUCUS. Mr. President, today I am introducing legislation with Senators LEAHY, LUGAR, DASCHLE, CRAIG, HATFIELD, BURNS, and CAMPBELL. This bipartisan bill encourages public-private partnerships in the management of our national forests.

National forests provide some of our Nation's most valued resources—fish and wildlife species and habitat, rare plants, majestic trees, recreation, and outstanding scenery. The U.S. Forest Service is the agency charged with the task of managing and protecting these precious resources. But it can't do the job alone. Much of the work carried out on our national forests is done in partnership with nonprofit organizations.

The Forest Service works with hundreds of nonprofit groups, including the Nature Conservancy, Rocky Mountain Elk Foundation, Boy Scouts of America, and Trout Unlimited. In Montana, for example, the Rocky Mountain Elk Foundation helped improve habitat for elk, mule deer and sensitive bird species on the Lolo National Forest. These groups contribute millions of dollars and countless hours every year to improve our public lands. I think it is time that the U.S. Government recognized their importance and made the rules fairer.

That is why I'm introducing this legislation. This bill will make it easier for nonprofit groups to make donations for fish and wildlife projects on the national forests. Unlike commercial enterprises that pay for resources on the national forests after they use them, nonprofit organizations make their full contribution up front. This requirement puts these groups at a tremendous disadvantage by causing them to forego interest from the time a cost-share agreement is finalized to when work is finished—a process that frequently takes more than 2 years.

My legislation levels the playing field for these private partners. It authorizes the Forest Service to fund cooperative projects with appropriated money and lets cooperators reimburse the Forest Service as work is completed rather than having to make their full share in contributions by front. My bill also requires the Secretary of Agriculture to establish rules regarding the acceptance of contributions.

Everyone wins under this legislation. The Forest Service will complete more fish and wildlife projects. Nonprofit groups will have a greater incentive to participate in cost-share projects. And, most importantly, the American people will see the benefits of improved fish and wildlife habitat. In closing, I encourage Congress to act quickly on this bill so we can begin to see on-the-ground results.•

By Mr. KENNEDY (for himself, Mr. SIMON, and Mrs. BOXER):

S. 754. A bill to amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, and for other purposes; to the Committee on the Judiciary.

IMMIGRATION ENFORCEMENT IMPROVEMENTS ACT

Mr. KENNEDY. Mr. President, it is a privilege to introduce the Immigration Enforcement Improvements Act of 1995 today on behalf of the Clinton administration.

This important bill builds upon the administration's already impressive record in addressing the pressing national problem of illegal immigration.

We must take strong steps to stop illegal immigration, while continuing to welcome those immigrants who enter lawfully within our immigration ceilings and contribute so much to the Nation.

This administration has done more to close the door on illegal immigration than any previous administration. With expected increases this year and next, we will have increased border control staffing by 51 percent since President Clinton took office—including border patrols and inspectors at border crossing points and airports. We have tripled the deportation of illegal immigrants and targeted the removal of criminal aliens. We have increased the budget of the Immigration Service by over 70 percent from $1.5 billion in 1993 to $2.6 billion requested for 1996.

The real credit for these impressive accomplishments goes to President Clinton, Attorney General Janet Reno, and Immigration Commissioner Doris Meissner for their effective leadership

and commitment to meeting the challenge of illegal immigration.

The legislation introduced today recognizes that there is no single solution to illegal immigration. The bill will give the administration a variety of tools to control our borders more effectively, to deny jobs to illegal workers, and to remove illegal immigrants who are here in violation of our laws.

The bill authorizes increases in enforcement personnel of no less than 700 Border Patrol agents annually for the next 3 years, and authorizes the increases in INS inspectors needed to enable full staffing at airports and entry points.

The bill imposes new, stiff penalties for alien smuggling, document fraud and other serious immigration offenses.

The bill authorizes pilot programs to test effective ways to verify that job applicants are eligible to work in the United States. The goal is to find simple and effective ways of denying jobs to illegal immigrants, and thereby shutting down the magnet that draws so many illegal aliens to this country.

The bill promotes coordination on workplace enforcement between the Immigration Service and the Department of Labor, since employers who hire undocumented workers often also violate other labor standards as well.

Finally, the bill expedites the removal of criminal aliens by eliminating needless procedures and redtape.

I commend the administration for their impressive initiative. Immigration should not be a partisan issue. In the weeks ahead, I look forward to working closely with Senator SIMPSON, the chairman of the Judiciary Subcommittee on Immigration, and with many other colleagues on both sides of the aisle to bring bipartisan legislation before the Senate capable of dealing with the serious challenges we face.

I ask unanimous consent that a more detailed summary of the bill may be printed in the RECORD, along with the text of the bill itself.

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

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Enforcement Improvements Act of 1995."

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short Title.
Sec. 2. Table of Contents.

TITLE I—BORDER ENFORCEMENT

Sec. 101. Authorization for Border Control Strategies.
Sec. 102. Border Patrol Expansion.
Sec. 103. Land Border Inspection Enhancements.
Sec. 104. Increased Penalties for Failure to Depart, Illegal Reentry, and Passport and Visa Fraud.
Sec. 105. Pilot Program on Interior Repatriation of Deportable or Excludable Aliens.
Sec. 106. Special Exclusion in Extraordinary Migration Situations.
Sec. 107. Immigration Emergency Provisions.
Sec. 108. Commuter Lane Pilot Programs.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

Sec. 201. Reducing the Number of Employment Verification Documents.
Sec. 202. Employment Verification Pilot Projects.
Sec. 203. Confidentiality of Data Under Employment Eligibility Verification Pilot Projects.
Sec. 204. Collection of Social Security Numbers.
Sec. 205. Employer Sanctions Penalties.
Sec. 206. Criminal Penalties for Document Fraud.
Sec. 207. Civil Penalties for Document Fraud.
Sec. 208. Subpoena Authority.
Sec. 209. Increased Penalties for Employer Sanctions Involving Labor Standards Violations.
Sec. 210. Increased Civil Penalties for Unfair Immigration-Related Employment Practices.
Sec. 211. Retention of Employer Sanctions Fines for Law Enforcement Purposes.
Sec. 212. Telephone Verification System Fee.
Sec. 213. Authorizations.

TITLE III—ILLEGAL ALIEN REMOVAL

Sec. 301. Civil Penalties for Failure to Depart.
Sec. 302. Judicial Deportation.
Sec. 303. Conduct of Proceedings by Electronic Means.
Sec. 304. Subpoena Authority.
Sec. 305. Stipulated Exclusion and Deportation.
Sec. 306. Streamlining Appeals from Orders of Exclusion and Deportation.
Sec. 307. Sanctions Against Countries Refusing to Accept Deportation of Their Nationals.
Sec. 308. Custody of Aliens Convicted of Aggravated Felonies.
Sec. 309. Limitations on Relief from Exclusion and Deportation.
Sec. 310. Rescission of Lawful Permanent Resident Status.
Sec. 311. Increasing Efficiency in Removal of Detained Aliens.

TITLE IV—ALIEN SMUGGLING CONTROL

Sec. 401. Wiretap Authority for Investigations of Alien Smuggling and Document Fraud.
Sec. 402. Applying Racketeering Offenses to Alien Smuggling.
Sec. 403. Expanded Asset Forfeiture for Smuggling or Harboring Aliens.
Sec. 404. Increased Criminal Penalties for Alien Smuggling.
Sec. 405. Undercover Investigation Authority.
Sec. 406. Amended Definition of Aggravated Felony.

TITLE V—INSPECTIONS AND ADMISSIONS

Sec. 501. Civil Penalties for Bringing Inadmissible Aliens from Contiguous Territories.
Sec. 502. Definition of Stowaway; Excludability of Stowaway; Carrier Liability for Costs of Detention.
Sec. 503. List of Alien and Citizen Passengers Arriving or Departing.
Sec. 504. Elimination of Limitations on Immigration User Fees for Certain Cruise Ship Passengers.
Sec. 505. Transportation Line Responsibility for Transit Without Visa Aliens.
Sec. 506. Authority to Determine Visa Processing Procedures.
Sec. 507. Border Services User Fee.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Sec. 601. Alien Prostitution.
Sec. 602. Grants to States for Medical Assistance to Undocumented Immigrants.
Sec. 603. Technical Corrections to Violent Crime Control Act and Technical Corrections Act.
Sec. 604. Expeditious Deportation.
Sec. 605. Authorization for Use of Volunteers.

TITLE I—BORDER ENFORCEMENT

SEC. 101. AUTHORIZATION FOR BORDER CONTROL STRATEGIES.

There are authorized to be appropriated to the Department of Justice such funds as may be necessary to provide for expansion of efforts to prevent illegal immigration through direct deterrence at the land borders of the United States.

SEC. 102. BORDER PATROL EXPANSION.

The Attorney General, in each of fiscal years 1996, 1997, and 1998, shall increase to the maximum extent feasible and consistent with standards of professionalism and training requirements, the number of full time, active-duty Border Patrol agents by no fewer than 700, above the number so such agents on duty at the end of fiscal year 1995, as well as hire an appropriate number of personnel needed to support these agents.

SEC. 103. LAND BORDER INSPECTION ENHANCEMENTS.

To eliminate undue delay in the thorough inspection of persons and vehicles lawfully attempting to enter the United States, the Attorney General, subject to appropriation or availability of funds in the Border Services User Fee Account, shall increase in fiscal years 1996 and 1997 the number of full time land border inspectors assigned to active duty by the Immigration and Naturalization Service to a level adequate to assure full staffing of all border crossing lanes now in use, under construction, or whose construction has been authorized by Congress.

SEC. 104. INCREASED PENALTIES FOR FAILURE TO DEPART, ILLEGAL REENTRY, AND PASSPORT AND VISA FRAUD.

(a) The United States Sentencing Commission shall promptly promulgate, pursuant to 28 U.S.C. 994, amendments to the sentencing guidelines to make appropriate increases in the base offense levels for offenses under section 242(e) and 276(b) of the Immigration and Nationality Act (8 U.S.C. 1252(e) and 1326(b)) to reflect the amendments made by section 130001 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796, 2023 (Sept. 13, 1994).

(b) The United States Sentencing Commission shall promulgate, pursuant to 28 U.S.C. 994, amendments to the sentencing guidelines to make appropriate increases in the base offense levels for offenses under 18 U.S.C. 1541-1546 to reflect the amendments made by section 130009 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796, 2030 (Sept. 13, 1994).

SEC. 105. PILOT PROGRAM ON INTERIOR REPATRIATION OF DEPORTABLE OR EXCLUDABLE ALIENS.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Attorney General, after consultation

with the Secretary of State, may establish a pilot program for up to two years which provides for interior repatriation and other disincentives for multiple unlawful entries into the United States.

(b) REPORT.—If the Attorney General establishes such a pilot program, not later than 3 years after the date of enactment of this Act, the Attorney General, together with the Secretary of State, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of the pilot program under this section and whether the pilot program or any part thereof should be extended or made permanent.

SEC. 106. SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS.

Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended—

(a) in subsection (b), by inserting at the end the following sentence: "If the alien has arrived from a foreign territory contiguous to the United States, either at a land port of entry or on the land of the United States other than at a designated port of entry, the alien may be returned to that territory pending the inquiry."

(b) by adding at the end the following new subsections (d) and (e):

"(d) SPECIAL EXCLUSION FOR EXTRAORDINARY MIGRATION SITUATIONS.—

"(1) Notwithstanding the provisions of section (b) of this section and of section 236, the Attorney General under the circumstances described in subparagraphs (A) or (B) may, without referral to an immigration judge, order the exclusion and deportation of an alien who appears to an examining immigration officer to be excludable. The Attorney General shall by regulation establish a procedure for special orders of exclusion and deportation under this subsection when, in the case of an alien who is, or aliens who are excludable under section 212(a)—

"(A) The Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the United States, including by aircraft, present an extraordinary migration situation; or

"(B) The alien—

"(i) is brought or escorted under the authority of the United States into the United States, having been on board a vessel encountered outside of the territorial waters of the United States by officers of the United States;

"(ii) is brought or escorted under the authority of the United States to a port of entry, having been on board a vessel encountered within the territorial sea or internal waters of the United States; or

"(iii) has arrived on a vessel transporting aliens to the United States without such alien having received prior official authorization to come to, enter, or reside in the United States.

"The judgment whether there exists an extraordinary migration situation within the meaning of (A) or whether to invoke the provisions of (B) is committed to the sole and exclusive discretion of the Attorney General; provided, that the provisions of this subsection may be invoked by the Attorney General under subparagraph (A) for a period not to exceed ninety days, unless, within such ninety-day period or extension thereof, the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional ninety-day period.

"(2) As used in this section, 'extraordinary migration situation' means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity for the inspection and examination of such aliens.

"(3) When the Attorney General determines to invoke the provisions of paragraph (1), the Attorney General may, pursuant to this section and sections 235(e) and 106(f), suspend the normal operation of immigration regulations regarding the inspection and exclusion of aliens.

"(4) No alien may be ordered specially excluded under paragraph (1) if: (A) such alien is eligible to seek and seeks asylum under section 208; and (B) the Attorney General determines such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided. The Attorney General may by regulation provide that, notwithstanding this paragraph, an alien may be returned to a country where the alien does not have a credible fear of persecution or of return to persecution. As used herein, the term "credible fear of persecution" means that: (A) there is a substantial likelihood that the statements made by the alien in support of his or her claim are true; and (B) in light of such statements and country conditions, the alien has a reasonable possibility of establishing eligibility as a refugee within the meaning of section 101(a)(42)(A). An alien determined to have a credible fear of persecution shall be taken before an immigration judge for a hearing in accordance with section 236.

"(5) Notwithstanding the provisions of paragraph (4), the Attorney General may provide that an application for asylum made by an alien arriving in the United States under the circumstances described in subparagraph (A) of paragraph (1) be considered pursuant to section 208 and any regulations promulgated thereunder for applications considered pursuant to this paragraph; Provided, however, that an alien not granted asylum is subject to a special order of exclusion under paragraph (1).

"(6) A special exclusion order entered in accordance with the provisions of this subsection is not subject to administrative appeal, except that the Attorney General shall provide by regulation for:

"(A) prompt review of such an order against an applicant who appears to have been lawfully admitted for permanent residence; and

"(B) prompt review of such an order entered against an alien physically present in the United States who has sought asylum under section 208 and was determined not to have a credible fear of persecution under paragraph (4). Such review shall be conducted by an officer or officers of the Department of Justice specially trained in asylum and refugee law.

"(7) A special exclusion order shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236, except that judicial review of such an order shall be available only under section 106(f).

"(8) Nothing in this subsection shall be regarded as requiring a hearing before an immigration judge in the case of an alien crewman or alien stowaway.

"(e) NO COLLATERAL ATTACK.—In any action brought for the assessment of penalties for improper entry or reentry of an alien under section 275 and 276 of the Immigration and Nationality Act, no court shall have jurisdiction to hear claims attacking the validity of orders of special exclusion entered under this section.".

SEC. 107. IMMIGRATION EMERGENCY PROVISIONS.

(a) REIMBURSEMENT OF FEDERAL AGENCIES FROM IMMIGRATION EMERGENCY FUND.—Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) is amended—

(1) in paragraph (1) after "paragraph (2)" by replacing "and" with ",", striking "State," inserting "other Federal agencies and States," inserting "and for the costs associated with repatiriation of aliens attempting to enter the United States illegally, whether apprehended within or outside the territorial sea of the United States" before "except," and by adding the following language at the end of paragraph (1), "Provided, that the fund may be used for the costs of such repatriations without the requirement for a determination by the President that an immigration emergency exists.".

(2) in paragraph (2)(A), by inserting "to Federal agencies providing support to the Department of Justice or" after "available."

(b) VESSEL MOVEMENT CONTROLS.—50 U.S.C. 191 is amended by inserting "or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to or arriving off the coast of the United States presents urgent circumstances requiring an immediate Federal response," after "United States," the first time it appears.

(c) DELEGATION OF IMMIGRATION ENFORCEMENT AUTHORITY.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end of subsection (a) a new sentence to read as follows:

"In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States presents urgent circumstances requiring an immediate Federal response, the Attorney General may authorize, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, any specially designated state or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service.".

SEC. 108. COMMUTER LANE PILOT PROGRAMS.

(a) Section 286(q) of the Immigration and Nationality Act (8 U.S.C. 1356) is amended—

(1) in paragraph (1), by striking "a project" and inserting "projects";

(2) in paragraph (1), by striking "Such project" and inserting "Such projects"; and

(3) by striking paragraph (5).

(b) The Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1994 (P.L. 103–121, 107 Stat. 1161) is amended by striking the fourth proviso under the heading "Immigration and Naturalization Service, Salaries and Expenses".

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

SEC. 201. REDUCING THE NUMBER OF EMPLOYMENT VERIFICATION DOCUMENTS.

(a) PROVISION OF SOCIAL SECURITY ACCOUNT NUMBERS.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by adding at the end of subsection (b)(2) a new sentence to read as follows:

"The Attorney General is authorized to require an individual to provide on the form described in subsection (b)(1)(A) that individual's Social Security account number for purposes of complying with this section.".

(b) CHANGES IN ACCEPTABLE DOCUMENTATION FOR EMPLOYMENT AUTHORIZATION AND IDENTITY.—Section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)) is amended—

(1) in subparagraph (B)—

(A) by striking clauses (ii), (iii), and (iv) and redesignating clause (v) as clause (ii),

(B) in clause (i), by adding at the end "or", and

(C) in redesignated clause (ii), by revising the introductory text to read as follows:

"(ii) resident alien card, alien registration card, or other document designated by regulation by the Attorney General, if the document—"; and

(D) in redesignated clause (ii) by striking the period after subclause (II) and by adding a new subclause (III) to read as follows:

"(III) and contains appropriate security features." and

(2) in subparagraph (C)—

(A) by inserting "or" after the ";" at the end of clause (i),

(B) by striking clause (ii), and

(C) by redesignating clause (iii) as clause (ii).

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to hiring (or recruiting or referring) occurring on or after such date (not later than 180 days after the date of the enactment of this Act) as the Attorney General shall designate.

SEC. 202. EMPLOYMENT VERIFICATION PILOT PROJECTS.

(a) The Attorney General, together with the Commissioner of Social Security, shall conduct pilot projects to test methods to accomplish reliable verification of eligibility for employment in the United States. The pilot projects tested may include: (1) an expansion of the telephone verification system to include, by the end of Fiscal Year 1996, participation by up to 1,000 employers; (2) a process which allows employers to verify the eligibility for employment of new employees using Social Security Administration (SSA) records and, if necessary, to conduct a cross-check using Immigration and Naturalization Service (INS) records; (3) a simulated linkage of the electronic records of the INS and the SSA to test the technical feasibility of establishing a linkage between the actual electronic records of the INS and the SSA; or (4) improvements and additions to the electronic records of the INS and the SSA for the purpose of using such records for verification of employment eligibility.

(b) The pilot projects referred to in subsection (a) shall be conducted in such locations and with such number of employers as is consistent with their pilot status.

(c) The pilot projects referred to in subsection (a) shall begin not later than 12 months after the enactment of this Act and may continue for a period of 3 years. During the pilot project, the Attorney General shall track complaints of discrimination arising from the administration or enforcement of the pilot project. Not later than 60 days prior to the conclusion of this 3-year period, the Attorney General shall submit to the Congress a report on the pilot projects. The report shall include evaluations of each of the pilot projects according to the following criteria: cost effectiveness, technical feasibility, resistance to fraud, protection of confidentiality and privacy, and protection against discrimination, and which projects, if any, should be adopted.

(d) Upon completion of the report required by subsection (c), the Attorney General is authorized to continue implementation on a pilot basis for an additional period of 1 year any or all of the pilot projects authorized in subsection (a). The Attorney General shall inform Congress of a decision to exercise this authority not later than the end of the 3-year period specified in subsection (c).

(e) Nothing in this section, shall exempt the pilot projects from any and all applicable civil rights laws, including, but not limited to, Section 102 of the Immigration Reform and Control Act of 1986, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963, as amended; and the Americans with Disabilities Act of 1990, as amended.

(f) In conducting the pilot projects referred to in subsection (a), the Attorney General may require appropriate notice to prospective employees concerning the employers' participation in the pilot projects. Any notice should contain information for filing complaints with the Attorney General regarding operation of the pilot projects, including discrimination in the hiring and firing of employees and applicants on the basis of race, national origin, or citizenship status.

SEC. 203. CONFIDENTIALITY OF DATA UNDER EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROJECTS.

(A) Any personal information obtained in connection with a pilot project under section 202 may not be made available to government agencies, employers, or other persons except to the extent necessary—

(1) to verify that an employee is not an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3));

(2) to take other action required to carry out section 202; or

(3) to enforce the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) or sections 911, 1001, 1028, 1546, or 1621 of title 18, United States Code.

(b) No employer may participate in a pilot project under section 202 unless the employer has in place such procedures as the Attorney General shall require—

(1) to safeguard all personal information from unauthorized disclosure and condition redisclosure of such information to any person or entity upon its agreement also to safeguard such information; and

(2) to provide notice to all individuals of the right to request an agency to correct or amend the individual's record and the steps to follow to make such a request.

(c)(1) Any person who is a U.S. citizen, U.S. national, lawful permanent resident, or other employment authorized alien, and who is subject to work authorization verification under section 202 shall be considered an individual under 5 U.S.C. 552a(a)(2), but only with respect to records covered by this section.

(2) For purposes of this section, a record shall mean an item, collection, or grouping of information about an individual that is created, maintained, or used by a Federal agency in the course of a pilot project under section 202 to make a final determination concerning an individual's authorization to work in the United States, and that contains the individual's name or identifying number, symbol, or other identifying particular assigned to the individual.

(d) Whenever an employer or other person willfully and knowingly—

(1) discloses or uses information for a purpose other than those permitted under subsection (a), or

(2) fails to comply with a requirement of the Attorney General pursuant to subsection (b),

after notice and opportunity for an administrative hearing conducted by the Attorney General or the Commissioner of Social Security, as appropriate, or by a designee, the employer or other person shall be subject to a civil money penalty of not less than $1,000 nor more than $10,000 for each violation. In determining the amount of the penalty, consideration shall be given to the intent of the person committing the violation, the impact of the violation, and any history of previous violations by the person.

(e) Nothing in this section shall limit the rights and remedies otherwise available to U.S. citizens and lawful permanent residents under 5 U.S.C. 552a.

(f) Nothing in this section or in section 202 shall be construed to authorize, directly or indirectly, the issuance of use of national identification cards of the establishment of a national identification card.

SEC. 204. COLLECTION OF SOCIAL SECURITY NUMBERS.

Section 264 of the Immigration and Nationality Act (U.S.C. 1304) is amended by adding at the end of a new subsection (f) to read as follows:

"(f) Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's Social Security account number for purposes of inclusion in any record of the alien maintained by the Attorney General.".

SEC. 205. EMPLOYER SANCTIONS PENALTIES.

(a) INCREASED CIVIL MONEY PENALTIES FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—Section 274A(e)(4)(A) of the Immigration and Nationality Act (8 U.S.C. 1324(e)(4)(A)) is amended—

(1) in clause (i), by striking "$250" and "$2,000" and inserting "$1,000" and "$3,000", respectively;

(2) in clause (ii), by striking "$2,000" and "$5,000" and inserting "$3,000" and "$8,000", respectively; and

(3) in clause (iii), by striking "$3,000" and "$10,000" and inserting "$8,000" and "$25,000", respectively.

(b) INCREASED CIVIL MONEY PENALTIES FOR PAPERWORK VIOLATIONS. Section 274A(e)(5) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)(5)) is amended by striking "$100" and "$1,000" and inserting "$200" and "$5,000", respectively.

(c) INCREASED CRIMINAL PENALTIES FOR PATTERN OR PRACTICE VIOLATIONS. Section 274A(f)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(f)(1)) is amended by inserting the phrase "guilty of a felony and shall be" immediately after the phrase "subsection (a)(1)(A) or (a)(2)." Section 274A(f)(1) of such Act is further amended by striking "$3,000" and "six months" and inserting "$7,000" and "two years", respectively.

SEC. 206. CRIMINAL PENALTIES FOR DOCUMENT FRAUD.

(a) FRAUD AND MISUSE OF GOVERNMENT-ISSUED IDENTIFICATION DOCUMENTS.—Section 1028(b)(1) of title 18, United States Code, is amended by striking "five years" and inserting "10 years and by adding at the end the following new provision:

"Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this section—

"(1) if committed to facilitate a drug trafficking crime (as defined in 929(a)) is 15 years; and

"(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 20 years.".(b) CHANGES TO THE SENTENCING LEVELS.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promptly promulgate guidelines, or amend existing guidelines, to make appropriate increases in the base offense levels for offenses under section 1028(a) of title 18. United States Code.

SEC. 207. CIVIL PENALTIES FOR DOCUMENT FRAUD.

(a) ACTIVITIES PROHIBITED.—Section 274C(a) of the Immigration and Nationality Act (8 U.S.C. 1324c(a)) is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the period and inserting "; or" at the end of paragraph (4); and

(3) by adding at the end the following:

"(5) to present before boarding a common carrier for the purpose of coming to the United States a document that relates to the alien's eligibility to enter the United States and to fail to present such document to an immigration officer upon arrival at a United States port of entry, or

"(6) in reckless disregard of the fact that the information is false or does not relate to the applicant, to prepare, to file, or to assist another in preparing or filing, documents which are falsely made (including but not limited to documents which contain false information, material misrepresentation, or information which does not relate to the applicant) for the purposes of satisfying a requirement of this Act.

"The Attorney General may waive the penalties of this section with respect to any alien who knowingly violates paragraph (5) if the alien is subsequently granted asylum under section 208 or withholding of deportation under section 243(h). For the purposes of this section, the phrase 'falsely made any document' includes the preparation or provision of any document required under this Act, with knowledge or in reckless disregard of the fact that such document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a material fact pertaining to the document.".

(b) CONFORMING AMENDMENTS FOR CIVIL PENALTIES.—Section 274C(d)(3) of the Immigration and Nationality Act (8 U.S.C. 132c(d)(3)) is amended by striking "each document used, accepted, or created and each instance of use, acceptance, or creation" in each of the two places it appears and inserting "each document that is the subject of a violation under subsection (a)".

SEC. 208, SUBPOENA AUTHORITY.

(a) IMMIGRATION OFFICER AUTHORITY.—

(1) Section 274A(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)(2)) is amended by—

(A) striking at the end of subparagraph (A) "and";

(B) striking at the end of subparagraph (B) "." and inserting ", and"; and

(C) adding a new subparagraph (C) to read as follows:

"(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (3).'"

(2) Section 274C(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)(2)) is amended by—

(A) striking at the end of subparagraph (A) "and";

(B) striking at the end of subparagraph (B) "," and inserting ", and"; and

(C) adding a new subparagraph (c) to read as follows:

"(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2)."

(b) SECRETARY OF LABOR SUBPOENA AUTHORITY.—

The Immigration and Nationality Act is amended by adding a new section 293 (8 U.S.C. 1364) to read as follows:

"Sec. 294. Secretary of Labor Subpoena Authority.

The Secretary of Labor may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing conducted in the enforcement of any immigration program for which the Secretary of Labor has been delegated enforcement authority under the Act. In such hearing, the Secretary of Labor may administer oaths, examine witnesses, and receive evidence. for the purpose of any such hearing or investigation, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary of Labor.".

SEC. 209. INCREASED PENALTIES FOR EMPLOYER SANCTIONS INVOLVING LABOR STANDARDS VIOLATIONS.

(a) Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended by adding a new paragraph (10) to read as follows:

"(10)(A) The administrative law judge shall have the authority to require payment of a civil money penalty in an amount up to two times the level of the penalty prescribed by this subsection in any case where the employer has been found to have committed willful or repeated violations of any of the following statutes:

"(i) the Fair Labor Standards Act, 29 U.S.C. 201 et seq., pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction;

"(ii) the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq., pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction; or

"(iii) the Family and Medical Leave Act, 29 U.S.C. 2601 et seq., pursuant to a final determination by a court of competent jurisdiction.

"(B) The Secretary of Labor and the Attorney General shall consult regarding the administration of the provisions of this paragraph.".

(b) Section 274B(g) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)) is amended by adding a new paragraph (4) to read as follows:

"(4)(A) The administrative law judge shall have the authority to require payment of a civil money penalty in an amount up to two times the level of the penalty prescribed by this subsection in any case where the employer has been found to have committed willful or repeated violations of any of the following statutes:

"(i) the Fair Labor Standards Act, 29 U.S.C. 201 et seq., pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction;

"(ii) the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq., pursuant to a final determination by the Secretary of labor or a court of competent jurisdiction; or

"(iii) the Family and Medical Leave Act, 29 U.S.C. 2601 et seq., pursuant to a final determination by a court of competent jurisdiction.

"(B) The Secretary of Labor and the Attorney General shall consult regarding the administration of the provisions of this paragraph.".

(c) Section 274C(d) of the Immigration and Nationality Act (8 U.S.C. 1324c(d)) is amended by adding a new paragraph (7) to read as follows:

"(7)(A) The administrative law judge shall have the authority to require payment of a civil money penalty in an amount up to two times the level of the penalty prescribed by this subsection in any case where the employer has been found to have committed willful or repeated violations of any of the following statutes:

"(i) the Fair Labor Standards Act, 29 U.S.C. 201 et seq., pursuant to a final determination by the Secretary of labor or a court of competent jurisdiction;

"(ii) the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq., pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction; or

"(iii) the Family and Medical Leave Act 29 U.S.C. 2601, et seq. pursuant to a final determination by a court of competent jurisdiction.

"(B) the Secretary of Labor and the Attorney General shall consult regarding the administration of the provisions of this paragraph.".

SEC. 210. INCREASED CIVIL PENALTIES FOR UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) Section 274B(g)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)(B)) is amended—

(1) in clause (iv)(I), by striking "$250" and "$2,000" and inserting "$1,000" and "$3,000", respectively;

(2) in clause (iv)(II), by striking "$2,000" and "$5,000" and inserting "$3,000" and "$8,000", respectively; and

(3) in clause (iv)(III), by striking "$3,000" and "$10,000" and inserting "'$8,000" and "$25,000", respectively.

(4) in clause (iv)(IV), by striking "$100" and "$1,000" and inserting "$200" and "$5,000", respectively.

SEC. 211. RETENTION OF EMPLOYER SANCTIONS FINES FOR LAW ENFORCEMENT PURPOSES.

Section 286(c) of the Immigration and Nationality Act, 8 U.S.C. 1356(c) is amended by striking the period at the end of the section and by adding the following:

"; provided further, that all monies received during each fiscal year in payment of penalties under section 274A of this Act in excess of $5,000,000 shall be credited to the Immigration and Naturalization Services Salaries and Expenses appropriations account that funds activities and related expenses associated with enforcement of that section and shall remain available until expended.".

SEC. 212. TELEPHONE VERIFICATION SYSTEM FEE.

Section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) is amended by adding at the end a new paragraph (5) to read as follows:

"(5) TELEPHONE VERIFICATION SYSTEM FEE.—

"(A) The Attorney General is authorized to collect a fee from employers, recruiters, or

referrers who subscribe to participate in a telephone verification system pilot under this section.

"(B) Funds collected pursuant to this authorization shall be deposited as offsetting collections to the Immigration and Naturalization Service Salaries and Expenses appropriations account solely to fund the costs incurred to provide alien employment verification services through such a system.".

SEC. 213. AUTHORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title. None of the costs incurred in carrying out this title shall be paid for out of any trust fund established under the Social Security Act.

TITLE III—ILLEGAL ALIEN REMOVAL

SEC. 301. CIVIL PENALTIES FOR FAILURE TO DEPART.

The Immigration and Nationality Act is amended by adding a new section 274D (8 U.S.C. 1324d) to read as follows:

"CIVIL PENALTIES FOR FAILURE TO DEPART

"SEC. 274D. (a) Any alien subject to a final order of exclusion and deportation or deportation who—

"(1) willfully fails or refuses to:

"(A) depart from the United States pursuant to the order;

"(B) make timely application in good faith for travel or other documents necessary for departure; or

"(C) present for deportation at the time and place required by the Attorney General; or

"(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more $500 to the Commissioner as offsetting collections for each day the alien is in violation of this section.

"(b) Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 242(e) or any other section of this Act.".

SEC. 302. JUDICIAL DEPORTATION.

(a) Section 242A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1252a(d)(1)) is amended to read as follows:

"(1) Authority. Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien: (i) whose criminal conviction for an offense for which the alien is before the court for sentencing causes such alien to be deportable under section 241(a)(2)(A), or (ii) who previously has been convicted of an aggravated felony at any time, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.".

(b) Section 242A(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1252a(d)(3)(A)) is amended by striking clauses (ii) and (iii) and by revising clause (i) to read as follows:

"(i) A judicial order of deportation or denial of such order may be appealed by either party. Appellate review of any judicial order of deportation shall be considered as part of the underlying criminal case and subject to all the procedures and filing deadlines governing criminal appeals.".

(c) Section 242A(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1252a(d)(4)) is amended by striking "without a decision on the merits".

(d) The last sentence of 18 U.S.C. 3583(d)(3) is amended to read as follows:

"If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he or she be ordered deported by the Attorney General, pursuant to the procedures in the Immigration and Nationality Act, and remain outside the United States, and the court may order that he or she be delivered to a duly authorized immigration official for such deportation.".

SEC. 303. CONDUCT OF PROCEEDINGS BY ELECTRONIC MEANS.

Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting at the end the following: "Nothing in this subsection shall preclude the Attorney General from authorizing proceedings by video electronic media, by telephone, or, where waived or agreed to by the parties, in the absence of the alien. Contested full evidentiary hearings on the merits may be conducted by telephone only with the consent of the alien.".

SEC. 304. SUBPOENA AUTHORITY.

(a) Section 236(a) of the Immigration and Nationality Act (8 U.S.C. 1226(a)) is amended by inserting "issue subpoenas," in the first sentence after "evidence.".

(b) Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting "issue subpoenas," in the first sentence after "evidence,".

SEC. 305. STIPULATED EXCLUSION AND DEPORTATION.

(A) Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by adding at the end of subsection (a) the following new paragraph:

"(4) Stipulated Exclusion and Deportation.—The Attorney General shall provide by regulation for the entry by an immigration judge of an order of exclusion and deportation stipulated to by the alien and the Service. Such an order may be entered without a personal appearance by the alien before the immigration judge. A stipulated order shall constitute a conclusive determination of the alien's excludability and deportability from the United States.".

(b) Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended in subsection (b) by striking the sentence immediately following paragraph (4) and inserting the following:

"The Attorney General shall further provide by regulation for the entry by an immigration judge of an order of deportation stipulated to by the alien and the Service. Such an order may be entered without a personal appearance by the alien before the immigration judge. A stipulated order shall constitute a conclusive determination of the alien's deportability from the United States. The procedures so prescribed shall be the sole and exclusive procedures for determining the deportability of an alien under this section.".

SEC. 306. STREAMLINING APPEALS FROM ORDERS OF EXCLUSION AND DEPORTATION.

(a) Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION, EXCLUSION, AND SPECIAL EXCLUSION

"SEC. 106(A) APPLICABLE PROVISIONS.—Judicial review of a final order of exclusion or deportation is governed only by chapter 158 of title 28 of the United States Code, except as provided in subsection (b); provided, however, that no court may order the taking of additional evidence pursuant to 28 U.S.C. 2347(c).

"(b) REQUIREMENTS.—

"(1) A petition for review must be filed not later than 30 days after the date of the final order of exclusion or deportation.

"(2) A petition for review shall be filed with the Court of Appeals for the judicial circuit in which the immigration judge completed the proceedings.

"(3) The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Immigration and Naturalization Service in charge of the Service district in which the final order of exclusion or deportation was entered. Service of the petition on the officer or employee stays the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise. However, if the alien has been convicted of an aggravated felony, or the alien is under an order of exclusion, service of the petition does not stay the deportation unless the court orders otherwise.

"(4) Except as provided in paragraph (5)(B) of this subsection—"the court of appeals shall decide the petition only on the administrative record on which the order of exclusion or deportation is based and the Attorney General's findings of fact shall be conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary.

"(5)(A) If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

"(B) If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

"(C) The petitioner may have the nationality claim decided only as provided in this section.

"(6)(A) If the validity of an order of deportation has not been judicially decided, a defendant in a criminal proceeding charged with violating subsection (d) or (e) of section 242 may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

"(B) If the defendant claims in the motion to be a national of the United States and the district court finds that a genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the deportation order is based. The administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole.

"(C) If the defendant claims in the motion to be a national of the United States and the district court finds that a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

"(D) If the district court rules that the deportation order is invalid, the court shall dismiss the indictment. The United States Government may appeal the dismissal to the

court of appeals for the appropriate circuit within 30 days. The defendant may not file a petition for review under this section during the criminal proceeding. The defendant may have the nationality claim decided only as provided in this section.

"(7) This subsection—

"(A) does not prevent the Attorney General, after a final order of deportation has been issued, from detaining the alien under section 242(c);

"(B) does not relieve the alien from complying with subsection (d) or (e) of section 242; and

"(C) except as provided in paragraph (3) of this subsection, does not require the Attorney General to defer deportation of the alien.

"(8) The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs."

"(c) REQUIREMENTS FOR PETITION.—A petition for review of an order of deportation shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

"(d) REVIEW OF FINAL ORDERS.—A court my review a final order of deportation only if—

"(1) the alien has exhausted all administrative remedies available to the alien as of right;

"(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

"(e) LIMITED REVIEW FOR NON-PERMANENT RESIDENTS CONVICTED OF AGGRAVATED FELONIES.—

"(1) A petition for review filed by an alien against whom a final order of deportation has been issued under section 242A may challenge only whether—

"(A) the alien is the alien described in the order;

"(B) the alien is an alien described in section 242A(b)(2) and has been convicted after entry into the United States of an aggravated felony; and

"(C) the alien was afforded the procedures described in section 242A(b)(4).

"(2) A court reviewing the petition has jurisdiction only to review the issues described in paragraph (1).

"(f) SPECIAL EXCLUSION.—Notwithstanding any other provision of law, except as provided in this subsection, no court shall have jurisdiction to review any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of the special exclusion provisions contained in section 235(d); except as provided herein, there shall be no judicial review of: (i) a decision by the Attorney General to invoke the provisions of section 235(d), (ii) the application of section 235(d) to individual aliens, including the determination made under paragraphs 5 and 6, or (iii) procedures and policies adopted by the Attorney General to implement the provisions of Section 235(d). Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection, or to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

"(1) Judicial review of any cause, claim, or individual determination made or arising under or pertaining to special exclusion under section 235(d) shall only be available in habeas corpus proceedings, and shall be limited to determinations of: (i) whether the petitioner is an alien, (ii) whether the petitioner was ordered specially excluded, and (iii) whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 235(d)(3).

"(2) In any case where the court determines that the petitioner: (i) is an alien who was not ordered specially excluded, or (ii) has demonstrated by a preponderance of the evidence that he or she is a lawful permanent resident, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 236 or a determination in accordance with sections 235(a) or 273(d). Any alien who is provided a hearing under section 236 pursuant to these provisions may thereafter obtain judicial review of any resulting final order of exclusion pursuant to this section.

"(3) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually excludable or entitled to any relief from exclusion.".

SEC. 307. SANCTIONS AGAINST COUNTRIES REFUSING TO ACCEPT DEPORTATION OF THEIR NATIONALS.

Section 243(g) of the Immigration and Nationality Act (8 U.S.C. 1253(g)) is amended to read as follows:

"(g) DISCONTINUING GRANTING VISAS WHEN COUNTRY DENIES OR DELAYS ACCEPTING ALIEN—On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State may order consular officers in that foreign country to discontinue granting such classes of visas as the Secretary shall deem appropriate to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.".

SEC. 308. CUSTODY OF ALIENS CONVICTED OF AGGRAVATED FELONIES.

(a) Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended in paragraph (e)(2) by inserting after "unless" the following subparagraph—

"(A) the Attorney General determines, pursuant to section 3521 of title 18, United States Code, that release from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation or (B)".

(b) Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by revising paragraph (a)(2) to read as follows:

"(2)(A) The Attorney General shall take into custody any alien convicted of an aggravated felony when the alien is released. This requirement shall apply whether the alien is released on parole, supervised release, or probation, or may be arrested or imprisoned again for the same offense.

"(B) The Attorney General may release the alien only if the alien—

"(i) was lawfully admitted to the United States and satisfies the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceeding; or

"(ii) the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation.".

SEC. 309. LIMITATIONS ON RELIEF FROM EXCLUSION AND DEPORTATION.

(a) Section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is revised to read as follows:

"(c) An alien who is and has been lawfully admitted for permanent residence for at least 5 years, who has resided in the United States continuously for 7 years after having been lawfully admitted, and who is returning to such residence after having temporarily proceeded abroad voluntarily and not under an order of deportation, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and (9)(C)). For purposes of this subsection, any period of continuous residence shall be deemed to end when the alien is placed in proceedings to exclude the alien from the United States. Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion authorized under section 211(b). The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years. This subsection shall apply only to an alien in proceedings under section 236.".

(b) Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) is revised to read as follows:

"SEC. 244(a). CANCELLATION OF DEPORTATION.—The Attorney General may cancel deportation in the case of an alien who is deportable from the United States and:

"(1) is and has been a lawful permanent resident for at least 5 years who has resided in the United States continuously for 7 years after being lawfully admitted and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced, in the aggregate, to a term of imprisonment of at least 5 years; or

"(2) has been physically present in the United States for a continuous period of not less than 7 years since entering the United States; has been a person of good moral character during such period; and establishes that deportation would result in extreme hardship to the alien or the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

"For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end when the alien is served an order to show cause pursuant to section 242B(a)(1). An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (2) if the alien was absent from the United States for any single period of more than 90 days or an aggregate period of more than 180 days. No person who is deportable

under section 241(a)(2)(C) or 241(a)(4) shall be eligible for relief under this section. No person who has been convicted of an aggravated felony shall be eligible for relief under paragraph (2) of this section.

"(b) CONTINUOUS PHYSICAL PRESENCE NOT REQUIRED BECAUSE OF HONORABLE SERVICE IN ARMED FORCES AND PRESENCE UPON ENTRY INTO SERVICE.—The requirements of continuous residence or continuous physical presence in the United States specified in subsections (a)(1) and (a)(2) of this section shall not be applicable to an alien who: (1) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (2) at the time of his or her enlistment or induction was in the United States.

"(c) ADJUSTMENT OF STATUS.—The Attorney General may cancel deportation and adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General decides meets the requirements of subsection (a)(2). The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General decides to cancel removal.

"(d) VOLUNTARY DEPARTURE.—(1) The Attorney General may in his or her discretion permit an alien voluntarily to depart the United States at the alien's own expense—

"(A) in lieu of being subject to deportation proceedings under section 242 or prior to the completion of such proceedings, if the alien is not a person deportable under section 241(a)(2)(A)(iii) or section 241(a)(4). The Attorney General may require the alien to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified. If any alien who is authorized to depart voluntarily under this paragraph is financially unable to depart at his or her own expense and the Attorney General deems the alien's removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for enforcement of this Act; or

"(B) at the conclusion of a proceeding under section 242, only if the immigration judge determines that:

"(i) the alien is, and has been, a person of good moral character for at least five years immediately preceding his or her application for voluntary departure;

"(ii) the alien is not deportable under section 241(a)(2)(A)(iii) or section 241(a)(4); and

"(iii) the alien establishes by clear and convincing evidence that he or she has the means to depart the United States and intends to do so. The alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

"(2) If the alien fails voluntarily to depart the United States within the time period specified in accordance with subparagraphs (1) or (2), the alien shall be subject to a civil penalty of not more than $500 per day and be ineligible for any further relief under this paragraph or paragraph (b).

"(3) The Attorney General may by regulation limit eligibility for voluntary departure for any class or classes of aliens. No court may review any regulation issued under this subparagraph.

"(4) An alien may appeal from denial of a request for an order of voluntary departure under subparagraph (2) in accordance with the procedures in section 106, provided that no court shall have jurisdiction over an appeal regarding the length of voluntary departure where the alien has been granted voluntary departure of 30 days or more. Notwithstanding the pendency of an appeal by an alien of a denial of voluntary departure or a grant of voluntary departure of less than 30 days, the alien shall be removable from the United States 60 days after entry of the order of deportation. No court may order a stay of such removal. The alien's removal from the United States shall not moot the appeal.

"(e) ALIEN CREWMAN; NONIMMIGRANT EXCHANGE ALIENS ADMITTED TO RECEIVE GRADUATE MEDICAL EDUCATION OR TRAINING; OTHER.—The provisions of subsection (a) of this section shall not apply to an alien who—

"(1) entered the United States as a crewman subsequent to June 30, 1964;

"(2) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e); or

"(3)(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training, (B) is subject to the two-year foreign residence requirement of section 212(e), and (C) has not fulfilled that requirement or received a waiver thereof, or in the case of a foreign medical graduate who has received a waiver pursuant to section 220 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, has not fulfilled the requirements of section 214(k).".

(c) CONFORMING AMENDMENTS.—

(1) Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking the last two sentences.

(2) Section 242B of the Immigration and Nationality Act (8 U.S.C. 1252b) is amended—

(A) in paragraph (e)(2)—

(i) by striking "section 244(e)(1)" and inserting "section 244(d)", and

(ii) by striking "section 242(b)(1)" and inserting "section 244(d)", and

(B) in paragraph (e)(5)—

(i) by striking "section 242(b)(1)" and inserting "section 244(d)", and

(ii) by striking "suspension of deportation" and inserting "cancellation of deportation".

(d)(1) The amendments made by subsection (a) of this section shall take effect on the date of enactment; except that, for purposes of determining the period of continuous residence, the amendments made by subsection (a) shall apply to all aliens against whom proceedings are commenced on or after the date of enactment.

(2) The amendments made by subsection (b) of this section shall take effect on the date of enactment; except that, for purposes of determining the periods of continuous residence or continuous physical presence, the amendments made by subsection (b) shall apply to all aliens upon whom an order to show cause is served on or after the date of enactment.

(3) The amendments made by subsection (c) of this section shall take effect on the date of enactment.

SEC. 310. RESCISSION OF LAWFUL PERMANENT RESIDENT STATUS.

Section 246(a) of the Immigration and Nationality Act (8 U.S.C. 1256(a)) is amended by adding at the end the following sentence:

"Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to deport the alien under section 242 and 242A, and an order of deportation issued by an immigration judge shall be sufficient to rescind the alien's status.".

SEC. 311. INCREASING EFFICIENCY IN REMOVAL OF DETAINED ALIENS.

(a) There are authorized to be appropriated such funds as may be necessary for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing the availability of pro bono counseling and representation for such aliens. Any such pilot program may provide for administrative grants to not-for-profit organizations involved in the counseling and representation of aliens in immigration proceedings. An evaluation component shall be included in any such pilot program to test the efficiency and cost effectiveness of the services provided and the replicability of such programs at other locations.

(b) Nothing in this section shall be regarded as creating a right to be represented in exclusion or deportation proceedings at the expense of the Government.

TITLE IV—ALIEN SMUGGLING CONTROL

SEC. 401. WIRETAP AUTHORITY FOR INVESTIGATIONS OF ALIEN SMUGGLING AND DOCUMENT FRAUD.

Section 2516(1) of title 18, United States Code, is amended—

(a) in paragraph (c), by inserting after "trains)" the following: "or a felony violation of section 1028 (relating to production of false identification documentation), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud or misuse of visas, permits, or other documents)";

(b) by striking "or" after paragraph (l);

(c) by redesignating paragraphs (m), (n), and (o) as paragraphs (n), (o), and (p), respectively; and

(d) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens);".

SEC. 402. APPLYING RACKETEERING OFFENSES TO ALIEN SMUGGLING.

Section 1961(1) of title 18, United States Code, is amended—

(a) by striking "or" after "law of the United States,";

(b) by inserting "or" at the end of clause (E); and

(c) by adding at the end the following:

"(F) any act, or conspiracy to commit any act, in violation of section 274(a)(1)(A)(v), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A)(v), 1327, or 1328).".

SEC. 403. EXPANDED ASSET FORFEITURE FOR SMUGGLING OR HARBORING ALIENS.

Section 274 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1324) is amended—

(a) by amending paragraph (b)(1) to read as follows:

"(b) SEIZURE AND FORFEITURE.—(1) The following property shall be subject to seizure and forfeiture:

"(A) any conveyance, including any vessel, vehicle, or aircraft, which has been or is

being used in the commission of a violation of subsection (a); except that—

"(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

"(2) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than such owner in violation of the criminal laws of the United States, or any State; and

"(B) any property, real or personal, (i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or (ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of subparagraph (a)(1)(A), except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted by any other person other than such owner without knowledge or consent of that owner."; and

(b) in paragraph (b)(2)—

(1) by striking "conveyances" both places it appears and inserting "property"; and

(2) by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, is facilitating or was intended to facilitate";

(3) in paragraph (3)—

(A) by inserting "(A)" immediately after "(3)", and

(B) by adding at the end the following:

"(B) Before the seizure of any real property pursuant to this section the Attorney General shall provide notice and opportunity to be heard to the owner of the property. The Attorney General shall prescribe such regulations as may be necessary to carry out this paragraph.";

(4) in paragraphs (b)(4) and (b)(5) by striking each place they appear the phrase "a conveyance" and the word "conveyance" and inserting "property"; and

(5) by redesignating subsection (c) to be subsection (d) and inserting the following new subsection (c)—

"(c) CRIMINAL FORFEITURE.—

"(1) Any person convicted of a violation of subsection (a) shall forfeit to the United States, irrespective of any provision of State law—

"(A) any conveyance, including any vessel, vehicle, or aircraft used in the commission of a violation of subsection (a); and

"(B) any property real or personal—

"(i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or

"(ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of subparagraph (a)(1)(A).

"The court, in imposing sentence on such person, shall order that the person forfeit to the United States all property described in this subsection.

"(2) The criminal forfeiture of property under this subsection, including any seizure and disposition of the property and any related administrative or judicial proceeding shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsections 413(a) and 413(d) which shall not apply to forfeitures under this subsection.".

SEC. 404. INCREASED CRIMINAL PENALTIES FOR ALIEN SMUGGLING.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(a) in subsection (a)(1)(A)—

(A) by striking "or" at the end of clause (iii);

(B) by striking the comma at the end of clause (iv) and inserting "; or"; and

(C) by adding at the end the following new clause:

"(v)(I) engages in any conspiracy to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts.";

(b) in subsection (a)(1)(B)—

(A) in clause (i), by inserting "or(v)(I)" after "(A)(i)";

(B) in clause (ii), by striking "or(iv)" and inserting "(iv), or (v)(II)";

(C) in clause (iii), by striking "or (iv)" and inserting "(iv), or (v)";

(c) in subsection (a)(1)(B) by adding at the end the following new paragraph—

"(3) Any person who hires for employment an alien—

"(A) knowing that such alien is an unauthorized alien (as defined in section 274A(h)(3)), and

"(B) knowing that such alien has been brought into the United States in violation of this subsection.

shall be fined under title 18, United States Code, and shall be imprisoned for not more than 5 years."; and

(d) in subsection (a)(2)(A)—

(1) by striking the period after clause (iv) and adding a new clause (v) to read as follows:

"(v) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year."; and

(2) in subparagraph (B) by adding "(v)" after "(A)(i)" in clause (i),

SEC. 405. UNDERCOVER INVESTIGATION AUTHORITY.

(a) With respect to any undercover investigative operation of the Immigration and Naturalization Service which is necessary for the detection and prosecution of crimes against the United States—

(1) sums authorized to be appropriated for the Immigration and Naturalization Service by this Act may be used for leasing space within the United States, the District of Columbia, and the territories and possessions of the United States without regard to section 3679(a) of the Revised Statutes (31 U.S.C. 1341), section 3732 (a) of the Revised Statutes (41 U.S.C. 11(a)), section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255), the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), section 3648 of the Revised Statutes (31 U.S.C. 3324), section 3741 of the Revised Statutes (41 U.S.C. 22), and subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395; 41 U.S.C. 254 (a) and (c));

(2) sums authorized to be appropriated for the Immigration and Naturalization Service by this Act may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 304 of the Government Corporation Control Act (31 U.S.C. 9102);

(3) sums authorized to be appropriated for the Immigration and Naturalization Service by this Act, and the proceeds from such undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of Title 18 of the United States Code, and section 3639 of the Revised Statutes (31 U.S.C. 3302); and

(4) the proceeds from such undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3617 of the Revised Statutes (31 U.S.C. 3302).

The authorization set forth in this section may be exercised only upon written certification of the Commissioner of the Immigration and Naturalization Service, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of such undercover operation.

(b) As soon as practicable after the proceeds from an undercover investigative operation, carried out under paragraphs (3) and (4) of subsection (a), are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Immigration and Naturalization Service, as much in advance as the Commissioner or his or her designee determine practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) The Immigration and Naturalization Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.

SEC. 406. AMENDED DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416), is amended—

(1) in subparagraph (N), by striking "of title 18, United States Code"; and

(2) in subparagraph (O), by striking "which constitutes" and all that follows up to the semicolon at the end and inserting ", for the purpose of commercial advantage".

(b) EFFECTIVE DATE OF CONVICTION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222(g) of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416) is amended by adding at the end the following sentence:

"Notwithstanding any other provision of law, the term applies for all purposes to convictions entered before, on, or after the date of enactment of this Act."

(c) APPLICATION TO WITHHOLDING OF DEPORTATION.—Section 243(h) of the Immigration

and Nationality Act (8 U.S.C. 1253(h)) is amended in paragraph (2) by inserting "for which the sentence imposed is 5 years or more" after "aggravated felony".

TITLE V—INSPECTIONS AND ADMISSIONS

SEC. 501. CIVIL PENALTIES FOR BRINGING INADMISSIBLE ALIENS FROM CONTIGUOUS TERRITORIES.

Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended by—

(a) striking "(other than from foreign contiguous territory)" from subsection (a), and

(b) striking "$3,000" and inserting "$5,000" in subsection (b).

SEC. 502. DEFINITION OF STOWAWAY; EXCLUDABILITY OF STOWAWAY; CARRIER LIABILITY FOR COSTS OF DETENTION.

(a) Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding the following new subsection:

"(47) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through either concealment on board such vessel or aircraft or evasion of that carrier's standard boarding procedures.".

(b) Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) is amended as follows:

(1) by inserting in paragraph (a)(1) before the period at the end of the first sentence the following: ", or unless the alien is an excluded stowaway who has requested asylum or withholding of deportation and whose application has not been adjudicated, or whose application has been denied but who has not exhausted any remaining appeal rights";

(2) by inserting after the first sentence in paragraph (a)(1) the following sentences:

"Any alien stowaway inspected upon arrival in the United States is an alien who is excluded within the meaning of this section. The term "alien" wherever appearing in this section shall include an excluded stowaway. The provisions of section 237 concerning the deportation of an excluded alien shall apply to the deportation of a stowaway under section 273(d).".

(c) Section 273(d) of the Immigration and Nationality Act (8 U.S.C. 1323(d)) is amended to read as follows:

"It shall be the duty of the owner, charterer, agent consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer. Upon inspection, the Attorney General, pursuant to regulation, may take immediate custody of any stowaway and shall charge the owner, charterer, agent, consignee, commanding officer, or master of the vessel or aircraft on which the stowaway has arrived the costs of detaining the stowaway. It shall be the duty of the owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer. Failure to comply with the provisions of this section shall result in the imposition of a $5,000 fine, payable to the Commissioner as offsetting collections for each alien stowaway. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. An alien stowaway inspected upon arrival shall be considered an excluded alien under this Act. The provisions of section 235 for detention of aliens for examination before a special inquiry officer and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such aliens shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure, removal or deportation of such alien from the United States. A stowaway may apply for asylum or withholding of deportation, as provided in sections 208 and 243(h) of this Act, pursuant to such regulations as the Attorney General may establish.".

SEC. 503. LIST OF ALIEN AND CITIZEN PASSENGERS ARRIVING OR DEPARTING.

Section 231(a) of the Immigration and Nationality Act (8 U.S.C. 1221(a)) is amended by—

(a) striking the first sentence and inserting the following—

"In connection with the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having such person on board to deliver to the immigration officers at the port of arrival, or other place designated by the Attorney General, electronic, typewritten or printed lists or manifests of the persons on board such vessel or aircraft.";

(b) striking in the second sentence "shall be prepared" and inserting "shall be prepared and submitted"; and

(c) inserting after the second sentence the following sentence:

"Such lists or manifests shall contain, but not be limited to, for each person transported, the person's full name, date of birth, gender, citizenship, travel document number (if applicable), and arriving flight number.".

SEC. 504. ELIMINATION OF LIMITATIONS ON IMMIGRATION USER FEES FOR CERTAIN CRUISE SHIP PASSENGERS.

Section 286(e)(1) of the Immigration and Nationality Act (8 U.S.C. 1356) is amended to read as follows:

"No fee shall be charged under subsection (d) for immigration inspection or preinspection provided in connection with the arrival of any passenger aboard an international ferry.".

SEC. 505. TRANSPORTATION LINE RESPONSIBILITY FOR TRANSIT WITHOUT VISA ALIENS.

Section 238(c) of the Immigration and Nationality Act (8 U.S.C. 1228(c)) is amended by inserting after the first sentence the following:

"Notwithstanding any other provision of this Act and in consideration for bringing aliens transiting through the United States without a visa, transportation lines shall agree, as part of any contract entered into under this section, to indemnify the United States against any costs for the detention and removal from the United States of any such alien who for any reason:

(a) is refused admission to the United States;

(b) fails to continue his or her journey to a foreign country within the time prescribed by regulation; or

(c) is refused admission by the foreign country to which the alien is travelling while transiting through the United States.".

SEC. 506. AUTHORITY TO DETERMINE VISA PROCESSING PROCEDURES.

Section 202(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(1)) is amended by inserting before the period at the end the following:

"; provided, however, that nothing in this subsection shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.".

SEC. 507. BORDER SERVICES USER FEE.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by inserting the following new subsection:

"(s)(1) In addition to any other fee authorized by law, the Attorney General shall charge and collect a fee, in United States currency, for border-related services and enforcement, at ports selected by the states in which they are located to participate in the border services user fee program. The fee shall be $1.50 for each non-commercial conveyance and $.75 for each pedestrian, for every land border entry, including persons arriving via ferries on any body of water which forms a part of the borders and boundaries contiguous to the United States. Commercial conveyances transporting passengers through passenger processing facilities shall be charged the pedestrian fee for the operator and each passenger, except that crewmen on ferries shall not be charged and conveyances on ferries will be charged the conveyance fee. These funds shall be available to the Attorney General in accordance with this section.

"(2) To the greatest extent practicable, fee revenues will be reinvested in participating ports in amounts that are approximately proportionate to the amounts collected at those ports and will not be used to substitute for the resources that would be allocated to the ports if they were not in the program, but will be added to the funds that would otherwise be dedicated to port spending.

"(3)(A) Each state that selects one or more ports to participate in the border services user fee program may establish a Border Services Council for each participating port.

"(B) The Councils shall develop spending priorities for the ports and submit those priorities to the Attorney General or his or her designated representative.

"(1) Port Services. The Attorney General or his or her designee shall account for these priorities in reinvesting fee revenues to fund additional permanent and temporary immigration inspectors and related support; the addition, improvement, and modification of facilities at ports of entry and border areas contiguous to those ports; the expansion, operation, and maintenance of information systems and advanced technologies related to port-related services and enforcement; and the enhancement of facilitation of legal traffic and the reduction of border violence and smuggling.

"(2) Port-related Enhancements. The Attorney General shall grant all revenues available for expenses above and beyond the costs set forth in subparagraph (1) to the Councils. These grant funds shall be spent on enhancements outside the port that facilitate operation of the port or otherwise enhance the flow of people or goods across the border.

"(3) For ports without Border Councils, the Attorney General or his or her designee shall

make grants of all funds beyond those used for the purposes of subparagraph (1) to other ports.

"(C) The membership of the Councils shall include:

"(1) three state representatives appointed by the Governor, at least one of which shall represent business interests;

"(2) three local representatives appointed by the Mayor, the County Board of Supervisors, the Town Council, or other local governing body, as determined by the state; and

"(3) three federal representatives, including a Service representative appointed by the Commissioner; a Customs representative appointed by the Commissioner of the Customs Service; and a GSA representative appointed by the Administrator of General Services.

"(D) The Councils shall be exempt from the requirements of the Federal Advisory Committees Act, 5 U.S.C. App. All Council meetings shall be open to the public.

"(E) States that select ports for participation in the border services user fee program may withdraw those ports from the program: (1) after amortizing any improvements that have been made with revenues from the program and (2) after providing one year's notice, to allow the federal agencies to comply with the proper procedures for relocating or terminating inspectors and other personnel.

"(4) The Attorney General may—

"(A) develop and implement special discounted fee programs for frequent border crossers;

"(B) adjust the border crossing user fee periodically to compensate for inflation, based on a national average of the consumer price index, and other escalation in the cost of carrying out the purposes of this Act; and

"(C) contract with private and public sector entities to collect the fee and require the collection of the fee to be performed by local bridge, tunnel and other transportation authorities operating in the United States, including ferry operators, adjacent to ports of entry, where such authorities exist. Such authorities shall be reimbursed for administrative costs related to collection of the fee.

"(5) Nothing in this section shall be construed to limit the methods used for fee collection, including outbound collection of the fee.

"(6) All of the fees collected under this subsection shall be deposited as offsetting governmental receipts in a separate account within the Treasury of the United States, to be expended in accordance with subsection (2) of this section. Such account shall be known as the Border Services User Fee Account.

"(7) START UP COSTS.—The Attorney General is authorized to advance from the Working Capital Fund of the Department of Justice to the Border Services User Fee Account the funds required to implement the Border Services User Fees. Receipts from this Fee shall be transferred from the Border Services User Fee Account and deposited as offsetting receipts to the Working Capital Fund of the Department of Justice, up to the amount advanced by the Fund to liquidate the advance provided by the Department of Justice Working Capital Fund.

"(8) EFFECTIVE DATE.—The Attorney General shall begin collection of the fee in a participating State not later then twelve months from the date the State notifies the Attorney General that it has selected ports to participate in the border services user fee program.

"(9) PENALTIES FOR NONPAYMENT.—The Attorney General may establish penalties for non-payment of fees as determined to be necessary to ensure compliance with the provisions of this section.

"(10 REGULATIONS.—The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provision of this section.".

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

SEC. 601. ALIEN PROSTITUTION.

Section 2424 of title 18 of the United States Code is amended by—

(a) in the first paragraph of subsection (a)—

(1) striking "alien";

(2) inserting after "individual" the first time it appears ", knowing or in reckless disregard of the fact that said individual is an alien,"; and

(3) striking "within three years after that individual has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppresing of the white-slave traffic".

(b) in the second paragraph of subsection (a)—

(1) striking "thirty" and inserting "five business"; and

(2) striking "within three years after that individual has entered the United States from any country, party to the said arrangement for the suppression of the white slave traffic".

(c) in the third paragraph of subsection (a), stirking "two" and inserting "ten".

(d) in subsection (b), striking "." after "failing to comply with this section" and inserting ", or for enforcement of the provisions of section 272A of the Immigration and Nationality Act, as amended.".

SEC. 602. GRANTS TO STATES FOR MEDICAL ASSISTANCE TO UNDOCUMENTED IMMIGRANTS.

(a) IN GENERAL.—In order to assist States to meet the costs of providing treatment to certain aliens for emergency medical conditions, there are authorized to be appropriated $150,000,000 for each of fiscal years 1996 through 2000.

(b) ALLOTMENTS.—

(1) From the sums appropriated pursuant to subsection (a) for a fiscal year, the Secretary of Health and Human Services shall determine, with respect to each State with a plan approved under title XIX of the Social Security Act, an allotment for each such State which shall be the amount which bears the same ratio to the amount appropriated for such fiscal year as the sum of such State's allotments for fiscal years 1988 through 1994 under section 204 of the Immigration Reform and Control Act of 1986 bears to the total of such allotments for all the States for such fiscal years.

(2) In the case of any State for which the allotment determined under paragraph (1) for fiscal year is less than 1 percent of the amount appropriated pursuant to subsection (a) for such year, no allotment shall be made, and in the case of any other State which notifies the Secretary that all or part of its allotment will not be needed for the purpose for which it is available, the State's allotment shall be made as determined under paragraph (1), and then reduced by the unneeded portion. There shall be allotted to each of the remaining States the amount determined with respect to each such State under paragraph (1), together with the additional allotments provided below in this paragraph. The total of (A) the amounts of allotments determined under paragraph (1) but not made, and (B) the amount of the reductions under the preceding sentence, shall also be allotted among each of the remaining States as follows: the allotment of each such remaining State shall be increased by an amount which bears the same ratio to such total as the allotment amount determined with respect to such State for the fiscal year involved under paragraph (1) bears to the sum of such allotment amounts for all such remaining States for such fiscal year.

(c) USE OF FUNDS.—Payments under this section may only be used to provide the non-Federal share of expenditures under the State plan approved under title XIX of the Social Security Act (as required by the last sentence of section 1902(a) of such Act) for care and services necessary for the treatment of an emergency condition that are furnished to an alien who is not a qualified alien under section 250A(c) of the Immigration and Nationality Act.

(d) PAYMENT OF FUNDS.—In order to receive funds under this section, the State shall certify to the Secretary that funds will only be used for the purpose described in subsection (c). Thereafter, the Secretary shall from time to time make payments to each State from its allotment under subsection (b)(2). Payments under this section shall be made to the agency responsible for administering or supervising the administration of the State's plan approved under title XIX of the Social Security Act, and such payments shall be available to the State for expenditure in accordance with this section in the year allotted or in any subsequent fiscal year.

(e) DEFINITION.—As used in this section, the term "State" has the meaning given such term, for purposes of title XIX of the Social Security Act, under section 1101(a)(1) of such Act.

SEC. 603. TECHNICAL CORRECTIONS TO VIOLENT CRIME CONTROL ACT AND TECHNICAL CORRECTIONS ACT.

(a)(1) Section 130003(c)(1) of the Violent Crime Control Act of 1994, Pub. L. 103-322, is amended by striking "a new subsection (1)" and inserting "a new subsection (j)".

(2) The amendment made by this subsection shall be effective as if originally included in section 130003(c)(1) of the Violent Crime Control Act of 1994.

(b)(1) Section 106(d)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1105a), as amended by Section 130004(b) of the Violent Crime Control Act of 1994, Pub. L. 103-322, is amended by striking "242A(b)(5)" and inserting "242A(b)(4)".

(2) The amendment made by this subsection shall be effective as if originally included in section 130004(b) of the Violent Crime Control Act of 1994.

(c)(1) Section 242A(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1252a(d)(4)), as added by section 223 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, is amended by striking "without a decision on the merits".

(2) The amendment made by this subsection shall be effective as if originally included in section 223 of Pub. L. 103-416.

SEC. 604. EXPEDITIOUS DEPORTATION.

Section 225 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, is amended by striking the words "section 242(i) of the Immigration and Nationality Act (8 U.S.C 1252(i))" and substituting in lieu thereof, "sections 242(i) or 242A of the Immigration and Nationality Act (8 U.S.C. 1252(i) or 1252a)".

SEC. 605. AUTHORIZATION FOR USE OF VOLUNTEERS.

Notwithstanding any other provision of law, the Attorney General may accept, administer, and utilize gifts of services from

any person for the purpose of providing administrative assistance to the Immigration and Naturalization Service in administering programs relating to naturalization, adjudications at ports of entry, and removal of criminal aliens. Nothing in this Section shall require the Attorney General to accept the services of any person.

SECTION-BY-SECTION ANALYSIS AS PREPARED BY THE DEPARTMENT OF JUSTICE

TITLE I—BORDER ENFORCEMENT

Sec. 101. Authorization for border control strategies.

This section authorizes the appropriation to the Department of Justice of the funds necessary for expanded control at the land borders.

Sec. 102. Border patrol expansion.

This section mandates the Attorney General in fiscal years 1996, 1997, and 1998, to increase the number of border patrol agents to the maximum extent possible and consistent with standards of professionalism and training, by no fewer than 700 each year.

Sec. 103. Land border inspection enhancements.

This section mandates the Attorney General, subject to appropriations or the availability of funds in the Border Services User Fee Account, to increase the number of land border inspectors in fiscal years 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections at the land border ports of entry.

Sec. 104. Increased penalties for failure to depart, illegal reentry, and passport and visa fraud.

Section 104(a) directs the U.S. Sentencing Commission to increase the base offense level under section 242(e) for failure to depart under an order of deportation, and section 276(b) for illegal reentry after deportation to reflect the enhanced penalties provided in section 130001 of the Violent Crime Control Act of 1994 (VCCA).

The VCCA made failure to depart after a final order of deportation punishable by imprisonment of not more than four years, or not more than 10 years if the alien is deportable for alien smuggling, has committed certain other criminal offenses, has failed to register, has falsified documents, or is engaged in security-related espionage or terrorism.

The VCCA also provided for punishment of 10 years imprisonment of any alien who reenters subsequent to deportation for conviction or commission of three or more misdemeanors involving drugs, crimes against the person, or both. Imprisonment for aliens who reenter after deportation for aggravated felony was raised from 15 to 20 years.

Section 104(b) directs the Sentencing Commission to make appropriate increases in the base offense level for sections 1541–46 of Title 18, U.S.C. (passport and visa fraud) to reflect the enhanced penalties provided in section 130009 of the VCCA.

The VCCA increases the penalties for passport and visa fraud to up to 10 years imprisonment in most cases; and changes prior law by eliminating the option for fines instead of imprisonment and increasing the maximum number of years in prison.

Sec. 105. Pilot program on interior repatriation of deportable or excludable aliens.

This section permits the Attorney General to establish a pilot program for deportation of persons to the interior, rather than the border area, of a contiguous country. It mandates a report to Congress not later than 3 years after initiation of any pilot program.

Sec. 106. Special exclusion in extraordinary migration situations.

This section will aid with border control by allowing aliens to be excluded from entering the United States during extraordinary migration situations or when the aliens are arriving on board smuggling vessels. Persons with a credible fear of persecution in their countries of nationality will be allowed to enter the United States to apply for asylum.

Section 106(a) amends section 235 of the Immigration and Nationality Act (INA) to clarify that an alien in exclusion proceedings who has arrived from a foreign contiguous country may be returned to that country while the proceedings are pending.

Section 106(b) amends section 235 of the INA, relating to inspection requirements, by adding two new subsections, 235(d) and 235(e). New subsection (d) allows the Attorney General to order an alien excluded and deported without a hearing before an immigration judge. This authority may be exercised when the Attorney General declares an extraordinary migration situation to exist (because of the number of aliens en route to or arriving in the United States, including by aircraft) or when aliens are brought to the United States or arrive in the United States on board a smuggling vessel. (This language is virtually identical to that passed by the full Senate Judiciary Committee in August 1994 as a substitute for the general expedited exclusion authority proposed in S. 1333.)

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. However, a person may be returned to a third country in which he or she has no credible fear of persecution or of return to persecution.

There is no administrative review of an order of special exclusion except for persons previously admitted to the United States as lawful permanent residents. Asylum denials would be reviewable by an asylum officer, but there is no judicial review of the asylum denial. (See section 308, below, for amendments to the judicial review provisions of the INA, which limit judicial review of a special exclusion order to certain issues through habeas proceedings.

New subsection 235(e) provides that a person may not attack prior orders of deportation as a defense against penalties for illegal reentries.

Sec. 107. Immigration emergency provisions.

Section 107(a) amends section 404(b) of the INA to permit reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements could be made to other countries for repatriation expenses without the requirements that the President declare an immigration emergency.

Section 107(b) amends 50 U.S.C. 191 (Magnuson Act) to permit the control and seizure of vessels when the Attorney General determines that urgent circumstances exist due to a mass migration of aliens.

Section 107(c) amends section 101(a) of the INA by authorizing the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens present urgent circumstances.

Sec. 108. Commuter land pilot programs.

To facilitate border management, this section amends section 286(q) of the INA and the 1994 Department of Justice Appropriations Act to permit expansion of commuter lane pilot programs at land borders.

It also amends the 1994 Justice Appropriations Act to allow the Immigration and Naturalization Service (INS) to establish these projects on the Northern, as well as the Southern, border.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

Sec. 201. Reducing the number of employment verification documents.

The provisions of this section will strengthen enforcement of employer sanctions. These provisions will assist interior enforcement and decrease nonimmigrant overstays by making it more difficult for illegal aliens to gain unlawful employment.

Section 201(a) amends section 274A(b)(2) of the INA to permit the Attorney General to require any individual to provide his or her Social Security account number on any forms required as part of employment verification process.

Section 201(b) amends section 274A(b)(1)(B) of the INA to eliminate three types of documents that may be present to establish both an individual's employment authorization and identity.

Under current law, by statute and regulation, an individual may present 1 or more of up to 29 documents to establish employment authorization, identity, or both.

Documents that now establish both employment authorization and identity are a U.S. passport, certificate of U.S. citizenship, certificate of naturalization, unexpired foreign passport with work authorization, or a resident alien card or other alien registration card containing a photograph and work authorization. Under this amendment, only a U.S. passport, resident alien card, or alien registration card or other employment authorization document issued by the Attorney General would establish both employment authorization and identity.

Subsection (b) also amends 274A(b)(1)(C) of the INA to eliminate the use of a U.S. birth certificate as a document that can establish work authorization.

Subsections (a) and (b) would apply with respect to hirings occurring not later than 180 days after enactment, as designated by the Attorney General.

Sec. 202. Employment verification pilot projects.

This section provides for the Attorney General, working with the Commissioner of Social Security, to conduct pilot projects to test methods for reliable and nondiscriminatory verification of employment eligibility. Pilot programs may include the expansion of the telephone verification system up to 1000 employers; a simulated linkage of INS and Social Security Administration (SSA) databases; a process to allow employers to verify employment eligibility through SSA records using INS records as a crosscheck; and improvements and additions to the INS and SSA databases to make them more accessible for employment verification purposes. Pilots are to run for 3 years with an option for a 1-year extension and are to be limited to certain geographical locations. The Attorney General may require employers participating in the pilots to post notices informing employees of their participation and of procedures for filing complaints with the Attorney General regarding the operation of the pilots.

At the end of the 3-year period, the Attorney General must report to Congress regarding the cost effectiveness, technical feasibility, resistance to fraud, and impact upon privacy and anti-discrimination policies of the various pilot projects.

Sec. 203. Confidentiality of data under employment eligibility verification pilot projects.

Section 203(a) provides for the confidentiality of individual information collected in the operation of pilot projects under section 202. No individual information may be made available to any Government agencies, employers, or other persons other than as necessary to verify that the employee is not an authorized alien. In addition, the information may be used for enforcement of the INA and for criminal enforcement of the immigration-related fraud provisions of Title 18 (sections 911, 1001, 1028, 1546, and 1621).

Pursuant to section 203(b), participating employers must have in place procedures to safeguard the personal information and notify employees of their right to request correction or amendment of their records. These procedures will be detailed in a standard memorandum of understanding signed by INS and each employer.

Section 203(c) makes the provisions, rights and remedies of 5 U.S.C. 552a(a)(2), applicable to all work-authorized persons who are subject to work authorization verification under section 202 with respect to records used in the course of a pilot project to make a final determination concerning an individual's work authorization.

Pursuant to section 203(d), employers and other persons are subject to civil penalties from $1,000 to $10,000 for the willful and knowing unlawful disclosure or use of information or failure to comply with subsection 203(b).

Section 203(e) states that nothing in this section shall limit the rights and remedies otherwise available to U.S. citizens and lawful permanent residents under 5 U.S.C. 552a.

Section 203(f) states that nothing in this section or section 202 shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

Sec. 204. Collection of Social Security numbers.

To facilitate the use of Social Security numbers in immigration-related activities, this section adds a new subsection 264(f) to the INA to clarify that the Attorney General may require any alien to provide his or her Social Security number for inclusion in any record maintained by the Attorney General. (This is a companion to section 201(a), described above.)

Sec. 205. Employer sanctions penalties.

Section 205(a) amends section 274A(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of $250 to $2,000 to a range of $1,000 to $3,000. The subsection also increases penalties for second violations from the current range of $2,000 to $5,000 to a range of $3,000 to $8,000. The penalties for subsequent violations are increased from a range of $3,000 to $10,000 to a range of $8,000 to $25,000.

Section 205(b) amends section 274A(e)(5) of the INA to increase the penalties for employer sanctions paperwork violations from the current range of $100 to $1,000 to a range of $200 to $5,000.

Section 205(c) amends section 274A(f)(1) of the INA to increase the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from $3,000 to $7,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

Sec. 206. Criminal penalties for document fraud.

Section 206(a) amends 18 U.S.C. 1028(b)(1), on identification document fraud, to increase the maximum term of imprisonment from 5 to 10 years. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism.

Section 206(b) directs the Sentencing Commission promptly to make appropriate increases in all of the base offense levels for immigration document fraud offenses under 18 U.S.C. 1028.

Sec. 207. Civil penalties for document fraud.

Section 207(a) amends section 274C(a) of the INA to apply civil penalties in cases where an alien has presented a travel document upon boarding a vessel for United States, but fails to present the document upon arrival ("document-destroyers"). A discretionary waiver of these penalties is provided if the alien is subsequently granted asylum.

Subsection (a) also applies civil penalties against a person who prepares, files, or assists another person in preparing or filing, certain false documents in reckless disregard of the fact that the information is false or does not relate to the applicant.

Section 207(b) conforms section 274(c)(d)(3) to refer to "each document that is the subject of a violation under subsection (a)". This will clarify that an alien who does not present a document (because it was destroyed) is subject to penalties.

Sec. 208. Subpoena authority.

Section 208(a) amends section 274A(e)(2) of the INA to clarify that immigration officers may issue subpoenas for investigations of employer sanctions offenses under section 274A.

Section 208(b) adds a new section 294 to the INA to authorize the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50) available to the Secretary of Labor. The Federal Trade Commission Act provisions allow access to documents and files of corporations, including the authority to call witnesses and require production of documents.

Sec. 209. Increased penalties for employer sanctions involving labor standards violations.

Section 209(a) adds a new paragraph 274A(e)(10) to the INA to authorize an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties, for willful or repeated violations of: (i) the Fair Labor Standards Act (29 U.S.C. 201 et seq.); (ii) the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.); and (iii) the Family and Medical Leave Act (29 U.S.C. 2601 et seq.).

Section 209(b) adds a new paragraph, section 274B(g)(4), to the INA to make the same provisions in (a) above applicable in section 274B, unfair immigration-related employment practices.

Sec. 210. Increased civil penalties for unfair immigration-related employment practices.

This section amends section 274B(g)(2)(B) of the INA to increase the civil penalties applicable for unfair immigration-related employment practices to make the penalties comparable to the increased proposed for employer sanctions violations.

The penalty for a first violation would be increased from the current range of $250 to $2,000 to a range of $1,000 to $3,000. The penalty for a second violation would be increased from the current range of $2,000 to $5,000 to a range of $3,000 to $8,000. The penalty for more than two violations would be increased from the current range of $3,000 to $10,000 to a range of $8,000 to $25,000.

The penalty for a documents violation, that is, requesting more or different documents than are required or refusing to honor documents tendered that on their face reasonably appear to be genuine, would be increased from a range of $100 to $1,000 to a range of $200 to $5,000.

Sec. 211. Retention of employer sanctions fines for law enforcement purposes.

This section amends section 286(c) of the INA to credit to INS appropriations any employer sanction penalties received in excess of $5,000,000. These funds will be used to fund employer sanctions enforcement and related expenses. The funds credited to the account remain available until used.

Sec. 212. Telephone verification system fee.

This section amends section 274A(d) of the INA to authorize INS to collect and retain the fees paid to use the telephone verification system pilot project. These fees are to be credited to the INS Salaries and Expenses appropriation as offsetting collections solely for employer verification services costs.

Sec. 213. Authorizations.

This section provides for blanket authorization for appropriation of funds needed to carry out this title.

TITLE III—ILLEGAL ALIEN REMOVAL

Sec. 301. Civil penalties for failure to depart.

This section adds a new section 274D to the INA, to subject aliens who willfully fail to depart after an order of exclusion or deportation to a $500-per-day penalty (payable to the INS Commissioner as offsetting collections). This section would not diminish the criminal penalties at section 242(e) for failure to depart or any other section of the INA.

Sec. 302. Judicial deportation.

Section 302(a) amends section 242A(d)(1) of the INA to authorize a U.S. district court to enter a judicial order of deportation when the court imposes a sentence that causes the alien to be deportable or when the alien previously has been convicted of an aggravated felony. Current law limits judicial deportation to the time of sentencing for an aggravated felony conviction.

Section 302(b) amends section 242A(d)(3) to provide that a judicial order of deportation or denial of the Government's motion for such an order may be appealed by either party, as part of the underlying criminal case.

Section 302(c) amends section 242A(d)(4) of the INA to strike the reference to "a decision on the merits." This change clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

Section 302(d) amends 18 U.S.C. 3583(d)(3) to provide that a court may set as a condition of supervised release that an alien defendant be ordered deported by the Attorney General and that the alien remain outside the United States. This amendment addresses an issue in litigation where district court judges have read this section to authorize them to order deportation.

Sec. 303. Conduct of proceedings by electronic means.

This section amends section 242(b) of the INA to permit deportation proceedings to be conducted by video conference or telephone, saving travel and hearing time and resources. The alien must consent to such a hearing by telephone if it is to be a full contested evidentiary hearing on the merits.

Sec. 304. Subpoena authority.

This section clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA.

Sec. 305. Stipulated exclusion and deportation.

This section amends sections 236 and 242 of the INA to permit the entry of orders of exclusion and deportation stipulated to by the alien and the INS, and to provide that stipulated orders are conclusive. Department of Justice regulations will provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

Sec. 306. Streamlining appeals from orders of exclusion and deportation.

This section revises and amends section 106 of the INA. It provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed within 30 days after the final order in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals.

The Attorney General's findings of fact shall be conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order.

A new section 106(e) provides that a petition for review filed by an alien against whom a final order of deportation has been issued under section 242A (aggravated felonies) will be limited to whether the alien: is the alien described in the order; has been convicted after entry of an aggravated felony; and was afforded the appropriate deportation proceedings.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he or she is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief.

Sec. 307. Sanctions against countries refusing to accept deportation of their nationals.

This section amends section 243(g) of the INA to permit the Secretary of State to refuse issuance of all visas to nationals of countries that refuse to accept deportation of their nationals from the United States. Under current law, the Secretary of State has the authority only to refuse to issue immigrant visas.

Sec. 308. Custody of aliens convicted of aggravated felonies.

Section 308(a) amends section 236(e) of the INA to permit the Attorney General to release an aggravated felon alien who is in exclusion proceedings from detention if the release is necessary to provide protection to a witness, a potential witness, or a person cooperating with a major criminal investigation, or to protect an immediate family member of such a person.

Section 308(b) amends section 242(a)(2) of the INA to permit the Attorney General to release an aggravated felon alien who is in deportation proceedings from detention if the release is necessary to provide protection to a witness, a potential witness, or a person cooperating with a major criminal investigation, or to protect an immediate family member of such a person.

Sec. 309. Limitations on relief from exclusion and deportation.

Section 309(a) amends section 212(c) of the INA to limit relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a lawful permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings. Persons in deportation proceedings must now apply for cancellation of deportation (described below). Finally, an aggravated felon will be eligible for section 212(c) relief only if he or she has been sentenced to less than 5 years, in the aggregate, for the aggravated felony conviction or convictions. Time actually served will not be a factor in determining eligibility.

Section 309(b) amends section 244 of the INA to consolidate two existing forms of relief from deportation (suspension of deportation under section 244 and a waiver of deportability under section 212(c)) into one form of relief, "Cancellation of Deportation." A lawful permanent resident (LPR) would be eligible for cancellation if he or she has been an LPR for 5 years, has resided in the U.S. after lawful admission for 7 years, and has not been convicted of an aggravated felony or felonies for which he or she has been sentenced, in the aggregate, to a term or terms of 5 years or more. A non-LPR would be eligible for relief if he or she had been continuously physically present for 7 years, was of good moral character, and could establish extreme hardship to the alien or the alien's U.S. citizen spouse or child if deported. The 7-year and 5-year periods end with the issuance of an Order to Show Cause initiating deportation proceedings. This provision would clarify an area of the law regarding the cutoff periods for these benefits that have given rise to significant litigation and different rules being applied in different judicial circuits.

This section also amends the existing provisions for voluntary departure. Prehearing voluntary departure may be granted to any alien other than an aggravated felon. The Attorney General may require a voluntary departure bond. At the conclusion of a deportation proceeding, voluntary departure may be granted only if the person has been of good moral character for 5 years prior to the order, is not deportable under certain criminal or national security grounds, and demonstrates by clear and convincing evidence that he or she has the means to depart the United States and intends to do so. The alien would be required to post a voluntary departure bond. An alien would be subject to civil penalties of $500 per day for failure to depart within the time set for voluntary departure. Judicial review of voluntary departure orders would be limited.

An alien would be subject to civil penalties of $500 per day for failure to depart within the time set for voluntary departure. Judicial review of a voluntary departure order would be prohibited if relief was granted for 30 days or more. Judicial review of a denial of voluntary departure could not stay deportation of an alien after 60 days had passed from issuance of an order of deportation.

Section 309(c) makes conforming amendments to sections 242(b) and 242B(e) of the INA.

Section 309(d) provides that the effective date of this section is the date of enactment, except that subsections (a) and (b), relating to the determination of when the period of residency or of continuous physical presence ends, are applicable only to orders to show cause filed on or after the date of enactment. The conforming amendments made by subsection (c) are effective on enactment.

Sec. 310. Rescission of lawful permanent resident status.

This section amends section 246(a) of the INA to clarify that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

Sec. 311. Increasing efficiency in removal of detained aliens.

This section authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

TITLE IV—ALIEN SMUGGLING CONTROL

Sec. 401. Wiretap authority for investigations of alien smuggling and document fraud.

This section amends 18 U.S.C. 2516(1) to give INS the authority to use wiretaps in investigations of alien smuggling and document fraud.

Sec. 402. Applying racketeering offenses to alien smuggling.

This section amends 18 U.S.C. 1961(1) to include the offenses relating to alien smuggling as predicate offenses for racketeering charges. The application of RICO to smuggling will be limited to those offenses committed for commercial advantage or private financial gain.

Sec. 403. Expanded asset forfeiture for smuggling or harboring aliens.

This section amends 274 of the INA to authorize seizure and forfeiture of real and personal property in cases of alien smuggling and harboring. Current forfeiture authority is limited to conveyances. INS must give notice to owners of an intent to forfeit.

Sec. 404. Increased criminal penalties for alien smuggling.

This section amends section 274(a)(1)(A) of the INA to add conspiracy and aiding and abetting to the smuggling offenses, with offenders being subject to a fine, and/or 10 years imprisonment for conspiracy and/or 5 years imprisonment for aiding and abetting. It makes it a criminal offense to hire an alien with the knowledge that the alien is not authorized to work and that the alien was smuggled into the U.S. The penalty for violating this section is a fine and/or up to 5 years imprisonment.

This section also amends section 274(a)(2) of the INA to increase the penalties for multiple smuggling offenses (and for a new offense for smuggling aliens who will be committing crimes) to not less than 3 years or more than 10 years of imprisonment.

Sec. 405. Undercover investigation authority.

This section authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for undercover operations, so-called "proprietaries" to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses.

Sec. 406. Amended definition of aggravated felony.

Section 406(a) amends section 101(a)(43)(N) of the INA, to strike the reference to title 18, U.S.C. in defining alien smuggling as an aggravated felony. This amendment will result in the inclusion of the smuggling offenses in section 274 of the INA into the definition of aggravated felony. It also amends the definition of "aggravated felony" by adding a requirement that the offense of trafficking in document fraud to be "for the purpose of commercial advantage."

Section 406(b) amends section 101(a)(43) to provide that the term "aggravated felony" applies for all purposes to convictions entered before, on, or after the date of enactment of this Act. This amendment will end controversy on which convictions fall within the definition.

Section 406(c) amends section 243(h) of the INA to provide that for purposes of determining whether an alien is ineligible for withholding of deportation based on conviction for an aggravated felony, the alien must have been sentenced to five years or more. Currently any aggravated felon is ineligible for withholding of deportation.

TITLE V—INSPECTIONS AND ADMISSIONS

Sec. 501. Civil penalties for bringing inadmissible aliens from contiguous territories.

This section amends section 273(a) to establish the illegality of bringing inadmissible aliens from foreign contiguous territories. It amends section 273(b) of the INA to increase from $3,000 to $5,000 the fine for bringing in an alien unlawfully.

Sec. 502. Definition of stowaway; excludability of stowaway; carrier liability for costs of detention.

Section 502(a) adds a definition of stowaway to the INA (section 101(a)) to mean any alien who obtains transportation without consent or through concealment or evasion.

Section 502(b) amends section 237 of the INA to clarify that a stowaway is subject to immediate exclusion and deportation. However, it allows a stowaway to apply for asylum or withholding of deportation.

Section 502(c) amends section 273(d) of the INA to require the carrier to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It amends section 273(d) by raising the fine for failure to remove a stowaway from $3,000 to $5,000 per stowaway, payable to the Commissioner as offsetting collections.

Sec. 503. List of alien and citizen passengers arriving or departing.

This section amends section 231(a) of the INA to clarify the content of and format for passenger lists and manifests to be prepared and submitted by carriers to INS, including name, date of birth, gender, citizenship, travel document number, and arriving flight number.

Sec. 504. Elimination of limitations on immigration user fees for certain cruise ship passengers.

This section amends section 286(e)(1) of the INA to remove the current exemption from payment of the $6 immigration user fee for cruise ship passengers.

Sec. 505. Transportation line responsibility for transit without visa aliens.

This section amends section 238(c) of the INA to provide that a carrier which has entered into an agreement with the United States to transport aliens without visas through the U.S. must agree to indemnify the United States for any costs of detaining or removing such an alien.

Sec. 506. Authority to determine visa processing procedures.

This section amends section 202(a)(1) of the INA, which provides that visas must be issued without discrimination because of race, sex, nationality, place of birth, or place of residence, to state that nothing in this subsection limits the authority of the Secretary of State to determine procedures for processing visas. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

Sec. 507. Border services user fee.

This section adds a new subsection 286(s) to the INA, authorizing the Attorney General to charge and collect a border services user fee for every land border entry, including persons arriving at U.S. borders by ferry, at participating ports-of-entry. The fee is to be collected in U.S. Currency and is set at $1.50 for each non-commercial conveyance, and $.75 for each pedestrian. Commercial passenger conveyances will be charged the pedestrian fee for operator and each passenger, except that ferry crewmen are not subject to the fee.

The section provides for each State to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the Attorney General. The Attorney General must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be given to the Councils to spend on port-related enhancements. The Attorney General will allocate enhancement funds for ports that do not set up a Border Service Council.

The Council membership must include three state representatives appointed by the Governor including at least one business representative, three local representatives, and three federal representatives.

A State may withdraw a port from participation after amortizing improvements and after one year's notice.

The Attorney General is authorized to provide special discounts for frequent border crossers, to adjust the fee to compensate for inflation and cover increased costs, and to contract with private and public sectors to collect the fee. The Attorney General may establish such penalties for non-payment of the fees as are necessary to ensure compliance. The Attorney General is authorized to advance to the Border Services User Fee Account the amount of the start up costs from the Department of Justice's Working Capital Fund. Receipts from the fee will be transferred back from the Border Services User Fee Account and deposited as offsetting receipts to the Working Capital Fund to cover this advance.

The Attorney General will begin collecting the fee not later than 12 months from the date the State notifies the Attorney General that it has selected ports to participate in the fee program.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Sec. 601. Alien prostitution.

This section amends section 2424 of Title 18, U.S.C. (relating to filing statements with INS when bringing in aliens for immoral purposes) to add as a requirement for the offense that a person bringing in an alien for prostitution do so "knowing[ly] or in reckless disregard." It also deletes the statutory reference to signatories to the 1902 international convention and increases the maximum sentence for the offense from two to ten years.

Sec. 602. Grants to States for medical assistance to undocumented immigrants.

This section authorizes appropriations to assist States in providing treatment to certain aliens for emergency medical conditions.

Sec. 603. Technical corrections to Violent Crime Control Act and Technical Corrections Act.

Section 603(a) amends section 130003(c)(1) of the Violent Crime Control Act of 1994, Pub. L. 103-322. Section 130003(c)(1) created a new subsection 245(i) of the Act to provide for the adjustment of status for certain aliens in S nonimmigrant status. A technical correction is necessary because section 506(b) of the Commerce, Justice, and State appropriations statute, P.L. 103-317 (Aug. 26, 1994) had previously created a new subsection 245(i) to provide for the adjustment of status of certain aliens previously ineligible for such privilege. This proposed statutory amendment would redesignate the S-related adjustment provision as section 245(j) of the Act.

Section 603(b) amends section 130004(b)(3) of P.L. 103-322 by removing an incorrect reference to section 242A(b)(5) and replacing it with proper reference to paragraph (b)(4).

Sec. 604. Expeditious deportation.

This section amends Section 225 of the Immigration and Nationality Technical Corrections Act of 1994, P.L. 104-416, by adding a reference to section 242A of the INA (which requires the Attorney General to commence deportation proceedings promptly) to the existing reference to section 242(i) (also requiring expeditious deportation), so that section 225 now provides that neither of those provisions create any enforceable substantive or procedural right or benefit against the United States.

Sec. 605. Authorization for use of volunteers.

This section authorizes the Attorney General to accept and use unpaid personnel to assist INS administratively in naturalization, adjudications at ports of entry, and to remove criminal aliens.

By Mr. DOMENICI (for himself, Mr. FORD, Mr. JOHNSTON, Mr. CAMPBELL, Mr. THOMAS, and Mr. SIMPSON):

S. 755. A bill to amend the Atomic Energy Act of 1954 to provide for the privatization of the U.S. Enrichment Corporation; to the Committee on Energy and Natural Resources.

USEC PRIVATIZATION ACT

Mr. DOMENICI. Mr. President, I rise today on behalf of myself and Senators FORD, JOHNSTON, CAMPBELL, THOMAS, and SIMPSON to introduce the USEC Privatization Act.

The U.S. Enrichment Corporation is a federally owned corporation established pursuant to the Energy Policy Act of 1992. Prior to the transition mandated by the Energy Policy Act, USEC's functions were performed by the Department of Energy and its predecessor agencies.

Currently, the Corporation leases assets, most notably gaseous diffusion plants at Portsmouth, OH, and Paducah, KY, from the Department of Energy. USEC continues to operate those facilities in a manner similar to that in which they were operated prior to the transition. USEC also assumed contractual responsibility to implement uranium enrichment contracts that were in existence at the transition date and the right to utilize the gaseous diffusion facilities leased from the Department to provide uranium enrichment services, for the most part, as the market dictates.

The legislation I have introduced today would complete the transition process initiated by the Energy Policy Act by establishing USEC as a privately owned entity. The legislation is necessary to provide for a smooth transition and to resolve a number of issues not considered by the Energy Policy Act.

The legislation provides for the transfer of employment, health, and pension benefits of current employees from the current Government-owned Corporation to the private corporation. The language included in the legislation has been developed by USEC and the Department of Energy working in conjunction with the Office of Personnel Management. In addition, the union that represents the majority of employees at the Portsmouth and Paducah gaseous diffusion plants; the Oil, Chemical, and Atomic Workers International Union have made recommendations. It is my clear intention to protect the interests of those employees through the transition.

One of the most difficult and complicated issues facing USEC, and the uranium industry as a whole, is the reintroduction into the commercial market of uranium produced for defense purposes. During the cold war, uranium was produced for national security requirements in huge volumes with almost no consideration of cost. Treaty mandated reductions in nuclear arsenals have suddenly surplused much of that material. In addition, there is significant pressure to process fissile material from dismantled weapons in order to limit the ability to easily reconstitute those weapons. In the case of highly enriched uranium, those pressures have resulted in efforts, both in the United States and the former Soviet Union, to blend the material into low-enriched uranium suitable for electricity generation in commercial reactors.

Low-enriched uranium derived from highly enriched uranium, regardless of its country of origin, has suddenly become available in large quantities and, for the most part, in order to be sold in the commercial market, is being offered at prices significantly below its total production costs. Material once required regardless of cost, is now available to be sold at the marginal costs of blending it down—significantly below the production costs of even the most efficient producers in operation today.

U.S. trade law prohibits imported low-enriched uranium derived from highly enriched uranium from being dumped into U.S. markets. The Department of Commerce currently enforces restrictions on all uranium imported from the Russian Federation through the Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, Department of Commerce Investigation No. A-821-802, dated March 11, 1994, the Suspension Agreement. In addition, the Department of State has recently reached an understanding with Canada on the Implementation of the Suspension Agreement particularly as it pertains to the natural uranium component of low-enriched uranium derived from highly enriched uranium. That understanding stipulates that such material could be used only in the operation of the U.S. Enrichment Corporation, for example, for overfeeding purposes, for sale in accordance with Section IV.M of the Suspension Agreement, for example, outside of the United States, or it could be returned to Russia.

Those commitments place severe restrictions on the ability of the United States to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, the HEU Agreement. That agreement calls upon the executive agent for the United States, currently USEC, to purchase $8 billion of separative work units and $4 billion of natural uranium displaced by low-enriched uranium derived from highly enriched uranium from former Soviet nuclear weapons between now and 2013. While USEC may sell the separative work units into the commercial market, the Suspension Agreement and the understanding with Canada prevent USEC from selling the vast majority of the natural uranium derived from the agreement. While USEC is technically obligated to pay the Russians for the natural component only when it is sold or 2013, whichever comes first, Russia has made it clear that failure to pay for the natural uranium upon delivery jeopardizes the entire HEU Agreement—clearly a detriment to United States national security interests.

This legislation proposes an innovative remedy to this situation. Simply put, natural uranium displaced by low-enriched uranium imported under the HEU Agreement would be deemed to be of Russian origin and title of such material would be given to Russia. That material would be subject to the Suspension Agreement and the understanding with Canada accept that it could be sold for commercial end use in the United States starting in 2002 according to a schedule defined in the legislation.

Under this proposal, the Russians would be able to sell natural uranium derived from the HEU Agreement for future deliveries; in effect establishing a futures market. The price the Russians would be able to derive for the material sold now as futures would be dependent upon the conditions of commercial agreements between the Russians and any private investment entity, and would vary depending on predicted prices in the year 2002 and beyond.

However, it is my estimate that the net present value of that material is somewhere near $7 per pound. While that is below the current market price of $11.50 per pound, a futures contract could provide for an immediate cash purchase of the uranium instead of the continued uncertainty and possible delay of reimbursement until 2013.

In addition to the benefits to the Russians, the United States gains because the Suspension Agreement and commitments made to Canada would stand. The USEC privatization is able to proceed without the uncertainty of a potential $4 billion obligation, and because the Suspension Agreement continues in its current form, the United States uranium industry is allowed to continue to operate according to market conditions.

The United States also has significant, undertermined inventories of excess highly enriched uranium and low-enriched uranium. This legislation establishes a series of requirements that must be met before that material may enter the civilian market. Prior to the privatization date, the Secretary may agree to transfer up to 4 million separative work units and 7,000 metric tons or natural uranium to USEC. However, that material may be delivered for commercial end use only according to a defined disposition schedule.

Additional material, transferred to USEC from the Department of Energy following privatization may also enter the commercial market. However, prior to any such sale, the Secretary of Energy must conduct a full rulemaking to determine that the sale of the material will not have an adverse impact on the domestic mining or enrichment industry.

The legislation leaves in place the Energy Policy Act's provisions regarding liability. This issue will be considered in hearings. However, it is my intent that liabilities incurred following the transition date will be borne by the government-owned enrichment enterprise in existence today and its privately owned successor following the privatization date.

There are a number of issues the legislation does not address. It does not

include language proposed by USEC to enable USEC to commercialize organic membrane technology developed by the Department of Energy for uranium enrichment purposes. National security considerations and a desire to maintain a level playing field for technology transfer make this an issue best considered at a hearing before it is included in legislation. The legislation is also silent on the renegotiation of the current USEC-Department of Energy lease for the gaseous diffusion facilities. This may be an issue that is addressed following hearings.

Mr. President. The U.S. Enrichment Corporation falls within the jurisdiction of the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources. I serve as chairman of that subcommittee while my distinguished colleague from Kentucky, Senator FORD, serves as ranking member. It is my intention to hold hearings on this legislation as soon as practicable, preferably this month.

By Mr. ROCKEFELLER:

S. 756. A bill to expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, and for other purposes; to the Committee on Finance.

THE OPEN MARKETS AND FAIR TRADE ACT

Mr. ROCKEFELLER. Mr. President, I am rising to talk about a problem that persists year after year, and a bill to do something about it. I'm speaking of our trade deficit, which is out of control. Certainly, we are making progress on some micro-economic levels, and the Clinton administration has hammered out more than 70 different trade agreements over the last 2-plus years—14 with Japan alone. These are helping some industries, some workers, and some parts of our economy. But they have done nothing to shrink the trade deficit. Clearly, more must be done.

The bill I am introducing today, the Open Markets and Fair Trade Act of 1995, will evaluate the current conditions of markets around the world for American products and negotiate access to those markets. It also gives the President and Congress a new tool to use in those negotiations—the threat of reciprocal trade action. Basically the bill tells our trading partners that if they refuse to give our products reasonable market access, we may impose the same kind of restrictions on their products.

For example, under this legislation, if negotiations with the Japanese over the aftermarket for autoparts reached an impasse, the President could come to Congress and seek a reciprocal trade action that establishes a regulation that matches their strict regulations on repairing cars, which today serve to effectively keep most American replacement parts off Japanese cars. These restrictions only serve to help the Japanese producers and harm American manufacturers. In fact, along with American companies and American workers, the Japanese consumer is probably the biggest loser in the equation. It costs them about $600 for a new alternator in Tokyo—the same part in the United States costs about $120. A muffler sells for about $82 in the United States, and $200 in Japan. And a shock absorber set costs about $230 here, and over $600 in Tokyo.

The New York Times ran a story on May 2 that couldn't be more timely. Even with the dramatic rise of the yen, they reported that it still costs $5.35 for a Florida grapefruit in Japan. And a can of Campbell's chicken noodle soup cost 220 yen today, the same as in 1991—when the dollar was more than 50 percent stronger. If the price of the soup had dropped to match the rise of the yen, a can of Campbell's soup would cost about 125 yen today, not 220 yen, or $2.75, as it is now being sold in Tokyo. It is clear that the savings that should accrue from the strength of the yen never passed on to the Japanese consumer.

But let me stress, this bill does not single out Japan. I want to pry open markets wherever they're closed, wherever in the world American products are denied access. Our trade deficit with Japan was $65 billion last year; with China it was $30 billion; we had a deficit of almost $14 billion with Canada, and Germany rang in at $14 billion. Mr. President, following my statement, I would like to include a chart that lists the top 10 countries in which America has a trade deficit. While not all of these countries have barriers of the sort that this bill seeks to eliminate, a number of them clearly do. Again, this bill does not specify one country or another, it is about following up on the Uruguay round and looking beyond tariffs—it is designed to deal with market barriers; the internal rules in various countries that are practical impediments to American businesses. I am seeking to open more markets across the globe in order to bring about the increased exports and jobs that GATT promised.

And I think it's high time we question the wisdom that blames almost all of America's trade deficit problems solely on ourselves. For years, we've heard the same assertions: "Americans spend too much and save too little . . . the budget deficit is too high . . . we are growing faster than other countries so we have more money to spend than you." Yes, these economic realities contribute to the problem, but under President Clinton's leadership, we have reduced the Federal fiscal deficit by over $700 billion, yet the trade deficit goes up and up.

I think it's time we reverse the premise and look at how the trade deficit fuels our savings and debt problems. The inability of American companies to sell in places like Japan, China, Germany, and elsewhere costs our corporations profits, our workers job opportunities, and our Nation revenues—all of which weigh down our own economic growth and add to our fiscal deficit.

Whether it is a requirement for American firms to hire local agents to conduct business; cumbersome inspection and customs procedures; bans on the sale of products for dubious claims of national sovereignty or some other sort of prerogative, the simple fact is that protected sanctuary markets abroad are a major contributor to America's economic problems.

To explain this simply, I will use as an example the well-known case of how Japanese manufacturers sell things like electronics in the United States at such cheap prices, even when the yen is at a record height. I am citing Japan here, but it could be any other country that has a "sanctuary" market. It is well-known that many Japanese-made products are cheaper in the United States than in Japan. That is because Japan's closed market is a sanctuary that effectively insulates producers from competition, and allows them to over-charge Japanese consumers, giving them enough of a profit margin at home to sell below cost here. That means American companies lose on both ends. We can't export into these markets, and their subsidized exports harm our domestic industries and cost us jobs.

My trade policy is quite simple, in addition to preserving the effectiveness of America's trade laws, I support measures that will increase American exports, and West Virginia exports specifically. Every $1 billion in exports supports about 17,000 jobs. So it follows that if we increase American exports, we will create more jobs here in the United States. And export related jobs are, on average, better, higher paying jobs. That is why I have worked so hard to introduce West Virginia businesses to foreign market opportunities.

While this bill will expose countries with whom we have a trade deficit to extra scrutiny by the Commerce Department, the Open Markets and Fair Trade Act of 1995 is about market opportunities for American firms and especially markets for American industries with the most export potential and which promote critical technologies. Most importantly, it instructs the Commerce Department to look at markets which, if we can export there, offer the greatest employment opportunities for American workers.

America cannot afford to be a market for everyone else's products when we don't get the same kind of access in return. Our economy, and the global economy, cannot sustain that kind of imbalance. The American people will

only continue to support free trade if it means we are able to sell American products abroad as easily as Asian and European and Latin American manufacturers have access to our shelves and showrooms. While past negotiations should have made these points perfectly clear, the Open Markets and Fair Trade Act of 1995 will erase any doubts that may have lingered with our trading partners.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

U.S. TRADE DEFICIT: TOP 10 COUNTRIES

[In billions of dollars]

Country	Trade deficit		
	1994	1993	1992
1. Japan	65.669	59.318	49.417
2. China	29.494	22.768	18.260
3. Canada	14.693	10.732	8.341
4. Germany	12.512	9.648	7.593
5. Taiwan	9.633	8.855	9.397
6. Italy	7.518	6.764	3.602
7. Malaysia	7.012	4.504	3.898
8. Thailand	5.446	4.773	3.546
9. Venezuela	4.336	3.541	2.730
10. Nigeria	3.921	4.410	4.073
Subtotal for top 10	160.234	135.313	110.857
Total for the world	151.414	115.611	84.881

By Mr. COCHRAN:

S.J. Res. 33. A bill proposing an amendment to the Constitution of the United States relative to the free exercise of religion; to the Committee on the Judiciary.

CONSTITUTIONAL AMENDMENT JOINT RESOLUTION

• Mr. COCHRAN. Mr. President, I am pleased today to introduce a joint resolution proposing an amendment to the Constitution that will restore to individuals the fundamental right to the free exercise of their religious beliefs.

Although most of us would agree that the Framers of the Constitution intended special protection for the "free exercise of religion" when they included it in the Bill of Rights, several judicial rulings, and other acts of governments at all levels, over the years have brought that provision into question and resulted in much confusion.

I invite Senators to support this reaffirmation of fundamental, constitutional right.•

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. ROTH, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 44

At the request of Mr. REID, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from New Hampshire [Mr. GREGG] were added as cosponsors of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 103

At the request of Mr. BAUCUS, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from California [Mrs. BOXER], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 103, a bill entitled the "Lost Creek Land Exchange Act of 1995."

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 440

At the request of Mr. WARNER, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 448

At the request of Mr. PRYOR, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 448, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

S. 476

At the request of Mr. NICKLES, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

S. 539

At the request of Mr. COCHRAN, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 539, a bill to amend the Internal Revenue Code of 1986 to provide a tax exemption for health risk pools.

S. 602

At the request of Mr. BROWN, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 602, a bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic Treaty Organization of European countries emerging from Communist domination.

S. 607

At the request of Mr. WARNER, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 615

At the request of Mr. AKAKA, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 615, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 694

At the request of Mr. KYL, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 694, a bill to prevent and punish crimes of sexual and domestic violence, to strengthen the rights of crime victims, and for other purposes.

S. 722

At the request of Mr. DOMENICI, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes.

SENATE RESOLUTION 97

At the request of Mr. THOMAS, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Resolution 97, a resolution expressing the sense of the Senate with respect to peace and stability in the South China Sea.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from New York [Mr. D'AMATO] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE RESOLUTION 113—TO AUTHORIZE REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. GORTON (for Mr. DOLE, for himself, and Mr. DASCHLE) submitted the following resolution; which was agreed to:

S. RES. 113

Whereas, in the case of *Committee for Judicial Review* v. *The United States Senate Committee on the Judiciary, Senator Orrin Hatch,*

No. 1:95CV0770, pending in the United States District Court for the District of Columbia, the plaintiff has filed a complaint, seeking, among other relief, to restrain the Committee on the Judiciary from conducting confirmation hearings on the nomination of Peter C. Economus, who has been nominated to be a United States District Judge for the Northern District of Ohio;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend committees and Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Committee on the Judiciary, its chairman, Senator Orrin G. Hatch, and the other members of the Committee on the Judiciary in the case of *Committee for Judicial Review* v. *The United States Senate Committee on the Judiciary, Senator Orrin Hatch*.

SENATE RESOLUTION 114—TO REFER S. 740 TO THE U.S. COURT OF FEDERAL CLAIMS

Mr. GORTON (for Mr. HATCH) submitted the following resolution; which was agreed to:

S. RES. 114

Resolved, That the bill S. 740 entitled "A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton" now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims. The chief judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimants from the United States.

AMENDMENTS SUBMITTED

THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995 COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

DODD AMENDMENT NO. 624

(Ordered to lie on the table.)

Mr. DODD submitted an amendment intended to be proposed by him to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the appropriate place insert the following:

SEC. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) Bifurcation and Judicial Determination.—

(1) In general.—Notwithstanding any other provision of this Act, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) Inadmissibility of evidence relative only to a claim of punitive damages in a bifurcated proceeding.—Notwithstanding any other provision of this Act, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of this Act, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by the court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factor on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

DODD AMENDMENT NO. 625

(Ordered to lie on the table.)

Mr. DODD submitted an amendment intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

Strike section 107 and insert the following new section:

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) BIFURCATION AND JUDICIAL DETERMINATION.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A BIFURCATED PROCEEDING.—Notwithstanding any other provision of this Act, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of this Act, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by he court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factor on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

HEFLIN AMENDMENTS NOS. 626–627

(Ordered to lie on the table.)

Mr. HEFLIN submitted two amendments intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

AMENDMENT NO. 626

At the appropriate place in amendment No. 596 insert the following:

INSURABILITY OF PUNITIVE DAMAGES

(1) Insurance companies properly licensed under state law shall be permitted to issue policies covering liability giving rise to punitive or exemplary damages.

(2) Nothing herein shall require insurers to offer such insurance policies for punitive or exemplary damages.

(3) Such policies shall be effective in all states of the United States, notwithstanding state law to the contrary.

AMENDMENT NO. 627

At the end of amendment No. 596, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed the greater of—

(1) an amount equal to 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or

(2) $250,000.

(b) ALTERATION OR MISUSE.—Notwithstanding any other provision of this Act, the provisions of section 106(a) supersede the law of any State concerning misuse or alteration of a product.

(c) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title, other than a product liability action for toxic harm, may be brought more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

HEFLIN (AND SHELBY) AMENDMENT NO. 628

(Ordered to lie on the table.)

Mr. HEFLIN (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by them to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

At the appropriate place in amendment No. 596 insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to this section, but only during such time as the State law so provides.

DORGAN AMENDMENT NO. 629

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

Insert at the appropriate place: "Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards."

MCCAIN AMENDMENT NO. 630

(Ordered to lie on the table.)

Mr. MCCAIN submitted an amendment intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

At the appropriate place in title I in Amendment No. 596, insert the following new section:

SEC. . ALLOCATION OF ATTORNEYS' FEES.

(a) IN GENERAL.—With respect to the consideration of any award or offer of settlement presented to a court in any civil action in Federal or State court, the court, in determining the appropriate amount of attorneys' fees with respect to an attorney who represents, on a contingency fee basis, a class or claimant, shall take into account the best interests of all claimants and seek to ensure that such award or settlement does not disadvantage other litigants in the action.

(b) CONSIDERATION OF EXPENSES.—

(1) IN GENERAL.—In determining an appropriate amount of attorneys' fees in an action under subsection (a), the court shall ensure that the recovery for the medical expenses (present and foreseeable) of the class or claimants are given priority over the attorneys' fee.

(2) MINIMAL AMOUNT.—With respect to an action under subsection (a) in which the medical expenses of the class or claimants exceeds the amount of the award or settlement, the court shall award the minimal amount of attorneys' fees necessary to reimburse the attorney for competent counsel and apply the remainder of the award or settlement amount to the expenses of the class or claimants.

(c) PAYMENT OF FEES.—The court, in an action described in subsection (a), shall ensure that an attorney for the class or claimant does not receive payment of fees until all members of the class or all claimants entitled to a payment under an award or settlement in such action receive such payments, unless the court finds good cause for permitting some other sequencing of payments.

(d) LIMITATION.—After complying with the provisions of subsections (a) and (b), the court shall ensure that the attorneys' fees to be paid are reasonable. A court shall determine that attorneys' fees are reasonable under this section, if such fees are proportionate to the actual benefit to the class or claimant under an award or settlement under the action involved, and to the amount of time and effort expended by the attorney with respect to such action.

EXON AMENDMENTS NOS. 631–634

(Ordered to lie on the table.)

Mr. EXON submitted four amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 631

On page 42, line 7, delete "so." and insert in lieu thereof: "so; or".

On page 42, between lines 7 and 8 add the following new section:

"(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgement that the court feels it is likely to enter should the claimant prevail.".

On page 43, line 6, insert "(1)" before "if".

On page 43, line 7, delete "(1)" and insert in lieu thereof: "(A)".

On page 43, line 10, delete "(A)" and insert in lieu thereof: "(i)".

On page 43, line 11, delete "(B)" and insert in lieu thereof: "(ii)".

On page 43, line 13, delete "(2)" and insert in lieu thereof: "(B)".

On page 43, line 13, delete "implant." and insert in lieu thereof: "implant; or".

On page 43, between lines 13 and 14 insert the following new section:

"(2) if the biomaterials supplier is related by common ownership or control to a person meeting all of the requirements described in paragraph (1), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgement that the court feels it is likely to enter should the claimant prevail.".

AMENDMENT NO 632

On page 23, line 17, strike "Each' and insert in lieu thereof: "Except as provided in (3), each".

On page 24, line 1, strike "For" and insert in lieu thereof: "Except as provided in (3), for".

On page 24 between lines 6 and 7, insert the following:

(3) Cases affected by Title II.

For cases involving manufacturers or biomaterials suppliers covered by Title II of this Act (the Biomaterials Access Assurance Act of 1995), the trier of fact shall allocate to such manufacturer (or manufacturers) the amount of noneconomic loss (if any) which is determined to be the responsibility of a biomaterials supplier (or biomaterials suppliers) where such biomaterials supplier (or suppliers) is (or are) protected from liability to a claimant by Title II of this Act.

AMENDMENT NO. 633

On page 14, line 16 strike "claimant," and insert in lieu thereof "claimant to the extent permitted by applicable State law,".

AMENDMENT NO. 634

On page 38, line 24, after the phrase "any civil action" add "except for an action based on an intentional wrongful act".

On page 39, on line 2 after the phrase "any legal theory," add "except on the basis of an intentional wrongful act".

BOXER AMENDMENTS NOS. 635–640

(Ordered to lie on the table.)

Mrs. BOXER submitted six amendments intended to be proposed by her to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 635

Strike page 29 through page 54, line 4.

AMENDMENT NO. 636

At the appropriate place in amendment 596, insert the following: "Notwithstanding Section 107 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to the loss of human reproductive function."

AMENDMENT NO. 637

At the appropriate place in amendment 596, insert the following: "Notwithstanding Section 107 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to brain damage."

AMENDMENT NO. 638

At the appropriate place in amendment 596, insert the following: "Notwithstanding Section 107 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to the loss of a limb."

AMENDMENT NO. 639

At the appropriate place in amendment 596, insert the following: "Notwithstanding Section 107 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to facial disfigurement."

AMENDMENT NO. 640

In section 104, of amendment 596, strike subsection (a) and insert the following new subsection:

(a) GENERAL RULE.—Except as otherwise provided under applicable State law, in any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller.

ROCKEFELLER AMENDMENTS NOS. 641–651

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted 11 amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 641

In lieu of the matter proposed to be inserted by Gorton amendment 596, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product Liability Fairness Act of 1995".

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means an amount equal to the sum of—

(A) the amount paid to an employee as workers' compensation benefits; and

(B) the present value of all workers' compensation benefits to which the employee is or would be entitled at the time of the determination of the claimant's benefits, as determined by the appropriate workers' compensation authority for harm caused to an employee by a product.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term "commercial loss" means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(5) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term "harm" means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term "insurer" means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term "noneconomic loss"—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term "product" does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

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

(16) TIME OF DELIVERY.—The term "time of delivery" means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—

(1) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in paragraph (3), not later than 10 days after the service of an offer to proceed under paragraph (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in paragraph (2), extend the period for filing a written notice under such paragraph for a period of not more than 60 days after the date of expiration of the period specified in paragraph (2). Discovery may be permitted during such period.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—

(1) IN GENERAL.—The court shall assess reasonable attorney's fees (calculated in accordance with paragraph (2)) and costs against the offeree, incurred by the offeror during trial if—

(A) a defendant as an offeree refuses to proceed pursuant to the alternative dispute resolution procedure referred to subsection (a)(1);

(B) final judgment is entered against the defendant for harm caused by the product that is the subject of the action; and

(C) the refusal by the defendant to proceed pursuant to such alternative dispute resolution was unreasonable or not made in good faith.

(2) REASONABLE ATTORNEY'S FEES.—For purposes of this subsection, a reasonable attorney's fee shall be calculated on the basis of an hourly rate, which shall not exceed the hourly rate that is considered acceptable in the community in which the attorney practices law, taking into consideration the qualifications and experience of the attorney and the complexity of the case.

(c) GOOD FAITH REFUSAL.—In determining whether the refusal of an offeree to proceed pursuant to the alternative dispute procedure referred to in subsection (a)(1) was unreasonable or not made in good faith, the court shall consider—

(1) whether the case involves potentially complicated questions of fact;

(2) whether the case involves potentially dispositive issues of law;

(3) the potential expense faced by the offeree in retaining counsel for both the alternative dispute resolution procedure and to litigate the matter for trial;

(4) the professional capacity of available mediators within the applicable geographic area; and

(5) such other factors as the court considers appropriate.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of

a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(14)(B)) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—The amount of punitive damages that may be awarded to a claimant in any product liability action that is subject to this title shall not exceed 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in the separate proceeding under paragraph (1)—

(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and

(ii) shall not include evidence of the overall assets of the defendant.

SEC. 108. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 110. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN CONSENT.—Except as provided in subparagraph (C)—

(i) an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the insurer; and

(ii) no release to or agreement with the manufacturer or product seller described in clauses (i) through (iv) of subparagraph (A) shall be valid or enforceable for any purpose without the consent of the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 111. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1995".

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term "component part" means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term "harm" means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term "implant" means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term "manufacturer" means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term "medical device" means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) QUALIFIED SPECIALIST.—With respect to an action, the term "qualified specialist" means a person who is qualified by knowledge, skill, experience, training, or education in the specialty area that is the subject of the action.

(9) RAW MATERIAL.—The term "raw material" means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(11) SELLER.—

(A) IN GENERAL.—The term "seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if the biomaterials supplier—

(1) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(A) the manufacture of the implant; and

(B) the entrance of the implant in the stream of commerce; and

(2) subsequently resold the implant.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—The procedural requirements described in paragraphs (2) and (3) shall apply to any action by a claimant against a biomaterials supplier that is subject to this title.

(2) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(A) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(B) an action against the manufacturer is barred by applicable law.

(3) AFFIDAVIT.—At the time the claimant brings an action against a biomaterials supplier the claimant shall be required to submit an affidavit that—

(A) declares that the claimant has consulted and reviewed the facts of the action with a qualified specialist, whose qualifications the claimant shall disclose;

(B) includes a written determination by a qualified specialist that the raw materials or component parts actually used in the manufacture of the implant of the claimant were raw materials or component parts described in section 205(d)(1), together with a statement of the basis for such a determination;

(C) includes a written determination by a qualified specialist that, after a review of the medical record and other relevant material, the raw material or component part supplied by the biomaterials supplier and actually used in the manufacture of the implant was a cause of the harm alleged by claimant, together with a statement of the basis for the determination; and

(D) states that, on the basis of review and consultation of the qualified specialist, the claimant (or the attorney of the claimant) has concluded that there is a reasonable and meritorious cause for the filing of the action against the biomaterials supplier.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials

supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This Act shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this title.

AMENDMENT NO. 642

Strike all after the first word of amendment 596 and insert the following:

1. SHORT TITLE.

This Act may be cited as the "Product Liability Fairness Act of 1995".

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means an amount equal to the sum of—

(A) the amount paid to an employee as workers' compensation benefits; and

(B) the present value of all workers' compensation benefits to which the employee is or would be entitled at the time of the determination of the claimant's benefits, as determined by the appropriate workers' compensation authority for harm caused to an employee by a product.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term "commercial loss" means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(5) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term "harm" means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term "insurer" means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term "noneconomic loss"—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term "product" does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

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

(16) TIME OF DELIVERY.—The term "time of delivery" means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—

(1) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in paragraph (3), not later than 10 days after the service of an offer to proceed under paragraph (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in paragraph (2), extend the period for filing a written notice under such paragraph for a period of not more than 60 days after the date of expiration of the period specified in paragraph (2). Discovery may be permitted during such period.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—

(1) IN GENERAL.—The court shall assess reasonable attorney's fees (calculated in accordance with paragraph (2)) and costs against the offeree, incurred by the offeror during trial if—

(A) a defendant as an offeree refuses to proceed pursuant to the alternative dispute resolution procedure referred to in subsection (a)(1);

(B) final judgment is entered against the defendant for harm caused by the product that is the subject of the action; and

(C) the refusal by the defendant to proceed pursuant to such alternative dispute resolution was unreasonable or not made in good faith.

(2) REASONABLE ATTORNEY'S FEES.—For purposes of this subsection, a reasonable attorney's fee shall be calculated on the basis of an hourly rate, which shall not exceed the hourly rate that is considered acceptable in the community in which the attorney practices law, taking into consideration the qualifications and experience of the attorney and the complexity of the case.

(c) GOOD FAITH REFUSAL.—In determining whether the refusal of an offeree to proceed pursuant to the alternative dispute procedure referred to in subsection (a)(1) was unreasonable or not made in good faith, the court shall consider—

(1) whether the case involves potentially complicated questions of fact;

(2) whether the case involves potentially dispositive issues of law;

(3) the potential expense faced by the offeree in retaining counsel for both the alternative dispute resolution procedure and to litigate the matter for trial;

(4) the professional capacity of available mediators within the applicable geographic area; and

(5) such other factors as the court considers appropriate.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(14)(B)) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—The amount of punitive damages that may be awarded to a claimant in any product liability action that is subject to this title shall not exceed 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in the separate proceeding under paragraph (1)—

(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and

(ii) shall not include evidence of the overall assets of the defendant.

SEC. 108. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 110. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN CONSENT.—Except as provided in subparagraph (C)—

(i) an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the insurer; and

(ii) no release to or agreement with the manufacturer or product seller described in clauses (i) through (iv) of subparagraph (A) shall be valid or enforceable for any purpose without the consent of the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the

trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 111. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1995".

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term "component part" means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term "harm" means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term "implant" means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term "manufacturer" means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term "medical device" means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) QUALIFIED SPECIALIST.—With respect to an action, the term "qualified specialist" means a person who is qualified by knowledge, skill, experience, training, or education in the specialty area that is the subject of the action.

(9) RAW MATERIAL.—The term "raw material" means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(11) SELLER.—

(A) IN GENERAL.—The term "seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if the biomaterials supplier—

(1) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(A) the manufacture of the implant; and

(B) the entrance of the implant in the stream of commerce; and

(2) subsequently resold the implant.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—The procedural requirements described in paragraphs (2) and (3) shall apply to any action by a claimant against a biomaterials supplier that is subject to this title.

(2) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(A) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(B) an action against the manufacturer is barred by applicable law.

(3) AFFIDAVIT.—At the time the claimant brings an action against a biomaterials supplier the claimant shall be required to submit an affidavit that—

(A) declares that the claimant has consulted and reviewed the facts of the action with a qualified specialist, whose qualifications the claimant shall disclose;

(B) includes a written determination by a qualified specialist that the raw materials or component parts actually used in the manufacture of the implant of the claimant were raw materials or component parts described in section 205(d)(1), together with a statement of the basis for such a determination;

(C) includes a written determination by a qualified specialist that, after a review of the medical record and other relevant material, the raw material or component part supplied by the biomaterials supplier and actually used in the manufacture of the implant was a cause of the harm alleged by claimant, together with a statement of the basis for the determination; and

(D) states that, on the basis of review and consultation of the qualified specialist, the claimant (or the attorney of the claimant) has concluded that there is a reasonable and meritorious cause for the filing of the action against the biomaterials supplier.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A bio- materials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This Act shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this title.

AMENDMENT NO. 643

Strike title II of amendment 596.

AMENDMENT NO. 644

In section 107 of amendment 596, strike subsection (b) and insert the following:

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 3 times the sum of—

(i) the amount awarded to the claimant for the economic loss on which the claim is based; and

(ii) the amount awarded to the claimant for the noneconomic loss on which the claim is based; or

(B) $250,000.

(2) EXCEPTION.—

(A) DETERMINATION BY COURT.—Notwithstanding subsection (c), in a product liability action that is subject to this title, if the court makes a determination that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the amount of punitive damages to be awarded to the claimant in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under subparagraph (A), the court shall consider each of the following:

(i) The likelihood that serious harm would arise from the misconduct of the defendant.

(ii) The degree of the awareness of the defendant of that likelihood.

(iii) The profitability of the misconduct to the defendant.

(iv) The duration of the misconduct and any concealment of the conduct by the defendant.

(v) The attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated.

(vi) The financial condition of the defendant.

(vii) The total effect of other punishment imposed or likely to be imposed upon the defendant as a result of the misconduct, including any awards of punitive or exemplary

damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant has been or is likely to be subjected.

(viii) Any other factor that the court determines to be appropriate.

(C) FINAL PROCEDURES.—

(i) ENTRY OF JUDGMENT.—At the conclusion of any proceeding under subparagraph (A), the court shall determine the amount of punitive damages to be awarded and shall enter judgment for that amount.

(ii) FINDINGS OF FACT AND CONCLUSIONS OF LAW.—Any judgment entered under this subparagraph shall be accompanied by findings of fact and conclusions of law demonstrating consideration of each of the factors set forth in clauses (i) through (v) of subparagraph (B).

AMENDMENT NO. 645

At the appropriate place in amendment 596, insert the following new section:

SEC. . CAP ON PUNITIVE DAMAGES IN CERTAIN ACTIONS.

Notwithstanding section 15(e)(1), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this Act shall be determined under such section but shall not exceed the amount determined under such section or $250,000, whichever is greater.

AMENDMENT NO. 646

At the appropriate place in amendment 596, insert the following new section:

SEC. . CAP ON PUNITIVE DAMAGES IN CERTAIN ACTIONS.

Notwithstanding section 15(e), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this Act shall not exceed $500,000.

AMENDMENT NO. 647

At the appropriate place in amendment 596, insert the following new section:

SEC. . CAP ON PUNITIVE DAMAGES IN CERTAIN ACTIONS.

Notwithstanding section 15(e)(1), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this Act shall not exceed the greater of 3 times the sum of the amounts described in subparagraphs (A) and (B) of such section.

AMENDMENT NO. 648

In section 107 of amendment 596, strike subsection (b) and insert the following:

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for the economic loss on which the claim is based; and

(ii) the amount awarded to the claimant for the noneconomic loss on which the claim is based; or

(B) $250,000.

(2) EXCEPTION.—In a product liability action that is subject to this title, if the trier of fact determines that, at the time the action is filed, the annual revenues of the defendant are greater than or equal to $10,000,000, the amount of punitive damages that may be awarded to the claimant shall not exceed the greater of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for the economic loss on which the claim is based; and

(ii) the amount awarded to the claimant for the noneconomic loss on which the claim is based; or

(B) $1,000,000.

(3) APPLICATION.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

AMENDMENT NO. 649

At the end of section 109 of amendment 596, add the following new subsection:

(c) SPECIAL RULE.—Notwithstanding subsections (a) and (b), if a defendant that is liable for noneconomic loss is unable to pay for the damages because the defendant is insolvent or bankrupt (as determined pursuant to applicable Federal or State law), the amount of liability of each other defendant in the action that is found to be liable for noneconomic loss shall be increased by a share, determined in accordance with the percentage of responsibility of the defendant, to cover the amount of liability for noneconomic loss of insolvent or bankrupt defendant.

AMENDMENT NO. 650

At the end of section 109 of amendment 596, add the following new subsection:

(C) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), in a product liability action that is subject to this title, the liability of the defendant for noneconomic loss shall be joint and several if—

(A) the percentage of responsibility of the defendant is determined to be greater than or equal to 30 percent of the harm to the claimant; and

(B) other defendants who are found to be liable for noneconomic loss become insolvent or bankrupt pursuant to applicable Federal or State laws.

(2) DETERMINATION OF PERCENTAGE OF RESPONSIBILITY.—For purposes of paragraph (1), in a product liability action that is subject to this title, the trier of fact shall determine the percentage of responsibility of each defendant for the harm to the claimant.

AMENDMENT NO. 651

At the end of section 107 of amendment 596, add the following new subsections:

(d) PUNITIVE DAMAGE REVOLVING FUNDS.—

(1) STATE REVOLVING FUNDS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, as soon as practicable after the date of enactment of this Act, each State in which punitive damages may be awarded in connection with product liability actions that are subject to this title shall establish a punitive damage revolving fund into which one-third of the amount of punitive damages awarded in such State in product liability actions that are subject to this title shall be deposited.

(B) USE OF AMOUNTS DEPOSITED IN REVOLVING FUND.—Subject to subsection (e), the amounts deposited in the revolving fund shall be used to pay the proportional share of the punitive damages that a defendant in such a product liability action that becomes insolvent or bankrupt pursuant to applicable Federal or State laws is unable to pay.

(2) FEDERAL REVOLVING FUND.—

(A) IN GENERAL.—Notwithstanding any other provision of law, as soon as practicable after the date of enactment of this Act, the Secretary of the Treasury shall establish a punitive damage revolving fund that shall be administered by the Director of the Administrative Conference of the United States Courts, into which one-third of the amounts awarded by Federal courts as punitive damages in product liability actions that are subject to this title shall be deposited.

(B) USE OF AMOUNTS DEPOSITED REVOLVING FUND.—Subject to subsection (e), the amounts deposited in the revolving fund shall be used to pay the proportional share of the punitive damages that a defendant in such a product liability action that becomes insolvent or bankrupt pursuant to applicable Federal or State laws is unable to pay.

(e) LIMITATION ON PAYMENT TO CLAIMANT.—With respect to a product liability action that is subject to this title, no claimant may receive a total payment of punitive damages in an amount greater than two-thirds of the amount of the punitive damages awarded by the court.

(f) CONFORMING AMENDMENT.—Section 604(a) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(26) Administer the punitive damage revolving fund established under section 107(d)(2) of the Product Liability Fairness Act of 1995.".

FEINGOLD AMENDMENTS NOS. 652–653

(Ordered to lie on the table.)

Mr. FEINGOLD submitted two amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 652

On page 6, line 22, in section 101(12)(B)(1) of title I, insert before the semicolon: "or any product designed or marketed primarily for the use of children".

AMENDMENT NO. 653

On page 6, line 22, in section 101(12)(B)(1) of title I, insert before the semicolon: "or any product designed or marketed primarily for the use of children".

HATCH AMENDMENT NO. 654

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place in amendment No. 596, insert the following new section:

SEC. . REPRESENTATIONS AND SANCTIONS UNDER RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Notwithstanding anything in this Act, Rule 11 of the Federal Rules of Civil Procedure is amendment—

(1) in subsection (b)(3) by striking out "or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery" and inserting in lieu thereof "or are well grounded in fact"; and

(2) in subsection (c)—

(A) in the first sentence by striking out "may, subject to the conditions stated below," and inserting in lieu thereof "may";

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof the following: "A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation,

directives of a nonmonetary nature, or an order to pay penalty into court or to a party."; and

(C) in paragraph (2)(A) by inserting before the period ", although such sanctions may be awarded against a party's attorneys".

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

SPECTER AMENDMENTS NOS. 655–657

(Ordered to lie on the table.)

Mr. SPECTER submitted three amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 655

At the appropriate place in title I of the substitute amendment No. 596, insert the following:

SEC. . FOREIGN PRODUCTS.

(a) GENERAL RULE.—

(1) IN GENERAL.—Notwithstanding any other provisions of law, in any product liability action that is subject to this title for any harm sustained in the United States that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal district court in which the action is filed shall have personal jurisdiction over such manufacturer if the court determines that the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(2) SERVICE OF PROCESS.—Process in any action described in paragraph (1) may be served at any location at which the foreign manufacturer is located, has an agent, or regularly transacts business.

(b) ADMISSION.—In any product liability action that is subject to this title, if a foreign manufacturer of the product fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, that failure shall be deemed to be an admission by such manufacturer of any and all facts to which the discovery order relates.

AMENDMENT NO. 656

In the appropriate place in amendment No. 596, substitute in lieu of section 107(c) the following: "The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed ten (10) percent of the net worth of the defendant against whom they are imposed."

AMENDMENT NO. 657

Strike section 109 of amendment No. 596, and insert the following section:

SEC. 109. JOINT AND SEVERAL LIABILITY.

(a) IN GENERAL.—

(1) JOINT AND SEVERAL LIABILITY FOR ALL HARM.—Except as provided in paragraph (2), in a product liability action that is subject to this title, the liability of each defendant shall be joint and several.

(2) EXCEPTION.—In a product liability action that is subject to this title, the liability of a defendant for noneconomic loss shall be several only if such defendant is determined under subsection (b) to be responsible for a percentage of responsibility for the harm to the claimant that is less than 15 percent.

(b) PERCENTAGE OF RESPONSIBILITY.—In a product liability action that is subject to this title, the trier of fact shall determine the percentage of responsibility of each defendant for the harm to the claimant, including any noneconomic loss.

GRAHAM AMENDMENTS NOS. 658–659

(Ordered to lie on the table.)

Mr. GRAHAM submitted two amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 658

On page 16 of amendment 596, between lines 14 and 15, insert the following:

(c) SPECIAL RULE RELATING TO DRUGS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in any product liability action that is subject to this Act, the amount of liability of a product seller that is found liable to a claimant under subsection (a) for harm caused by a drug that may be lawfully sold, shall be determined on the basis of the market share of sales of the drug by the product seller (as defined and determined by the court).

(2) DRUG DEFINED.—As used in this subsection, the term "drug" has the meaning given in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)).

AMENDMENT NO. 659

On page 6 of amendment 596, strike out lines 16 through "subject" on line 20, and insert the following:

"(1) tissue, organs, and blood used for therapeutic or medical purposes, except to the extent that such tissue, organs, and blood (or the provision thereof) are subject,".

WELLSTONE AMENDMENTS NOS. 660–661

(Ordered to lie on the table.)

Mr. WELLSTONE submitted two amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 660

At an appropriate place, insert the following:

"Section . Notwithstanding any other provision of this Act, with regard to any separate proceeding under this Act to determine the amount of punitive damages, nothing in this Act shall be construed to limit the evidence admissible in such a proceeding beyond the restriction that evidence be relevant to the issue of the amount of punitive damages."

AMENDMENT NO. 661

At an appropriate place, insert the following:

"Section . Any limitation contained in this Act on the application of joint liability to the recovery of damages shall apply unless the court determines that its operation will prevent the recovery of "fair and adequate compensation" as described in the "Purposes" sub-section of the "Health Care Liability Reform" title of this Act."

HOLLINGS AMENDMENTS NOS. 662–674

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 13 amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 662

Strike lines 8 through 14 on page 9.

AMENDMENT NO. 663

On page 4, beginning with "The" on line 10, strike through line 12.

AMENDMENT NO. 664

Strike lines 10 through 15 on page 22.

AMENDMENT NO. 665

On page 11, strike lines 8 through 17.

AMENDMENT NO. 666

Strike lines 20 through 24 on page 28.

AMENDMENT NO. 667

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, the provision of section 107 that pertains to bifurcated proceedings shall not apply to any civil action.

AMENDMENT NO. 668

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, there shall be no limit because of this Act on the amount of punitive damages that may be awarded to a claimant in any civil action subject to this Act.

AMENDMENT NO. 669

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, no civil action shall be subject to section 107 of this Act.

AMENDMENT NO. 670

On page 28, between lines 12 and 13, insert the following:

SEC. 2. APPLICATION OF ACT LIMITED TO DOMESTIC PRODUCTS.

Notwithstanding any other provision of this Act, this Act shall not apply to any product, component part, implant, or medical device that is not manufactured in the United States within the meaning of the Buy American Act (41 U.S.C. 10a) and the regulations issued thereunder, or to any raw material derived from sources outside the United States.

AMENDMENT NO. 671

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law inconsistent with this Act if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected.

AMENDMENT NO. 672

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act

preempts any provision of State law adopted after the date of enactment of this Act.

AMENDMENT NO. 673

On page 1, between lines 15 and 16, insert the following:

SEC. 2. STATE IMPLEMENTATION REQUIRED.

Notwithstanding any provision of this Act to the contrary, nothing in this Act shall supersede any provision of State law or rule of civil procedure unless that State has enacted a law providing for the application of this Act in that State.

AMENDMENT NO. 674

At the appropriate place in the bill, insert the following:

SEC. ——. NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law—

(1) if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected; or

(2) adopted after the date of enactment of this Act.

GORTON AMENDMENTS NOS. 675–679

(Ordered to lie on the table.)

Mr. GORTON submitted six amendments intended to be proposed by him to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956 supra; as follows:

AMENDMENT NO. 675

On page 41, line 17, strike "or".

On page 42, line 2, strike "or".

On page 42, line 7, strike "so." and insert "so; or".

On page 42, between lines 7 and 8, insert the following:

"(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

On page 43, strike lines 3 through 13 and insert the following:

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

AMENDMENT NO. 676

On page 16, line 21, after "but" insert "any person engaged in the business of renting or leasing a product".

AMENDMENT NO. 677

On page 2, strike lines 4 through 14 and insert the following:

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

On page 25, line 15, strike "CONSENT" and insert "NOTIFICATION".

On page 25, beginning with "subparagraph" on line 16 strike through line 25 and insert "subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.".

AMENDMENT NO. 678

On page 16, between lines 14 and 15, insert the following:

For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

AMENDMENT NO. 679

On page 37, strike lines 5 through 9.

On page 37, line 10, strike "(9)" and insert "(8)".

On page 37, line 15, strike "(10)" and insert "(9)".

On page 37, line 17, strike "(11)" and insert "(10)".

On page 46, beginning with line 7, strike through line 25 on page 74 and insert the following:

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

HOLLINGS AMENDMENT NO. 680

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

On page 7, lines 1 through 3, strike all and insert in lieu thereof the following:

(13) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action, brought against a manufacturer, seller, or any other person responsible for the distribution of a product in the stream of commerce, involving a defect or design of the product or anything for harm caused by the product.

KYL AMENDMENT NO. 681

Mr. KYL proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section 103, strike all after subsection (a) through the end of the section.

HOLLINGS AMENDMENT NO. 682

Mr. HOLLINGS proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

At the appropriate place in title I, insert the following new section:

SEC. . PRODUCT LIABILITY INSURANCE REPORTING.

(a) REPORT TO CONGRESS.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers, and risk retention groups.

(b) COLLECTION OF DATA.—To carry out the purposes of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) REGULATIONS.—Within 120 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paper-work and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts, and the National Center for State Courts.

(d) SUBPOENA.—The Secretary may subpoena witnesses and records related to the report required under this section from any place in the United States. If a witness disobeys such a subpoena, the Secretary may petition any district court of the United States to enforce such subpoena. The court may punish a refusal to obey an order of the court to comply with such a subpoena as a contempt of court.

GORTON AMENDMENTS NOS. 683–685

Mr. GORTON proposed three amendments to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

AMENDMENT NO. 683

On page 2, strike lines 4 through 14 and insert the following:

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount

paid to an employee as workers' compensation benefits.

On page 25, line 15, strike "CONSENT" and insert "NOTIFICATION".

On page 25, beginning with "subparagraph" on line 16 strike through line 25 and insert "Subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.".

AMENDMENT NO. 684

On page 16, line 21, after "but" insert "any person engaged in the business of renting or leasing a product".

AMENDMENT NO. 685

On page 16, between lines 14 and 15, insert the following: "For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer."

NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to consider the nominations of Charles William Burton to be a member of the Board of Directors of the U.S. Enrichment Corporation, and James J. Hoecker to be a member of the Federal Energy Regulatory Commission.

The hearing will take place Wednesday, May 10, 1995, at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

For further information, please call Camille Heninger at (202) 224-5070.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place Wednesday, May 10, 1995, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities (Docket No. RM95-8-000), and Recovery Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM94-7-001).

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Judy Brown or Howard Useem at (202) 224-6567.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Wednesday, May 3, 1995, beginning at 9:30 a.m. in room SD-215, to conduct a hearing on the alternative minimum tax.

The PRESIDING OFFICER. With objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on the nomination of Dr. Henry Foster during the session of the Senate on Wednesday, May 3, 1995, at 9:30 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 3, 1995 at 2 p.m. to hold a closed business meeting.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces of the Committee on Armed Services be authorized to meet at 2:30 p.m. on Wednesday, May 3, 1995, in open session, to receive testimony on peace operations.

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

SUBCOMMITTEE ON ANTITRUST BUSINESS RIGHTS, AND COMPETITION

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Business Rights, and Competition of the Committee on the Judiciary, be authorized to hold a hearing during the session of the Senate on Wednesday, May 3, 1995, to consider "Antitrust Issues in Telecommunications Legislation."

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent that the European Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 3, 1995, at 2 p.m. to hear testimony on Paths/Impediments to NATO Enlargement: Interests/Perceptions of Allies, Applicants, and Russia.

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

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND REGULATORY RELIEF

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Financial Institutions and Regulatory Relief, of the Committee on Banking, Housing, and Urban Affairs, be authorized to meet during the session of the Senate on Wednesday, May 3, 1995, to conduct a hearing on S. 650, "The Economic Growth and Regulatory Paperwork Reduction Act."

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

SUBCOMMITTEE ON SEAPOWER

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet at 9 a.m. on Wednesday, May 3, 1995, in open session, to receive testimony on the Marine Corps modernization programs and current operations in review of the defense authorization request for fiscal year 1996 and the Future Years Defense Program.

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

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to meet Wednesday, May 3, at 10 a.m., to consider S. 440, a bill to designate the National Highway System.

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

EXECUTIVE SESSION

Mr. GORTON. Mr. President, in executive session, I ask unanimous consent that the Senate immediately proceed to the consideration of Executive Calendar No. 106, Charles T. Manatt, to be a member of the Board of Directors for the Communications Satellite Corporation; further, that the nomination be confirmed, and the motion to reconsider be laid upon the table; that any statements relating to the nomination appear at the appropriate place in the RECORD; and that the President be immediately notified of the Senate's action.

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

The nomination was considered and confirmed as follows:

COMMUNICATIONS SATELLITE CORPORATION

Charles T. Manatt, of the District of Columbia, to be a Member of the Board of Directors of the Communications Satellite Corporation until the date of the annual meeting of the Corporation in 1997.

EXTRADITION TREATY WITH JORDAN—TREATY DOCUMENT NO. 104-3

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate

proceed to the following treaty on the Executive Calendar, Calendar No. 2, Treaty Document No. 104-3, Extradition Treaty with Jordan.

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

Mr. GORTON. Mr. President, I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages, up to and including the presentation of the resolution of ratification; that no amendments, conditions, declarations, provisos, reservations, or understandings be in order; that any statements be inserted in the CONGRESSIONAL RECORD as if read; that when the resolution of ratification is agreed to, the motion to reconsider be laid upon the table; that the President be notified of the Senate's action, and that following disposition of the treaty, the Senate return to legislative session.

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

Mr. GORTON. I ask for a division vote on the resolution of ratification.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will rise and stand until counted.

All those opposed to ratification, please rise and stand until counted.

On a division, two-thirds of the Senators present and having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan, signed at Washington on March 28, 1995.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

TO AUTHORIZE REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 113, submitted earlier today by Senators DOLE and DASCHLE, authorizing representation by Senate legal counsel.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 113) to authorize representation by Senate Legal Counsel.

Mr. GORTON. Mr. President, I ask unanimous consent that the resolution be considered and agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 113) was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 113

Whereas, in the case of *Committee for Judicial Review* v. *The United States Senate Committee on the Judiciary, Senator Orrin Hatch*, No. 1:95CV0770, pending in the United States District Court for the District of Columbia, the plaintiff has filed a complaint, seeking, among other relief, to restrain the Committee on the Judiciary from conducting confirmation hearings on the nomination of Peter C. Economus, who has been nominated to be a United States District Judge for the Northern District of Ohio;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1) (1994), the Senate may direct its counsel to defend committees and Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Committee on the Judiciary, its chairman, Senator Orrin G. Hatch, and the other members of the Committee on the Judiciary in the case of *Committee for Judicial Review* v. *the United States Senate Committee on the Judiciary, Senator Orrin Hatch*.

RELIEF OF INSLAW, INC., AND WILLIAM A. HAMILTON AND NANCY BURKE HAMILTON

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 114, submitted earlier today by Senator HATCH.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 114) to refer S. 740 entitled "A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton" to the chief judge of the United States Court of Federal Claims for a report thereon.

Mr. GORTON. I ask unanimous consent that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 114) was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 114

Resolved, That the bill S. 740 entitled "A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton" now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims. The chief judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimants from the United States.

ORDER FOR STAR PRINT—S. 735

Mr. GORTON. Mr. President, I ask unanimous consent that S. 735 be star printed to reflect the following changes which I send to the desk.

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

LOST CREEK LAND EXCHANGE ACT OF 1995

Mr. GORTON. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of S. 103, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 103) entitled the "Lost Creek Land Exchange Act of 1995."

Mr. GORTON. I ask unanimous consent that the bill be deemed read a third time and passed; the motion to reconsider be laid upon the table; and, that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (S. 103) was deemed read a third time, and passed; as follows:

S. 103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This title may be cited as the "Lost Creek Land Exchange Act of 1995".

SEC. 2. LAND EXCHANGE.

(a) GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture (hereinafter referred to in this title as the "Secretary") is authorized and directed to acquire by exchange certain lands and interests in lands owned by the Brand S Corporation, its successors and assigns, (hereinafter referred to in this title as the "Corporation"), located in the Lost Creek area of the Deerlodge National Forest and within the Gallatin National Forest.

(b) OFFER AND ACCEPTANCE OF LAND.—

(1) NON-FEDERAL LAND.—If the Corporation offers to convey to the United States fee title that is acceptable to the United States to approximately 18,300 acres of land owned by the Corporation and available for exchange, as depicted on the maps entitled "Brand S/Forest Service Land Exchange Proposal", numbered 1 through 3, dated March 1994, and described in the "Land Exchange

Specifications" document pursuant to paragraph (b)(3), the Secretary shall accept a warranty deed to such lands.

(2) FEDERAL LAND.—Upon acceptance by the Secretary of title to the Corporation's lands pursuant to paragraph (b)(1) and upon the effective date of the document referred to in paragraph (b)(3), and subject to valid existing rights, the Secretary of the Interior shall convey, by patent, the fee title to approximately 10,800 acres on the Deerlodge and Gallatin National Forests, and by timber deed, the right to harvest approximately 3.5 million board feet of timber on certain Deerlodge National Forest lands, as depicted on the maps referenced in paragraph (b)(1) and further defined by the document referenced in paragraph (b)(3): *Provided*, That, except for the east ½ of sec. 10, T3S, R8E, the Secretary shall not convey to the Corporation the lands on the Gallatin National Forest identified as the "Wineglass Tract" on the map entitled "Wineglass Tract", dated September 1994, unless the Secretary finds that measures are in place to protect the scenic, wildlife, and open space values of the Wineglass Tract. Such finding shall be contained in the document referenced in paragraph (b)(3).

(3) AGREEMENT.—A document entitled "Brand S/Forest Service Land Exchange Specifications", shall be jointly developed and agreed to by the Corporation and the Secretary. Such document shall define the non-Federal and Federal lands to be exchanged, and shall include legal descriptions of such lands and interests therein, along with any other agreements. Such document shall be transmitted, upon completion, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives and shall not take effect until sixty days after transmittal to both Committees.

(4) CONFLICT.—In case of conflict between the maps referenced in paragraph (b)(1) and the document referenced in paragraph (b)(3), the maps shall govern.

(c) TITLE.—

(1) REVIEW OF TITLE.—Within sixty days of receipt of title documents from the Corporation, the Secretary shall review the title for the non-Federal lands described in paragraph (b) and determine whether—

(A) applicable title standards for Federal land acquisition have been satisfied or the quality of title is otherwise acceptable to the Secretary;

(B) all draft conveyances and closing documents have been received and approved;

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary; and

(D) the Corporation has complied with the conditions imposed by this title.

(2) CONVEYANCE OF TITLE.—In the event the title does not meet Federal standards or is otherwise unacceptable to the Secretary, the Secretary shall advise the Corporation regarding corrective actions necessary to make an affirmative determination. The Secretary, acting through the Secretary of the Interior, shall effect the conveyance of lands described in paragraph (b)(2) not later than ninety days after the Secretary has made an affirmative determination.

(d) RESOLUTION OF PUBLIC ACCESS.—The Secretary is directed, in accordance with existing law, to improve legal public access to Gallatin National Forest System lands between West Pine Creek and Big Creek.

SEC. 3. GENERAL PROVISIONS.

(a) MAPS AND DOCUMENTS.—The maps referred to in section 202(b)(1) shall be subject to such minor corrections as may be agreed upon by the Secretary and the Corporation. The maps and documents described in section 202(b) (1) and (3) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

(b) NATIONAL FOREST SYSTEM LANDS.—

(1) IN GENERAL.—All lands conveyed to the United States under this title shall be added to and administered as part of the Deerlodge or Gallatin National Forests, as appropriate, and shall be administered by the Secretary in accordance with the laws and regulations pertaining to the National Forest System.

(2) WILDERNESS STUDY AREA ACQUISITIONS.—Until Congress determines otherwise, lands acquired within the Hyalite-Porcupine-Buffalo Horn Wilderness Study Area pursuant to this title shall be managed by the Secretary of Agriculture and the Secretary of the Interior, as appropriate, so as to maintain the presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

(c) VALUATION.—The values of the lands and interests in lands to be exchanged under this title and described in section 202(b) are deemed to be of approximately equal value.

(d) LIABILITY FOR HAZARDOUS SUBSTANCES.—

(1) The Secretary shall not acquire any lands under this title if the Secretary determines that such lands, or any portion thereof, have become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601)).

(2) Notwithstanding any other provision of law, the United States shall have no responsibility or liability with respect to any hazardous wastes or other substances placed on any of the lands covered by this title after their transfer to the ownership of another party, but nothing in this title shall be construed as either diminishing or increasing any responsibility or liability of the United States based on the condition of such lands on the date of their transfer to the ownership of another party.

ORDERS FOR THURSDAY, MAY 4, 1995

Mr. GORTON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m., Thursday, May 4, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period for the transaction of morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak for up to 5 minutes each except for the following: Senator THOMAS, 30 minutes; Senator BRADLEY, 15 minutes; Senator DASCHLE or his designee, 30 minutes; Senator LAUTENBERG, 10 minutes; Senator FAIRCLOTH, 5 minutes; and Senator KERREY, 15 minutes.

I further ask unanimous consent that at the hour of 11:30, the Senate resume consideration of H.R. 956, the product liability bill.

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

Mr. FORD. Mr. President, so that you know that there is another side here, we have no objections.

PROGRAM

Mr. GORTON. For the information of all Senators, there will be a series of stacked votes beginning at 12:15 tomorrow on or in relation to several amendments that were offered during today's session. Also, there will be at least one cloture vote on the Gorton substitute occurring at the end of the stacked sequence. In addition, under rule XXII, second-degree amendments must be filed at the desk 1 hour prior to the cloture vote.

ORDER FOR RECESS

Mr. GORTON. If there is no further business to come before the Senate, following the remarks of the distinguished Democratic leader, Senator DASCHLE, I ask unanimous consent the Senate stand in recess under the previous order.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair has an announcement.

The Chair, on behalf of the Vice President, pursuant to 22 U.S. Code 276d–276g, as amended, appoints the Senator from Washington [Mrs. MURRAY] as Vice Chairman of the Senate delegation to the Canada-United States Interparliamentary Group during the 104th Congress.

Mr. FORD. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. DASCHLE. Mr. President, I will use my leader time as in morning business. There are a couple of issues I would like to address. As I understand it, once my remarks have been made, the Senate will then go into recess. So I will summarize my remarks at this point.

THE FEDERAL BUDGET FOR FISCAL 1996

Mr. DASCHLE. Mr. President, today is May 3, more than a month after the law requires a budget resolution to be reported to the Senate for debate. It is 18 days past April 15, when the law requires a budget resolution to have been completed and passed.

Yet, the Senate Budget Committee has not even begun to mark up a resolution. Instead, a scheduled markup has been delayed until May 8, so nothing will be done until then.

Yet, the current majority has inherited a budget from the last Congress in which the deficit is declining. Its task should be easier than the task of the last Congress, which made the tough decisions that led to deficit decline.

Meanwhile, although our task in the last Congress was a harder one, and we achieved it with no Republican help, we did so within the deadlines set by law.

Republicans campaigned on the claim that they could cut taxes, protect defense spending, and balance the budget, all without touching Social Security benefits. That was the message heard around the country all year last year. That was the message to which Americans responded: Cut taxes, protect defense spending, and balance the budget, without affecting Social Security.

Now the time is already past for the first downpayment on that promise—the budget resolution required by law.

All we are hearing is the stirring sound of people changing the subject. Republicans have discovered that the Medicare Program faces challenges in the years ahead. Democrats told them and the Nation that 2 years ago, when we shored up the Medicare Program and cut the deficit, all without Republican votes.

Throughout the last 2 years, Republicans have rejected each and every proposal offered to help shore up the Medicare Program, with rhetoric about reduced choices and higher taxes.

Now it is time to deliver. If Democratic solutions to the long-term problems of an aging population are no good, let us hear Republican solutions.

I fear we will not, because there are not any. The Republican discovery of a well-known fact is nothing but an effort to distract Americans from their real intentions. House Republicans are considering reductions in Medicare growth on the order of $300 billion. Senate Republicans have said they will need to reduce normal Medicare growth by $200 to $250 billion.

They all say they are not cutting, they are just reducing growth. But if a program grows because more people age and become eligible for it, it is pretty obvious that the same number of dollars will stretch a lot thinner.

Medicare program costs are increasing because all health insurance costs are increasing. In fact, on a per capita basis, Medicare and Medicaid costs are increasing at the same rate as privately insured costs. If Medicare growth rates are simply slashed—without reform—to a rate of growth half as high, we know who is going to pay.

The seniors and working people and employers of this country will pay, that is who. Hospitals and doctors will just shift costs to private insurers. The result will be a massive hidden tax on jobs, a massive hidden tax hike on seniors and workers through hikes in copayments and deductibles.

Cost sharing of the kind Republicans are now contemplating are not just likely to shift costs to the private sector. They are certain to shift costs to the private sector.

It will be an invisible tax on the privately insured.

Some Republicans want to impose this invisible tax to pay for their visible tax cut for the wealthy.

The budget figures and the rate of health care inflation show that Medicare can be preserved without massive cuts of the kind some are considering. The only reason they need to cut $300 billion from Medicare is because they plan to give away $354 billion at the same time through a tax cut for the wealthy.

Americans will not be fooled by talk of bipartisan commissions. They will not buy the ruse, where their retired parents' health care is cut way back and their own health care costs are exacerbated to quietly provide tax breaks to the wealthiest people in the country.

If Medicare needs reform, it should be reformed in a way that ensures seniors will get the care they have been promised, and it should be done in the context of health care reform. Medicare should not be cut blindly to achieve false savings—or worse, to fund a tax cut for those who need it least.

The first step in this process must be for the majority to do what they already should have done—propose a budget.

SELLING THE POWER MARKETING ADMINISTRATIONS IS BAD POLICY

Mr. DASCHLE. Mr. President, the administration's proposal to sell three of the Nation's five power marketing administrations includes the Western Area Power Administration, which markets power from the main stem dams on the Missouri River to South Dakota utilities and cooperatives.

As others have indicated, the sale of the power marketing administrations or PMA's would result in an expected one-time savings of $3.7 billion. However, basing the decision on that fact alone is a case of false economy.

PMA's return far more money to the Federal Government each year than they cost to operate. In 1995, for example, the Western Area Power Administration cost $225.1 million to operate, but returned $378.5 million to the Treasury. Other power marketing administrations showed even greater returns. And, beyond that, the sale is likely, ultimately, to increase electricity rates for consumers by up to 300 percent in some areas.

This makes no sense.

Obviously, we need to reduce the budget deficit, and Democrats are ready to do that. But we should not do it indiscriminately. Before we start cutting Government programs, we have a responsibility to evaluate their utility and consider the consequences.

I am concerned that, in proposing this sale, proponents have fallen prey to the allure of short-term savings and missed the larger point that power marketing administrations are good examples of exactly how Government should work.

It has been said that the purpose of Government is to do those things that are essential but which we cannot do as individuals. That is exactly what the power marketing administrations do. They bring affordable electricity to communities that otherwise might not be able to afford it. And they do it cost-effectively.

I have heard the claims that the power marketing administrations can be sold without causing substantial rate increases. Frankly, I'm skeptical of these claims.

In South Dakota, the Western Area Power Administration, or WAPA, markets power from the main stem dams along the Missouri River and has for years ensured a consistent and affordable supply of electricity. The program pays for itself.

If WAPA and the other PMA's are sold, rates are likely to increase substantially. That is because those with the deepest pockets—those in the best position to purchase the assets—will be out-of-State financial interests, whose primary objective will be to maximize their return on investment.

Like any business, the buyers of PMA's will want to maximize their bottom line—profits. And electric rates for existing Federal power customers will rise as a result. Customers in South Dakota and other States now served will pay much higher costs for power, with much of the money going to out-of-State financial interests who bankroll these purchases.

Farming, ranching, and small businesses dominate the prairie economy, providing modest incomes for most South Dakotans. The economic fate of our State or any other should not be placed in the hands of those whose only interest is in making higher profits.

As you would expect, the proposal to sell the power marketing administrations is unpopular in South Dakota and, I believe, in many other States as well.

I have received more than 10,000 letters from people opposed to the sale—and only two letters in favor of it. Ten thousand to two.

I believe that people generally know what is best for themselves. And when they speak this clearly, in such overwhelming numbers, Congress ought to listen.

And let there be no mistake. The sale of the power marketing administrations will have a negative effect far beyond the economy of South Dakota. PMA's sell power in 34 States across the country. I urge every Member of this body to take a long look at the potential impacts of this sale on customers in his or her State. Read the fine print in this proposal, and I believe you will see the folly in this idea.

In conclusion, Mr. President, PMA's work. Instead of selling them off, we should be holding them up as an example of how the Federal Government can work for the people and the national economy.

PMA's provide affordable power to States like South Dakota without any subsidy. The Federal Government gets a return on its investment. Customers have access to reliable, affordable electricity.

What more can one ask of a program?

Like other States, South Dakota sacrificed great tracts of prime wildlife habitat and farmland so that dams could be constructed. Selling the PMA's now would deprive us of equitable compensation for those sacrifices. Given that, and given the almost certain rate increases that would result from the sale, as well as the likelihood of out-of-State ownership and, thus, the export of State resources, the sale of the PMA's is not a policy that I can support. I urge my colleagues to join me in opposing this ill-conceived sale.

Mr. President, I yield the floor and, as I understand it, we are now going into recess.

RECESS UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9:30 a.m., Thursday, May 4, 1995.

Thereupon, the Senate, at 7:28 p.m., recessed until Thursday, May 4, 1995, at 9:30 a.m.

NOMINATION

Executive nomination received by the Senate May 3, 1995:

DEPARTMENT OF STATE

TIMOTHY MICHAEL CARNEY, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SUDAN.

CONFIRMATION

Executive nomination confirmed by the Senate May 3, 1995:

COMMUNICATIONS SATELLITE CORPORATION

CHARLES T. MANATT, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN 1997.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.