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# Senate

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

PRAYER

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

Here is a promise from God for today. It is as sure for us as it was when it was spoken through Isaiah so long ago. Hear this word today! ''Fear not, for I am with you; be not dismayed, for I am your God. I will strengthen you. Yes, I will help you. I will uphold you with my righteous right hand.''—Isaiah 41:10.

Let us pray.

Dear God, we claim that promise as we begin this day's work. Your perfect love casts out fear. Your grace and goodness give us the assurance that You will never leave nor forsake us. Your strength surges into our hearts. Your divine intelligence inspires our thinking. We will not be dismayed, casting about furtively for security in anything or anyone other than You. Fortified by Your power, help us to focus on the needs of others around us and of our Nation. May this be a truly great day as we serve You. Bless the Senators as they place their trust in You and follow Your guidance for our Nation.

Gracious God, we thank You for the people who work here in this Chamber to serve the Senate. Especially today we thank You for Senate doorkeeper Eugene Kelly, who died last evening. We thank you for his life and for his work among us and ask You to be with his wife, Doris, to comfort and encourage her. Through our Lord and Savior. Amen.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. I thank the Chair.

## SCHEDULE

Mr. SMITH of New Hampshire. Mr. President, today the Senate will be in a period of morning business until the hour of 11 a.m. As a reminder, the cloture vote on the motion to proceed to the Y2K legislation has been vitiated. By previous consent, debate on the Y2K bill will begin following morning business at 11 a.m. Amendments are anticipated throughout today's session, and therefore votes can be expected.

I thank my colleagues for their attention.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, the leadership time is reserved.

## MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the Senator from New Hampshire is recognized to speak for up to 10 minutes.

(The remarks of Mr. SMITH of New Hampshire pertaining to the submission of S. Res. 113 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Mr. SMITH of New Hampshire. I thank the Chair. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

The Senator from Maine is recognized for a period of up to 20 minutes.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 1189 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

## ORDER OF PROCEDURE

Mrs. BOXER. Mr. President, Senator DURBIN has asked that I control his 30 minutes under the previous agreement. I ask unanimous consent that I may do that.

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

Mrs. BOXER. I say to my friend, Senator DORGAN, I will be probably 5 minutes in my initial remarks and then will yield to him, if he needs—how much time?

Mr. DORGAN. Mr. President, I wonder if I might ask consent to be recognized for 15 minutes. Senator WELLSTONE is coming over to take part of that, following the presentation by Senator BOXER.

Mrs. BOXER. I have no objection to that. I have Senator TORRICELLI coming over for time. I will go for 5 minutes, to be followed by 15 minutes under the control of Senator DORGAN. Then I will take back the remainder of that time. That is a unanimous consent request.

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

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

LEGISLATIVE ACTION IN THE SENATE

Mrs. BOXER. Mr. President, a funny thing happened before the Memorial Day recess. We finally did something around here. I say ''a funny thing'' because we haven't done that much to write home about. What happened was we had the juvenile justice bill come before this body. It was debated. Amendments were offered. Votes were taken. The Senate passed the bill by a large bipartisan majority.

I think that is the way we ought to be doing our business rather than having a bill brought up and having the so-called amendment tree filled to prevent those of us on this side of the aisle from bringing up amendments. I think the way the juvenile justice bill was handled was good. I hope we see more of that openness on the floor of the Senate.

When we had the juvenile justice bill before us, we did some good things. One of the good things we did was to pass some commonsense gun laws.

Now, after a 2-week break, the House is going to be taking up the juvenile justice bill and looking at these gun laws and deciding on which of them they are going to move forward. From the reports I read in the paper today—I haven't read the House bill yet, although we are going over it now—those gun laws are significantly weakened.

I say to my friends in the House, where I proudly served for 10 years, if anything, you should strengthen those laws, not weaken those laws. We had the Lautenberg amendment that passed. As I understand it, it has been weakened over on the House side, opening up new loopholes so that people at gun shows can call themselves exhibitors and not have to pay attention to all the important background checks that should take place before a gun is purchased at a gun show. So we will be watching.

As the people were very happy to see us do sensible gun laws, they also are waiting for us to do something else. That has to do with their health care. That has to do with the Patients' Bill of Rights. That has to do with the fact that many HMOs are not treating patients in the right fashion.

I know we are taking up the Y2K bill to protect businesses from lawsuits. It is an important bill. I am glad we are taking it up. I have my opinions on it. I will be offering an amendment on it. I hope I can support it.

But what about the vast majority of Americans who need us to pass a Patients' Bill of Rights? Somehow this keeps going to the back of the list. More and more Americans need us to look at their problems: Women who can't get access to their OB/GYNs or, if they do, it is very restrictive; people who get taken to an emergency room far away from the closest one and are told that this really wasn't an emergency, because, guess why, they didn't die, so then their HMO doesn't cover the visit; a child needs to see a specialist and can't see one or has a chronic condition and must always see a specialist and go through bureaucratic hoops to see that specialist.

I thought we honored our children. That is not the way to treat a sick child. We should be making the lives of our children easier, not harder, especially when they are very sick.

Worst of all, HMOs cannot be held accountable in court. You cannot sue your HMO, even if the HMO made a medical decision that resulted in a patient's death or put someone in a coma permanently.

The PRESIDING OFFICER. The 5 minutes of the Senator from California have expired.

Mrs. BOXER. I ask unanimous consent to complete in 1 minute.

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

Mrs. BOXER. Mr. President, the practices of too many HMOs are outrageous. It is equally outrageous that we haven't had a chance to bring that bill to the floor for debate. We on this side of the aisle spent all last year pleading to bring it up, but we were met with delay and obstruction, just as we did on the minimum wage.

We fought hard to finally get a minimum wage bill brought up a couple of Congresses ago. We are going to fight hard again to get a new minimum wage bill brought up, to get a Patients' Bill of Rights brought up. We are not going to stop until it happens. We want to make this Senate relevant to the lives of our people, just as we did when we took up the juvenile justice bill. I look forward to working with Members on both sides of the aisle on a Patients' Bill of Rights, raising the minimum wage, and other issues we need to take up.

I thank the Chair. I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized for 15 minutes.

Mr. MCCONNELL. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. MCCONNELL. Does the Senator from North Dakota control the time?

The PRESIDING OFFICER. The Senator from California would have 5 additional minutes after the Senator from North Dakota.

Mr. MCCONNELL. Mr. President, I am just trying to get in line here.

Mrs. BOXER. Mr. President, can I say to my friend that Senator DURBIN had taken 30 minutes in this part of the morning business hour. He has designated me to control that 30 minutes. As I understand it, I took 6 minutes. We now have 15 minutes for Senator DORGAN and the remaining time by Senator TORRICELLI. That would complete this side's time. We have no problem with the Senator getting his time.

Mr. MCCONNELL. Mr. President, I am confused as to what I am inquiring about. The time is controlled by Senator DURBIN until when?

The PRESIDING OFFICER. Twenty-three and a half minutes remain under the control of the Senator from California.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be recognized at the end of the time controlled by Senator DURBIN.

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

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Nicolas Benjamin be granted floor privileges.

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

(The remarks of Mr. DORGAN and Mr. WELLSTONE are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. WELLSTONE. 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. TORRICELLI. 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. TORRICELLI. Mr. President, I ask unanimous consent Senator REED be recognized for 10 minutes and I be recognized for 10 minutes.

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

The Senator from New Jersey is recognized for 10 minutes.

GUN CONTROL

Mr. TORRICELLI. Mr. President, last month for the first time in a generation, the Senate voted for some reasonable additions to the national gun control legislation.

We principally did three things of value to our country: We voted to ban the possession of assault weapons by minors; we voted to require background checks on the purchase of firearms at the 4,000 gun shows held nationally in our country; and to require that firearms come equipped with a child safety lock.

They were hard-won victories. Each in their own right was an important statement about our commitment to the safety of our citizens. Each represents America coming to terms with the level of gun violence in America. But it is important that they be held in some perspective, because none was particularly bold. While they make a contribution to dealing with the problem, they do not begin to end the problem.

Now the House of Representatives has another chance to build on the work of the Senate and respond to the needs of the American people, the desperate need to have some reasonable

levels of gun control to protect our citizens. The simple truth is that we have a great deal more to do. Every year, 34,000 Americans are victims of gun violence. Firearms are now the second leading cause of death, after car accidents, and gaining quickly. The lethal mix of guns and children is particularly disturbing. Fourteen children are dying every day from gunfire. Teenage boys are more likely to die from gunshots than all natural causes combined. It is not simply a problem. It is not enough to call it a crisis. There is an epidemic of gun violence that is consuming our citizens generally and our children in particular.

In truth, there are many causes. No one measure in either gun control legislation or in addressing this problem generally is going to solve the problem. Those who wait for a single answer to solve a complex societal problem will never be part of a solution. Our schools will play different roles. Our parents are learning the difficulties of raising children in a changing and complex society. The media will learn new levels of individual voluntary responsibility. But, as certainly as each of those elements is a part of dealing with gun violence in America, and particularly the new problems of youth and school violence, so, too, this Congress and gun control is an element.

In the last 2 months the shootings in Littleton, CO, and Conyers, GA, have represented a potential historic turning point on this issue. Almost certainly, when the history of our generation is written, the events in Conyers and Littleton will be seen in the same light as the publishing of Rachel Carlson's ''Silent Spring'' is seen as the beginning of the environmental movement or the 1960s march on Washington is for civil rights.

It may be possible we have now reached a critical mass in this country where, as a majority of the American people have otherwise been relatively silent on this issue while a small minority seemed to control and monopolize both the national debate and the political judgments, now the balance may be changing. If, indeed, we have reached this point of change, then this Congress will respond by doing several things that are meaningful in ending gun violence:

First, restrict the sales of handguns to one per month. It is not unreasonable that Americans limit their consumption of handguns to one every 30 days, and it is a real contribution to dealing with this problem, because States such as my own, New Jersey, which have had reasonable gun control for 30 years, are being frustrated. Mr. President, 80 percent of the guns used to commit felonies in New Jersey are coming from five States that do not have similar gun control. Guns are being purchased wholesale in other States and taken to my State for use in the commission of a crime. Limiting purchases to one a month will prohibit it from becoming profitable for people to engage in this unseemly business.

Second, reinstitute the Brady waiting period. Even if we perfect the technology of an instant background check to assure that people with mental illness or felony convictions do not buy guns, a cooling off period is still valuable. In this nation, the most likely person to shoot another citizen is a member of his or her own family in a crime of passion or rage. A cooling off period to separate the rage from the purchase of the gun and the act could save thousands of lives.

Third, require that handguns be made with smart gun technology. We have the technology to assure that the person who fires a gun owns the gun—a thumbprint or another means of electronic identification. That technology is in hand. It can be perfected. If it is not available today, it can be available soon. It can separate criminals from guns that are being stolen out of our own houses, our own stores, and killing our own people.

Fourth and finally, to regulate firearms, as every other consumer product, to ensure that firearms are safely designed, built, and distributed, not only for the general public but specifically and, more importantly, for the people who are actually buying the guns.

Together, these four measures represent a comprehensive national policy of responding to the growing spiral of gun violence in our society. Individually, none of them will meaningfully solve the problem, but together they represent an important statement and a critical beginning, using our technology, our common sense, and our laws to protect our citizens. Ironically, they principally benefit the people who own and buy guns, who are most likely to be hurt by a gun improperly made or distributed or stolen from their own home.

In recent months, we are recognizing that what the Federal Government is failing to do in dealing with gun violence other levels of government are doing, particularly the mayors of our cities—New Orleans, Chicago, Atlanta, Camden County in my home State, Philadelphia through Mayor Rendell—who are beginning lawsuits to hold gun manufacturers responsible for how they manufacture these guns and how they distribute them. I am proud they are doing so but not proud that the Federal Government is not part of this effort. The simple truth is, in a society in which the Federal Government regulates the content of our air, the quality of our water, virtually every measure of consumer product for its safety, its design and its content, the single exception is guns manufactured in the United States. By statute, the ATF is prohibited from engaging in the regulation of the design and distribution of firearms.

A toy gun is regulated for its design: The size of its parts, to protect an infant child, the contents of the materials. A toy gun is completely regulated by the Federal Government. But the actual gun, including the TEC–9 used in Columbine High School, is not. No one could rationally explain that contradiction, but it is the truth. Indeed, as I have demonstrated on this chart, a child's teddy bear is regulated for its edges, its points, small parts, hazardous materials, its flammability, but a gun—which 14 times a day takes a life—that may be in the same home, in proximity to that child is not.

I want to point out that in the Firearms Safety Consumer Protection Act we deal with each of these issues. I urge my colleagues to consider it and lend their support.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 10 minutes.

Mr. REED. Mr. President, I am here today to join my colleagues, Senator TORRICELLI and Senator BOXER and others, who are pointing out that America has recently been both shocked and, we hope, awakened to the danger of gun violence throughout our land and particularly the gun violence that envelops our children.

A few weeks ago, last month, we in this Senate began to recognize that the people of the United States want reasonable gun control policies. They want these policies to protect themselves and particularly to protect their children. During consideration of the juvenile justice bill, we made some progress by passing a ban on the juvenile possession of semiautomatic assault weapons and a ban on the importation of high-capacity ammunition clips. We saw Republicans join all Democrats in voting to require that child safety devices be sold with all handguns. Finally, with a historic, tie-breaking vote by the Vice President, we passed the Lautenberg amendment to firmly close the gun show and pawnshop loophole by requiring background checks on all sales and allowing law enforcement up to 72 hours to conduct these background checks, as currently permitted by the Brady law.

These are the kinds of measures that Democrats in Congress have been advocating for years. It is unfortunate that it took the Littleton tragedy to bring our colleagues in the majority around to our way of thinking. We welcome even these small steps in the right direction. But these are, indeed, small steps, and we need to do much more. We should reinstate the Brady waiting period, which expired last November, to provide a cooling off period before the purchase of a handgun. My colleague from New Jersey said it so well: Too often crimes with handguns are crimes of rage and passion. A cooling off period might insulate the acquisition of the gun from the crime of passion or rage. Even if we do perfect the instant check, this waiting period will still play a very valuable role in ensuring that handguns are not the source of violence and death in our society. We should also pass a child access prevention law to hold adults responsible if they allow a child to gain access to a firearm and that child uses the firearm to harm another.

These are the types of protections that are, indeed, necessary.

In addition, we should completely close the Internet gun sales loophole, something the Senate failed to do last month when we were considering the juvenile justice bill. We all know the increasing power of the Internet to sell goods and services. Whatever is happening now in the distribution of firearms through the Internet is merely a glimpse and a foreshadowing of what will happen in the months and years ahead. We should act now, promptly, so we can establish sensible rules with respect to the Internet sale of firearms.

I also believe that we should apply to guns the same consumer product regulations which we apply to virtually every other product in this country. Again, the Senator from New Jersey was very eloquent when he described the paradox, the unexplainable paradox, the situation in which we regulate toy guns but we cannot by law, in any way, shape or form, regulate real guns. If toy guns, teddy bears, lawn mowers, and hair dryers are all subject to regulation to ensure they include features to minimize the dangers to children, why not firearms?

I have introduced legislation to allow the Consumer Product Safety Commission to regulate firearms to protect children and adults against unreasonable risk of injury. I know my friend and colleague from New Jersey has introduced a bill to allow the Treasury Department to regulate firearms. Whichever agency ultimately has oversight, the important thing is that guns should no longer be the only consumer product exempt from even the most basic safety regulations.

Finally, I believe that gun dealers should be held responsible if they violate Federal law by selling a firearm to a minor, a convicted felon, or others prohibited from buying firearms.

Currently, there are over 104,000 federally licensed firearms dealers in the United States. While most of these dealers are responsible small business people, recent tracing of crime guns by the Bureau of Alcohol, Tobacco and Firearms has found substantial evidence that some dealers are selling guns to juveniles and convicted felons. This direct diversion of weapons from retail to illegal markets is taking place both through off-the-book sales by corrupt dealers and through so-called straw purchases, when an ineligible buyer has a friend or relative buy a firearm for him or her.

Indeed, just this week, my colleague, Senator SCHUMER, from New York released a study of Federal firearms data that reveals a stunning number of crime guns being sold by a very, very small proportion of the Nation's gun dealers. According to data supplied by the Bureau of Alcohol, Tobacco and Firearms, just 1 percent of this country's gun dealers sold nearly half of the guns used in crime last year. The statistics suggest we must move aggressively against these dealers who are flouting the laws and who are disregarding public safety.

To remedy this situation, I have introduced S. 1101, the Gun Dealer Responsibility Act, which would provide a statutory cause of action for victims of gun violence against dealers whose illegal sale of a gun directly contributes to the victim's injury. I believe this legislation will make unscrupulous gun dealers think twice about to whom they will sell a weapon, particularly if they intend to sell it to minors, convicted felons or any other ineligible buyer, either directly or through straw purchases.

Anyone who honestly considers the tragic events in Littleton 1 month ago and the 13 children who die from gun violence each day in this country must concede that our young people have far too easy and unlimited access to guns. It is a shameful commentary that in this country today, in 1999, for too many children it is easier to get a gun than it is to get counseling. We have to work on both fronts—improving our schools and access to mental health services and counseling and support—but we also have to close the loopholes which make it easy for youngsters to get guns. Last year, 6,000 American students were expelled from elementary or high school for bringing a gun into the school building. That, too, is an indication that we have to work to ensure that children do not have access to firearms.

We must do more than just keeping the guns away, but that is something we have to do right now in a comprehensive and coherent way.

The measures I have suggested and the measures that my colleague from New Jersey suggested are sensible parts of a comprehensive strategy to do what every American wants done: to keep weapons out of the hands of young children who may use them to harm themselves or harm others.

I hope that having been awakened by the tragedy in Littleton, we are ready to move progressively and aggressively to remedy this situation in the Senate.

I thank the Chair. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I ask that we remain in morning business and I be allowed to make a statement.

The PRESIDING OFFICER. The Senator is recognized for the remainder of morning business.

Mr. BREAUX. I thank the Chair.

## MEDICARE

Mr. BREAUX. Mr. President, when I first got into this business of being involved in Congress many years ago and also involved in fundraising activities, I remember trying to compose a fundraising letter. I sat down at my desk and drafted one. I thought I put out a pretty good fundraising letter to constituents saying why I thought I was the best person running for a particular office and would they please consider sending a contribution to me because I was obviously the best person for the job.

I shared the draft of my fundraising letter with one of the professional people who does this for a living. He looked at it, read it and said: This will never do.

I said: Why?

He said: It is not outrageous enough.

I said: What do you mean?

He said: In order to get people to extend money to you in your election, you have to be outrageous in the letter, be as outrageous as you possibly can; don't worry about whether it is totally accurate. Just make sure it gets the people's attention and really scares the you know what out of them in order for them to feel like it is absolutely essential that to save their future, they need to send you a political contribution.

I said: I am not going to do that. It doesn't fit how I operate, and I think it is a wrong thing to try and scare people.

Apparently, there are organizations in this city that think otherwise. I call to my colleagues' attention one of them called the National Committee to Preserve Social Security and Medicare. It is a very noble-sounding organization. They sent out this letter, a bright yellow thing, and it came in an envelope that is enough to look like it is from the Internal Revenue Service.

It says: ''Urgent Express. Please expedite. Dated material enclosed.''

It would really get your attention if you walked out to the mailbox and received this. But also, if you are a senior, you would be scared to death if you thought what they were telling you was true.

It starts off by saying the Breaux-Thomas effort to fix Medicare is going to basically destroy Medicare by giving you a voucher instead of a guaranteed contribution for your Medicare benefits. No. 1, that is absolutely, totally inaccurate, incorrect, misleading, false and anything else you want to call it.

What we do is give seniors the same type of system that every one of us as Federal employees, including Members of the Senate, has. Under our plan, it is guaranteed in law that the Federal Government will contribute 88 percent of the cost of whatever plan the seniors take. The seniors would pay about 12 percent. That is what they pay now. That is not a voucher. For them to say it is a voucher is misleading, false, and intended to simply scare people into giving more money.

If you look at the rest of their letter, they say you do not get guaranteed benefits. That is not true. The statute clearly says that you will have the same guaranteed benefits that you get under Medicare today. That is in statute. That is guaranteed. What they have to say is false.

What they are really trying to do, in addition to scaring seniors, is they are trying to raise money from them; tell

them anything to scare them to death and hope they send money.

I was underlining all the times they said, ''please send money'' in this letter. It is one after another.

It says on page 3: ''. . . we need your signature . . . and your generous special donation . . . .''

Then they go on to say: ''We also need as generous a donation as you can afford. . . .''

They then talk about sending a special donation to help us with our effort, and by making a special donation today, we can help save Medicare; endorsing this with as generous, and then they call it an ''emergency donation''—they go from ''special donation'' to send us an ''emergency donation'' to stop what BREAUX and THOMAS are trying to do by fixing Medicare.

Then they say:

[Please] boost our grassroots efforts by including an emergency contribution with your Petition. Your contribution of [$10] or $25, will be used to reinforce [our] message. . . . I've suggested [some] contribution amounts, but anything you can give will help more than you know. Please decide the most you can afford and enclose your check with your signed . . . Petition in the enclosed envelope . . . .

Your emergency donation is needed ''along with your contribution of [blank] or [blank] in the envelope provided.''

Mr. President, this is a fundraising letter intended to scare seniors into digging into their pockets, into their retirement funds and funding this operation so they can continue to put out false, erroneous, inaccurate information, information which is simply not true.

The PRESIDING OFFICER. The time of the Senator has expired. I would like for him to go on.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senator from Louisiana be allowed as much additional time as he needs.

Mr. BREAUX. This is not the way to fix Medicare, by scaring seniors. They do not mention that under the current Medicare program the premiums are going to double by the year 2007 if we do not do anything to fix it. That should really scare seniors into saying we need to do something to fix the program for our children and our grandchildren. But to send out false information calling the program a voucher, which it clearly is not, and to say it does not have the defined benefits, which it clearly does, all under the guise of scaring seniors into digging into their pockets and sending money that they need for food and groceries and extra Medicare benefits that they do not get now is something they should be ashamed of.

I think all of us know what they are trying to do. We just have to stand up and say it like it is and call it what it is. This is shameful.

## UNANIMOUS CONSENT AGREEMENT—S. 96

Mr. BREAUX. Mr. President, I ask unanimous consent that the Graham amendment to the Y2K legislation be designated an amendment to be offered by Senator TORRICELLI.

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

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. HUTCHINSON). Morning business is closed.

## Y2K ACT

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

The assistant legislative clerk read as follows:

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

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 608

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

Mr. MCCAIN. Mr. President, I am pleased to start out by offering a substitute amendment to S. 96, the Y2K Act. This substitute amendment is truly a bipartisan effort. It represents spirited discussion, hard fought compromise, and agreement with a number of my colleagues on both sides of the aisle, led by Senators DODD, WYDEN, HATCH, FEINSTEIN, BENNETT, LIEBERMAN, GORTON, LOTT, ABRAHAM, SANTORUM, and SMITH of Oregon.

The substitute 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 Arizona [Mr. MCCAIN], for himself, Mr. DODD, Mr. WYDEN, Mr. HATCH, Mrs. FEINSTEIN, Mr. GORTON, Mr. BENNETT, Mr. LOTT, Mr. ABRAHAM, Mr. FRIST, Mr. BURNS, Mr. SANTORUM, Mr. SMITH of Oregon, and Mr. LIEBERMAN, proposes an amendment numbered 608.

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

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

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

Mr. MCCAIN. Mr. President, I thank Senator WYDEN for being one of the true leaders on this bill. Senator WYDEN said at our committee markup that he wanted to get to ''yes.'' He has worked tirelessly with me and others to get there. Having not only the necessary majority vote but the 60 votes necessary to move forward is directly related to his efforts.

I also thank Senator DODD of Connecticut. He has offered an important perspective and has provided excellent suggestions and comments which I think make this substitute we offer today a better piece of legislation.

I am grateful to my colleagues, especially the senior Senator from Connecticut, for their unflinching dedication to dialogue, to working through our differences and remaining focused on the common goal of enacting this critical piece of legislation. Without the leadership of Senators DODD and WYDEN, this bipartisan effort would not have been possible.

Before I talk about the legislation and the language of the substitute itself, I would like to note that there was a unanimous consent agreement that 12 amendments would be in order on both sides. We are now in the process of working with the sponsors of those amendments, some of which we can agree to, some of which may require votes. But I hope my colleagues will also come over here ready to offer those amendments so that in a very short period of time we can begin to dispense with them.

We all know the very heavy schedule of legislation that lies before us between now and the next recess on the Fourth of July. So I am hopeful we can take up and dispense with these amendments in a timely fashion.

The first effort, obviously, will be to get time agreements on those amendments that we are unable to get agreement on, although I believe, from a first look at many of these amendments, we will be able to work out language so that we can accept a number of them. In fact, I think some of them will improve the legislation.

I want to walk through the details of this substitute amendment and the background and history of this bill.

First, let me summarize what this substitute contains.

Specifically, the substitute amendment:

Provides time for plaintiffs and defendants to resolve Y2K problems without litigation.

It reiterates the plaintiff's duty to mitigate damages and highlights the defendant's opportunity to assist plaintiffs in doing that by providing information and resources.

It provides for proportional liability in most cases, with exceptions for fraudulent or intentional conduct or where the plaintiff has limited assets.

It protects governmental entities, including municipalities, school, fire, water, and sanitation districts, from punitive damages.

It eliminates punitive damage limits for egregious conduct while providing small businesses some protection against runaway punitive damage awards.

And it provides protection for those not directly involved in a Y2K failure.

The substitute, as the original bill, does not—I emphasize, does not—cover personal injury and wrongful death cases.

The specific changes the substitute makes from the version of the bill which Senator WYDEN and I offered in April are those proposed by Senator DODD. It eliminates the director and officer liability caps, it eliminates the punitive damages caps for businesses with more than 50 employees, it provides that State evidentiary standards will be used in specific situations, and it preserves the protections provided in the Year 2000 Information and Readiness Disclosure Act.

Let me be quite blunt. These revisions represent significant compromise. They move this bill a considerable distance from the Y2K bill passed by the House. Even with these compromises, I believe the bill will accomplish the goals for the legislation—to encourage remediation and prevention of Y2K problems and eliminate frivolous and opportunistic litigation which can only serve to damage our economy. However, I do not believe any additional compromises are necessary or warranted.

I want to reemphasize that point. There have been additional efforts made to have us accept or work on additional changes to the bill. We run the risk right now of compromising to the degree where it makes these protections, if not meaningless, so reduced that we are not able to achieve the goal we seek. So I do not intend—nor do, I believe, the majority of my colleagues, including those on the other side of the aisle—to continue to work behind the scenes towards a compromise. If there is a change that Members believe needs to be made to this legislation, then let's go through the amending process, let's have a time limit on debate, and vigorously debate and educate our colleagues, and then have votes.

We have, thanks to Senator WYDEN, moved a significant way, and also thanks to Senator DODD; we have done that. We cannot move from our position further. Yet we do obviously have 12 amendments in order on that side, 12 amendments on this side, which is ample opportunity for debate and discussion about this issue and further amending, obviously, with majority rule.

So I point out again, these are significant compromises that have already been made, some of them to the dissatisfaction of some of our constituents. It has not made everybody happy. But having been around here now for some years, it is my firm belief that we have to make compromises, because that is the essence of legislation. But we have made enough compromises that we can no longer make any further changes without compromising the fundamental principles behind this legislation.

Let me make one other point. Time is of the essence here. We cannot dally. We cannot wait until the end of the year when Y2K is upon us.

Already lawsuits have been filed, some of them pretty interesting, and emphasize, at least to my mind, the necessity of this legislation.

But we need to move. I fully intend, once we pass this legislation, to move to conference as quickly as possible. There are differences between the House-passed legislation and this legislation. I am absolutely convinced we will be able to reach agreement in conference and come back here before the recess with a final conference report and bill to be approved by both Houses.

I am committed to passing legislation which is effective. I am not interested in passing a meaningless facade. We will do the public a great disservice to claim victory in passing legislation which leaves loopholes for spurious litigation. If we aren't going to legitimately fix the problem, then we must be forthright with the public and tell them it could not be done. I think that would be a disastrous result, but it would be more honest than to pretend to provide a solution and not.

This bill deserves the support of every Member of the Senate. It is fair, practical, and legally justifiable. It is important not only to the high-tech industry or only to big businesses but carries the strong support of small businesses, retailers, and wholesalers.

The coalition of support for this bill is compelling. Yesterday a press conference was held to reiterate the support of the overwhelming majority of the Nation's gross national product: the U.S. Chamber of Commerce; the National Association of Manufacturers; the National Retail Federation; virtually every high-tech industrial association, including the ITAA, the Business Software Alliance, and others who participated, to emphasize the need for the bill and their support for the compromises which have been made.

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

The estimated cost of litigation associated with fixing the Y2K problem is really quite enormous. In the view of some, it is as high as $1 trillion. I do not know if it is that high, but already major corporations in America have spent millions and millions, in some cases tens of millions, of dollars in fixing existing problems. If we throw into the mix the litigation we have already seen the beginnings of, it could really have an effect, not only on the ability of our businesses to do business, not only on the ability of our high-tech corporations to continue investing in research and development and improvements in technology, but it really would have a significant effect on our overall economy. You take that much money out of our economy in the form of litigation, you are going to feel the economic impacts of it.

Let me remind my colleagues how this legislation came to be, its genesis and rationale. The origin, as we all know, of the Y2K problem was in the 1950s and 1960s, when computer memory was oppressively expensive. According to the February 24, 1999, report of the Senate Special Committee on the Year 2000 Technology Problem, headed by Senators BENNETT and DODD, in the IBM 7094 of the early 1960s, core memory cost around $1 per byte. By comparison, today's semiconductor memory costs around $1 per million bytes. Thus, there was a strong incentive to minimize the storage required for a program and data.

A two-digit data code became the industry standard in order to economize on storage space. It was presumed that sometime during the 40 or 50 years before the end of the millennium, the coding would be changed as computer memory became more accessible. Unfortunately, although memory costs fell dramatically, the interface requirements of old software with new discouraged and slowed the changeover process. The computer equipment and software that was expected to become obsolete survived many layers and programming updates. The result is that the two-digit programs are not designed to recognize dates beyond 1999 and may not be able to process data-related operations beyond December 31 of this year.

Although some who oppose this litigation charge that the solutions are simple and should have been completed long ago, the reality is not that simple. First, there are over 500 programming languages in use today. A universally compatible Y2K solution would have to be compatible with most or many of these languages. Embedded processors in embedded chips have to be found and replaced. There are also several ways to reprogram causing additional interfacing issues.

Technical approaches to solving the problem include reprogramming all two-digit date codes with a four-digit date code; windowing the date codes to make programs think that the two-digit codes are applicable to the year 2000 and beyond; and encapsulation which, like the windowing method, tricks the computer program into thinking that the two-digit date code is applicable beyond 1999. Unless the same approach is taken in all computers, additional programming is required to allow interface of four-digit codes with two-digit codes which have been windowed or encapsulated.

Let me read from a recent publication of the National Legal Center for the Public Interest, the Year 2000 Challenge, Legal Problems and Solutions, which summarizes why the year 2000 problem is so difficult to solve.

I quote from the article from the National Legal Center for the Public Interest:

One of the most insidious characteristics of the Year 2000 problem is that the difficulty of solving it in any particular organization often is so underestimated. Since both the nature of the problem and the actions needed to fix it are relatively easy to explain, people who are not familiar with IT projects in general and the peculiar difficulties of Year 2000 projects in particular tend to think of Year 2000 projects as less difficult and risky than they really are.

The unfortunate fact is that there is no ''silver bullet'' solution to the Year 2000 problem in any organization, and the risks and difficulties in any Year 2000 project of even moderate size and complexity can be enormous. None of the remediation techniques described above is without disadvantage, and for many IT users the time and resources required to accomplish Year 2000 remediation far exceed what is available. Most major remediation programs involve finding and correcting date fields in millions of lines of poorly documented or undocumented code. There is no single foolproof method of finding date fields, no assurance that all date fields will be found, corrected, or corrected accurately, and no assurance that corrections will not produce unintended and undesirable consequences elsewhere in the program. In many cases it will be necessary to rely on information or assurances from third-party vendors regarding the Year 2000 compliance of their products, even though experience teaches that many such representations are inaccurate or misleading. Comprehensive end-to-end system testing of remediated systems in a simulated Year 2000 ''production'' environment is often impractical or impossible, and less intensive testing may fail to detect uncorrected problems. And even when an IT user has succeeded in making its own system Year 2000 ready, Year 2000 date handling programs of external programs or systems (such as the systems of customers or suppliers) can often have a devastating effect on internal operations.

In addition to the technical problems with solving the problems, we must consider the cost dimension of the Y2K problems. From the ITAA, Information Technology Association of America, Year 2000 website, I have the following information:

At $450 to $600 per affected computer program, the Gartner Group has estimated that a medium-sized company will spend between $3.6-$4.2 million to convert its software. The cost-per-line-of-code has been estimated between $1.00-$1.50. Viasoft estimates cost-per-impacted-programs between $572-$1,204.

Estimates place correcting the problem for businesses and the public sector in the United States alone between $100–$200 billion. If you accept the premise that the total information technology services marketplace in America approaches $150 billion annually; that means Year 2000 Software Conversion could represent anywhere from 33%–50% of dollars spent for information systems in one year. Some ITAA Year 2000 Task Group members report estimates placing the worldwide total to correct the problem between $300 to $600 billion.

In addition, the Senate Year 2000 Committee in its report cites figures for several specific companies, as well as total costs which include estimated litigation costs.

There is no generally agreed upon answer to this question. The Gartner Group's estimate of $600 billion worldwide is a frequently cited number. Another number from a reputable source is that of Capers Jones, Software Productivity Research, Inc. of Burlington, MA. Jones' worldwide estimate is over $1.6 trillion.[5] Part of the difference is that Jones' estimate includes over $300 billion for litigation and damages but Gartner's does not. A sense of the scale of the cost can be gained from looking at the Y2K costs of six multinational financial services institutions; Citicorp, General Motors, Bank America, Credit Suisse Group, Chase Manhattan and J.P. Morgan. These six institutions have collectively estimated their Y2K costs to be over $2.4 billion.

Mr. President, the point here is that this is a complex technical problem with no easy, cheap solution. Although the opponents of this legislation would have us believe that Y2K failures can only result from negligence or dereliction on the part of the technology industry, and all those who use computer hardware and software, in truth, massive efforts are underway, and have been for some time, to prevent the Y2K problem from occurring. Even with the nearly incomprehensible amounts of money being devoted to reprogramming date codes in virtually every business and industry in our country, there are going to be failures. Well-intentioned companies, acting in good faith, are nevertheless going to encounter problems in their systems, or in the interface of their systems with other systems, or as a result of some other company's system.

But what experts are also concluding is that the real problems and costs associated with Y2K may not be the January 1 failures, but the lawsuits filed to create problems where none exist. An article in USA Today on April 28 by Kevin Maney sums it up:

Experts have increasingly been saying that the Y2K problem won't be so bad, at least relative to the catastrophe once predicted. Companies and governments have worked hard to fix the bug. Y2K-related breakdowns expected by now have been low to nonexistent. For the lawyers, this could be like training for the Olympics, then having the games called off.

The concern, though, is that this species of Y2K lawyer has proliferated, and now it's got to eat something. If there aren't enough legitimate cases to go around, they may dig their teeth into anything. . . . In other words, lawyers might make sure Y2K is really bad, even if it's not.

Mr. President, the sad truth in our country today is that litigation has become an industry. While there are many fine, scrupulous attorneys representing their clients in ethical fashion, there are also many opportunistic lawyers looking for new ''inventories'' of cases. The Y2K problems provide these attorneys with a lottery jackpot.

Let me read from an article published in March of this year, by the Public Policy Institute of the Democratic Leadership Council, written by Robert D. Atkinson and Joseph M. Ward:

As the millennium nears, the Year 2000 (Y2K) computer problem poses a critical challenge to our economy. Tremendous investments are being made of fix Y2K problems, with U.S. companies expected to spend more than $50 billion. However, these efforts could be hampered by a barrage of potential litigation, as fear of liability may keep some businesses from effectively engaging in Y2K remediation efforts. Trail attorneys across the country are actually preparing for the potential windfall. For those who doubt the emergences of such a litigation leviathan, one only needs to listen to what is coming out of certain quarters of the legal community. At the American Bar Association annual convention in Toronto last August, a panel of experts predicted that the legal costs associated with Y2K will exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined.[1] That is more than three times the total annual estimated cost of all civil litigation in the United States.[2] Seminars on how to try Y2K cases are well underway and approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on the event.[3] Also, several law suits have already been filed, making trail attorneys confident that a large number of businesses, big and small, will end up in court as both a plaintiff and defendant. Such overwhelming litigation would reduce investment and slow income growth for American workers. Indeed, innovation and economic growth would be stifled by the rapacity of strident litigators.

I want to point out that is from the Public Policy Institute of the Democratic Leadership Council.

Mr. President, already at least 65 lawsuits—some report as many as 80—have been filed, and we are still 6 months away from January 1. Most of these lawsuits involve potential problems that have not even occurred yet. Our nation's legal system is not designed to handle the tidal wave of litigation which will undoubtedly occur if we do not act to prevent it. We must reserve the courts for the cases with real harm, real factual support, and which cannot be otherwise resolved through mediation and resolution.

Probably the classic example of opportunistic litigation is a class action suit filed in California by Tom Johnson against six major retailers. Tom Johnson, acting as a ''private attorney general'' under California consumer protection laws, has brought an action against a group of retailers, including Circuit City, Office Depot, Office Max, CompUSA, Staples, Fryes, and the good guys, inc. for failing to warn consumers about products that are not Y2K compliant.

He has not alleged any injury or economic damage to himself, but, pursuant to state statute, has requested relief in the amount of all of the defendants' profits from 1995 to date from selling these products, and restitution to ''all members of the California general public.'' Although he claims that ''numerous'' products are involved, he has not specified which products are covered by his allegations, but has generally named products by Toshiba, IBM, Compaq, Intuit, Hewlett Packard, and Microsoft.

It is crystal clear that the real reason for this lawsuit is not to fix a problem that Mr. Johnson has with any of his computer hardware or software, but to see whether he can convince the

companies involved that it's cheaper to buy him off in a settlement than to litigate—even if the case is eventually dismissed or decided in their favor.

And, even more interesting, is the history of how this case came to be filed. The Wall Street Journal carried a story on Friday, May 14, 1999 in its Politics and Policy column by Robert S. Grernberger.

It says:

Michael Verna, a California lawyer, is warning a group of technicians about the dangers ahead if they don't get the gliches out of their companies' computers by the end of the year.

Here in Seattle, Mr. Verna is explaining how writing internal memos or careless e-mail could hurt a firm in a Y2K lawsuit. Loretta Pirozzi of Data Dimensions Inc., a consulting firm, complain that most bosses aren't budgeting enough money to fix the problems. A knowing chuckle sweeps the room. Mr. Verna warns that memos on such budget disputes become smoking guns in court.

''What can we do?'' asks another woman.

''Have lawyers show you how to protect your documents, for one thing,'' he says. ''By the way,'' he adds, ''that isn't a sales pitch.''

But, of course, it is. Bowles & Verna, a 21-member firm in Walnut Creek, Calif., has a Y2K game plan. It starts with semimars that help develop new clients. The millennium itself will usher in the ''failure litigation phase'' of court fights. And in about five years, just when it seems like everyone has sued everyone else, comes the ''insurance-coverage phase,'' when companies go after their insurers to pay some of their Y2K losses.

''You want to be on the leading edge of the tort of the millennium,'' Mr. Verna says.

Bowles & Verna's journey to 2000 began almost by chance, in 1997, while Kenneth Jones, then a third-year law student, was playing a computer football game. It is wife, Sandy, was telling him that people were stocking up on canned goods and bottled water for the expected chaos of Y2K. At that moment, Mr. Jones recalls, he had an epiphany.

A new area of law, involving future failures due to Y2K bugs, was being born, and Mr. Jones, a law student comfortable with technology, was perfectly positioned for it. He also was headed for a job at Bowles & Verna, where he had been a summer law clerk. ''I decided the firm could be the experts.

With Mr. Verna's strong encouragement, the 28-year-old Mr. Jones proded his colleagues, giving some of the firm's techno-challenged lawyers a book, ''Year 2000 Solutions for Dummies.'' Gradually, the firm formed a Y2K team. All it lacked was a client. Then, late last year. Mr. Jones's friend Torn Johnson, a Walnut Creek swimming coach, went shopping for a laptop computer—and Bowles & Verna found its first Y2K lawsuit.

But with no apparent injury to Mr. Johnson, the firm needed a legal theory. California's Unfair Business Practices Act came to the rescue. The statute permits citizen lawsuits on behalf of the people of the state to stop unfair or deceptive business practices. And so Mr. Johnson is suing about half a dozen retailers for injunctive relief to require disclosure for Y2K compliance, but not for damages. And, under the state law, Bowles & Verna would collect attorney's fees.

This is precisely the type of frivolous and opportunistic lawsuit which would be avoided by S. 96. Rather than have all of these named companies wasting their time and resources preparing a defense for this case, S. 96 would direct the focus to fixing real problems. In this instance, Mr. Johnson does not have an actual problem, but if he did, he would need to articulate what is not working due to a Y2K failure. The company or companies responsible would then have an opportunity to address and fix the specific problem. If the problem isn't fixed, then Mr. Johnson would be free to bring his suit.

This case is the tip of the iceberg—if thousands of similar suits are brought after January 1, the judicial system will be overrun—and the nation's economy will be thrown into turmoil. This is a senseless and needless abuse that we can avoid by passing S. 96.

Mr. President, let me turn to the substance of the substitute amendment offered today. Without going through every paragraph of the bill, let me highlight the most important provisions.

Certainly the centerpiece of the bill are the provisions of Section 7 regarding notice. This section requires plaintiffs to give defendants 30 days notice before commencing a lawsuit. This provides an opportunity for someone who has been harmed by a Y2K failure to make the person responsible aware of the problem and to fix it. If the defendant doesn't agree to fix the problem, then the plaintiff can sue on the 31st day. If the defendant does agree to fix the problem, 60 days are permitted to accomplish the remediation before a lawsuit can be filed. This offers a reasonable time and opportunity for people to work out legitimate problems with sincere solutions, without cost of litigation. It focuses on the fact that most people want things to work—they don't want to sue.

A corresponding critical element of this legislation is the requirement for specificity in pleadings found in Section 8. Not written nor intended to cause loopholes for lawyers, the thrust of this requirement is that there must be a real problem in order to sue. Our judicial system should not be clogged with possible Y2K failures, nor novel complaints to ensure the payment of lottery style settlements and attorneys fees. We must reserve our judicial resources for real problems which have caused real injury which can be redressed by the court.

The Duty to Mitigate in Section 9 is also important. While it is in some respects merely a statement of current law, it highlights the emphasis to be placed on preventing problems and injury to the maximum extent possible, and articulates the role that prevention information made available by the affected industries can play in limiting injury to product users.

The economic loss rule found in Section 12 is also a restatement of law in the majority of states. It is critical, however, because it confirms that damages not available under contract theories of law cannot be obtained through tort theories. This is particularly important here where personal injury claims have been excluded.

Punitive damages caps have been retained for small businesses, defined as those with 50 fewer than 50 employees. Punitive damages are permitted under some state laws in certain egregious situations primarily as a deterrent from a repetition of the conduct.

Punitive damages are awarded primarily as punishment to a defendant. They are intended to deter a repeat of the offensive conduct.

Punitive damages are not awarded to compensate losses/damage suffered by a plaintiff.

The Y2K cases are unusual in that the conduct is not likely to occur again, thus there is little deterrent value in awarding punitive damages.

Without a deterrent effect, punitive damages serve only as a windfall to plaintiffs and attorneys.

Additionally, since we have eliminated personal injuries from coverage of the bill, the only harm caused by defendants will be economic damage, which can be appropriately compensated without the need for punitive awards.

Further, excessive punitive damage awards will simply compound the economic impact of Y2K litigation and the costs will be passed along to the public/consumers through higher prices.

In this situation, punitive damages truly become a ''lottery'' for the plaintiff, thus they should be limited.

S. 96 provides an exception to the caps for intentional injury to the plaintiff, which is most likely to be conduct worthy of additional punishment.

S. 96 protects all governmental entities so that taxpayers are asked to provide compensation for actual damages, but not provide windfalls to plaintiffs. This is especially important to municipalities and special districts (school, fire, water and sanitation). This is strongly supported by National League of Cities.

Let me speak to some of the points raised by the proposal of Senators KERRY, ROBB, DASCHLE, REID, BREAUX, and AKAKA. While it is encouraging that they agree the Y2K problem is one which must be addressed, it is unfortunate that they continue to reject some of the most important goals of the legislation.

First, their proposal applies only to ''commercial losses.'' It excludes consumer actions from the scope of the bill. I think this exclusion is misguided and merely strengthens the hand of the opportunistic lawyers.

It denies the consumer the protections afforded by S. 96, including the ability to have problems fixed quickly and without the need for expensive litigation. It places a burden on those least able to afford legal counsel.

Notwithstanding the purported attempt to cover consumer claims brought as class actions, in fact it provides a ''lawyers' loophole'' by permitting individual claims to be brought

and consolidated or aggregated to avoid the notice and pleading requirements of the class action section.

There are no punitive damage limitations or protections, either for business (large or small) or for governmental entities. Punitive damages are intended to punish poor behavior and deter a repeat of it in the future. Punitive damages do not have such an effect in Y2K litigation because of the uniqueness of the problem. Thus, in Y2K litigation, punitive damages become an incentive for ''jackpot justice'' and abusive litigation.

The proportionate liability provisions are ineffective in preventing ''deep pocket'' companies from being targeted by mass litigation.

The approach of requiring a defendant to prove itself innocent in order to be assured proportionate liability is misguided and ignores the vast array of potential defendants and the myriad of factual situations which may be encompassed in a Y2K action. In particular, defendants who are in the middle of the supply chain may be sued for a breach of a contract caused not by the failure of the defendant's computers but by those elsewhere in the supply chain.

Requirements in the Kerry proposal would result in that defendant being jointly and severally liable—an injustice. The result is, the deep-pocketed defendants will face needless and abusive litigation and will be subjected to either defending or settling such cases, regardless of their share of responsibility for causing the plaintiff's problems.

The Kerry proposal also fails to encourage settlement of cases before trial. Defendants who do settle with the plaintiff should not be subjected to continued liability or responsibility for other defendants. This defeats the purpose of incentive for early settlement in mediation.

The Kerry proposal rejects the protections for settling defendants contained in S. 96. The fair rule in this situation is that each defendant pays for the portion of the problem which that defendant causes. S. 96 provides that clear rule, with exceptions patterned after the Securities Act, as proposed by Senator DODD.

There are important differences as well. The Kerry proposal does not protect contracts as negotiated but permits them to be revised and overturned by uncertain common law. This results in the parties being uncertain of their duties and obligations under their contracts and will increase the likelihood of litigation. The proposal also too narrowly applies the economic loss rule, subjecting defendants to broader damages available under current law in most States.

Taken as a whole, the Kerry proposal simply does not provide the solutions which are needed to the Y2K problem. It is a meager attempt to provide lip service to the business community while protecting the trial lawyers' income stream. I urge my colleagues to carefully review the details of the proposal and reject this form-over-substance amendment.

I have taken a long time on this legislation. This is a very important issue, to say the least. It has a profound impact on our economy, on our country, and the lives of men and women who are engaged in small, medium, and large business throughout America.

This substitute amendment is a good piece of legislation that deserves the support of the Senate. It is not perfect. It certainly does not provide a wish list of product liability or tort reform. The business community certainly would like more than what is in this compromise. The House passed a bill that contained many of the provisions we have eliminated to reach this bipartisan compromise.

As in any negotiation process, there must be give and take. We have given a great deal. I remain convinced that the Y2K problem is real and must be addressed now. I believe that this substitute offered will achieve a just and reasonable approach to Y2K: Fair prevention, remediation, and litigation. This bill should not be further emasculated. It has the support of the broadest possible cross section of our Nation's economy. It is a bill which is good for our country. It will ensure that our economy is not derailed with opportunistic litigation.

It is critical that it pass without further delay. I ask each of my colleagues for their support in bringing this bill to its final successful conclusion and enacting it into law.

I thank the Senator from South Carolina, who I know has the very strongest views on this issue. He is a fierce fighter for the principles he believes in, which are obviously in opposition to this legislation. However, the Senator from South Carolina has allowed this bill to come to the floor. He could easily have blocked it further. I appreciate his cooperation in doing so.

We have 12 amendments that are in order on each side. We would like to see those amendments, and we would like to start work on them so we can resolve those and perhaps get time agreements or accept those amendments on both sides.

I thank my two dear friends who are on the floor today, Senator WYDEN and Senator DODD, without whose cooperation and effort we would never have reached this stage nor would we reach enactment of this legislation. The essence of doing business in this body on these kinds of issues is a bipartisan coalition. That is why we have a 60-vote rule, which many times I decry when I am pushing issues which have no more than 50 votes, such as campaign finance reform.

I think it also compels Members to work in a bipartisan fashion so we can work together. I argue that at the end of the day the legislation is probably much better for it.

If it is agreeable with the Senator from South Carolina, I will begin with colleagues on our side and then the other side of the aisle to begin addressing the amendments, so we can get agreement and time agreements so we can dispatch this legislation as soon as possible, although I know that the Senator from South Carolina will have a great deal to say on this issue, as he has in the past.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished chairman is correct, the Senator has had sufficient time now during the negotiations over the past 4 weeks to consider, after hearings before our committee, all the different ramifications and contentions by the parties. It is the intent of Members on this side of the aisle to expedite the vote on this particular measure whereby we will have only amendments that are germane to the particular issue, and that they be limited and there be no delaying conduct and action.

I must address immediately some of the comments made by my distinguished colleague from Arizona with respect to trial lawyers, with respect to punitive damages, the lottery, and various other things that go without contest up here in Washington because they look good on a poll.

If we were to poll the States' attorneys general or the Governors, they wouldn't be here at all. The State tort law has taken care of product liability, according to the American Bar Association, in a very efficient manner over the many years. In fact, we have the safest of all societies in America as a result of product liability. That is the subject at hand, of course—product liability—namely, the computerization, the software, the glitch or the Y2K problem that could occur January 1, 2000.

Everybody is on notice for January 1, 2000. All of these measures before the Senate—the McCain-Wyden-Dodd amendment—say January 1, if we have a glitch, we should first talk about it for 2 or 3 months. We have 6 months right now. We have had 30 years.

The computer industry, the software industry, has appeared before the committee. They have known about this problem for the past 30 years. Ross Perot says it is easy to fix; just take the year 1972; everything conforms in the year 2000 with the year 1972, and we have a fix.

There are other sinister drives, motives, and intents behind this particular measure that must be surfaced at the very outset. This is not a product liability problem for the computer industry. They know and have warned everybody, and everybody is making tests. For example, the best of the best, some 2,000 leading industries, are named in March in Business Week. The market, of course, has taken care of the problem. It is a nonproblem, as far as Y2K, as far as computerization, as far as the product itself.

There is another problem with respect to the Chamber of Commerce, the

Business Roundtable, and that crowd coming in here and trying to diminish the rights of consumers, the protection for consumers, of all Americans.

March 1 in Business Week, an article tells a story about Lloyd Davis, in his Golden Plains Agricultural Technologies, Colby, KS, business.

He needs $71,000 to get his particular system Y2K-compliant. He has a problem. He can borrow up to $39,000, but he has not been able to borrow the rest of it.

We are not talking about an injured party in an auto collision who has a bad back and brings a frivolous suit—nobody can tell whether the back is bad or not until after the verdict—and then walks away. That has happened in America several times. But these are substantial small businesses. I am quoting now from the article:

Multinationals such as General Motors, McDonald's, Nike, and Deere, are making the first quarter—or the second at the latest—the deadline for partners and vendors to prove they're bug free. A recent survey says that 69 percent of the 2,000 largest companies will stop doing business with companies that can't pass muster.

Mr. President, 2,000 companies of the blue chip corporations in America here are coming forward and saying—already, 2 months ago, 3 months ago—if you are not compliant by the end of this month, June at the latest, we are going to have to find another supplier. We cannot play around. We have to do business. We are going to others:

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

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

Mr. President, you are talking about frivolous lawsuits. Not with all this warning, with all the record made and public hearings here in the Government itself and the Congress, with all the chances to cure all the glitches. We have had chance upon chance upon chance and effort upon effort. The most recent one here, of course, was just a couple of weeks ago in the Washington Post:

Banking regulators worried about the year 2000 readiness of a big ATM service company in the west have just ordered it to get in shape by June 30 or face possible contract cancellations by its 750 bank customers.

The point is, business is not telling business let's work it out in 90 days, like the law that they propose. Business is telling business: Blam, you either get with it, business is business, or we are going to cut you off.

As an old-time trial lawyer, the punitive damages they are talking about is only for willful neglect. By January 1, 6 months from now, we have this big debate, we have the best of minds, we have the best of witnesses, we have the best of software experts coming, everything else—we have the best of business leadership saying: Get with it or we are going to cut you off. If they have not gotten with it by January 1, that is willful neglect. All cases after January 1, under the record being made here in 1999 in the National Government, ought to indicate if there ever were an indication of willful neglect, willful misconduct, it would be now on Y2K.

No, this is not really about business because business cannot wait around. Incidentally, the claimants are not frivolous—which is a remarkable thing, how they can tie people in. The National Federation of Independent Business ought to be standing here with me in this well, because the average computer for these small businesses, I would say, is around $20,000. These are not people willy-nilly looking for a lawsuit. They are not looking for a punitive damage lottery and all of that kind of nonsense that they make fun of here and try to stir up the emotions and say we have those old trial lawyers.

The truth of the matter is, these small business people have to get on and do business. They have no time to get a lawyer and wait the 90 days and come back around after 90 days, then file a pleading, and then on and on. Then under their particular bill, on joint and several—I cannot tell where the parts are made, but I guarantee the majority of the parts of the computers are made outside of the United States. If I cannot get joint and several, where am I going? To India, where a lot of the parts in computerization are made? Am I going to Malaysia to bring my suit? I am a small businessman.

Oh, no, they have to get joint and several out of here. Why? On account of product liability, the Chamber of Commerce on account of Tom Donahue and Victor Schwartz. I have been here for 20 some years in the Federal Government proudly standing on the side of the American Bar Association, the Association of State Supreme Court Justices, the State legislators. They met and they back us up every time, because this is a problem at the local level that has long since been solved in tort law, in verdicts made there. But otherwise, long since, here, there is evidence upon evidence of businesses saying we cannot wait around for lawsuits and lawyers and punitive damages and everything else of that kind. We have to get on with it.

But Silicon Valley has the money. People are falling over pell-mell. I wish we could have passed campaign financing reform because we are going to talk money out here on the floor, which is when this legislation really gets any kind of impetus or attention. Everybody wants Silicon Valley contributions. I do, too. But I cannot see changing 200 years of tort law in order to get it.

Most advisedly, if General Motors came up here to the National Government and said: Look, we are going to put out a new model come the first of the year, and it might have some glitches. So, if we find any glitches in our 2000 year's model, what we need to do is get together with anybody who has a glitch, and let's talk to them for 2 or 3 months. I don't know what they are supposed to do with the car during that time because it will not work.

But that is the law they want to pass: let's talk about it for 90 days. How fanciful and nonsensical this whole move is. Thereafter, bring your lawsuit. By the way, everybody has known about this particular problem for years on end, every business magazine and everything else. But let's not have any punitive damages or willful misconduct. Let's not have any joint and several liability.

General Motors would say: Senator, how about changing 200 years of the State tort law for me because I am going to put out a new model?

You would run General Motors out of town. You would not listen to them at all. But General Motors is not up here making those kinds of contributions. Silicon valley is. Oh, boy, we can bring the records here and show just exactly what the issue is. Everybody wants to show I am a friend of technology.

They do not have to talk to this Senator about technology. I authored the Advanced Technology Program. I authored the Advanced Technology Business Partnership Act. I have been working with the young computerization people and technology people for 20-some years at least. So don't tell me about technology and being a friend of technology. What they are is a friend of campaign contributions.

So, you have the money marrying up with the manifest intent of the Chamber of Commerce, the Business Roundtable, the Conference Board, the National Association of Manufacturers and the National Federation of Independent Business. The reason I can correlate them so easily is I had to face them last year in the campaign. Of course the Chamber of Commerce endorsed my opponent because I was such a sorry Senator. Then in February they gave me the Enterprise Award for the year 1998, since I had done such a good job. They do not have any shame. That is the bunch with the most gall I ever met to come around, take the fellow they opposed, and then give him an award for doing such an outstanding job; the very reason, such a sorry job, why they opposed him. But that is the kind of shenanigans we have going on and giving it an official recognition here.

Do not let me leave out the insurance companies. The insurance companies out there right now are at a hearing, Mr. President, before your subcommittee and mine: ''No fault.'' But they have a different name for it.

It has not worked. They have tried it in Connecticut, they have tried it in Georgia, they have tried it in Nevada, but it has not worked, and they canceled it out. We do not need a hearing.

We have the actual experience in the States. But the insurance companies, at every turn, are in here driving to change the laws here, there and yonder for money, to increase their profits.

I have been at the State level and have been a sort of States rights Senator. I have been defending insurance at the State level, saying it has been regulated.

They have come with Y2K; they have come with product liability; they have come with auto choice. They call it no fault. They want a little tidbit here and a little tidbit there. Let's federalize interstate commerce—if any business is an interstate commerce—and let's federalize the insurance industry in the United States and set the rules for all 50 States, and then they will not have to qualify it.

I bring these things out because they are most important, for the simple reason that the trial lawyers, for example, and punitive damages—both—do a wonderful job for America.

Let's go back to the leading case: the Pinto case back in 1978. There is an outstanding attorney in California named Mark Robinson. He got a verdict for $3.5 million actual damages and $125 million punitive damages. He never collected a red cent of the punitive damages.

When the Senator from Arizona gets up here and talks about the punitive damages lottery, the American Bar Association said less than 4 percent of all tort cases result in a punitive damage verdict, and half of those are reversed again on appeals. So we are talking about less than 2 percent. He is up here describing it as ''just roll the dice and we can get a lot of money and we have a lottery coming.''

What has that punitive damage verdict done? Go over, as I have done, to the National Safety Transportation Board and you will find out that in the last 4 years—Mr. President, I want you to listen to this statistic—they have had 73,854,669 vehicle recalls. There were some last week. Chrysler was recalling some cars. Another one had something to do with the ignition; it was causing fires. Another one had something else wrong with it. We are constantly getting the recalls. Why? Not because they love safety, but because of the punitive damage lottery and the trial lawyers; they are going to get them.

On a cost-benefit basis, in the Pinto case, they said do not worry about it, we can kill a few, let the gas tank explode and let them die; but the cost of those deaths is not near as much as the profit we make on selling the car.

On cost-benefit, as a result of trial lawyers, we have had, just in the last 4 years, 73 million recalls. That has promoted tremendous safety in America, has saved thousands of lives, millions of injuries, I can tell you that. If they want to give a good Government award to anybody with respect to bringing about safety in America, find Mark Robinson in San Diego and give him the award, because I am proud of him and America is proud of him.

The trouble is, they are being derided and rebuked and defamed in the National Congress because we have a bunch of Congressmen and Senators who have never been in a courtroom, never tried a case, do not understand that people do not have time for frivolous lawsuits. Trial lawyers know they take on all the expenses, they take on all the time and effort for the discovery, for the interrogatories, for all the motions, all the appearances, thereupon the trial and thereupon—this is what they call a lottery—get all 12 jurors by the greater weight of the preponderance of evidence, take the case on appeal and get a verdict from the Supreme Court, and then they get that fee they all talk about now in the tobacco cases.

The trial lawyers have done more than Koop and Kessler. I have been up here working with them on cancer. I have received national awards, I can say immodestly. I helped and worked and got a center for this particular disease, but I can tell you advisedly, after 32-some years, these trial lawyers on smoking, on lung cancer, on heart attacks, saving lives, preventing cancer deaths, have done way more than Koop and Kessler, because we used to meet out here and nobody would pay attention to Koop and nobody would pay attention to Kessler. When the trial lawyers then started bringing the cases and getting these settlements, it was not the fees that they got but, more or less, the good that they brought to our society. Let's give them the good Government award this morning.

I want to clear the air here because we have just run into all of this lottery stuff and spurious suits and frivolous suits. This case involves small business folks who have put $20,000 or more into a computer, and they are trying, like the doctor who appeared before the committee, their dead-level best to get some results because they are not waiting, of course, until January 1, 2000.

We had the testimony of Dr. Robert Courtney on February 9, 1999, before the Committee on Commerce, Science, and Transportation. The good doctor was from Atlantic County, NJ. I had never met him before, but he gave an outstanding recount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If I had to pay that $25,000, that would force me to drop many of my indigent patients that I now treat for free. Since Medical Manager insisted upon charging me for the new system, and because my one year-old system was no longer dependable, I retained an attorney and sued Medical Manager to fix or replace my computer system at their cost.

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

This settlement gave me what I wanted from Medical Manager—the ability to use my computer system as it was meant to be used. To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

Additionally, even Medical Manager has stated that it was pleased with the settlement. According to the Medical Manager president who was quoted in the American Medical News, ''[f]or both our users and our shareholders, the best thing was to provide a Y2K solution. This is a win for our users and a win for us.'' [pick up article and display to Senators] I simply do not see why the rights of doctors and other small businesses to recover from a company such as Medical Manager should be limited—which is what I understand this bill would do. Indeed, my attorney tells me that if this legislation had been in effect when I bought my system, Medical Manager would not have settled. I would still be in litigation, and might have lost my practice.

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

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

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

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

Thank you.

Mr. HOLLINGS. I thank the distinguished Chair.

I will run right down, trying to save time. It says:

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

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

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

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

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

The salesman pointed out the advertising brochure, and so forth.

But just one year later, I received a form letter from Medical Manager telling me that the system I had just purchased had a Y2K problem.

Here comes business. This is the practice of the business that is going on here now in June of 1999, 6 months ahead of January 1, 2000. The computer people are moving in and they are saying: Wait a minute, you have got a Y2K problem.

I quote again:

It was a problem that would make it impossible for me to schedule due dates or handle my administrative tasks—as early as 1999.

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

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

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

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

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

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

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

This witness appeared before the committee attesting to the fact that what really happened is the attorney put it on the Internet. Whoopee for the Internet. And once he got his case on the Internet, some 20,000 purchasers in a similar situation started calling on the phone and filing in. Then on a cost/benefit—business is business—they knew what the law was. They knew they intentionally misled. The salesman had said: Man, this thing will last you more than 10 years, like your last system. In a year it was already on the blink. They wanted to charge $25,000—more than he paid for the first system and the upgrade combined.

They got a free upgrade. They paid the lawyers, too. They were tickled to death to get out of this one after it got on the Internet.

Let me quote:

This settlement gave me what I wanted from Medical Manager—the ability to use my computer system as it was meant to be used. To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

Reading on and skipping a good part, to conclude:

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

It is working all over the country, and, frankly, at a very minimal cost. The consummate sum total of all products—this is product liability matters—of all product liability verdicts does not exceed the $12.1 billion that

Pennzoil received in a verdict against Texaco. When business sues business, oh, boy, as Senator Dirksen stood here at this chair and said: Then it gets into money. He said: A billion here and a billion there, and before long it runs into money.

This is something to protect the consumers of America. It is very much needed. They are working on it at the State level, and they have plenty of notice. They do not need a bill to say, come January 1st, give them another 90 days. We are going to give them 90 days beginning right now with the debate. And we are going to give them another 60. Happy day. We are giving them more days right now.

Just use the law, use your sense, do what business practices are doing all over the country. But there is no question that this thing here is just the footprint of a political exercise by those entities downtown at the Chamber, which I am embarrassed for because I used to be a champion of the Chamber of Commerce.

Talk about a businessman's politician, I challenge anybody to meet the record we made bringing business, and continue to bring, to the State of South Carolina. Incidentally, none of them have said anything about Y2K; none of them have said anything about product liability.

I remember taking another prospect the other day to Bosch. They make not only all the fuel injectors but all of the antilock brakes for Toyota and Mercedes and a 10-year contract for General Motors. Just going along down the line, I said: By the way, what do you have on product liability?

The fellow got insulted. He said: Product liability? He ran over and said: Look here. He showed me a serial number on every one of the antilock brakes. He said: We would know immediately what went wrong.

You see, substantive basic tort law brings about due care, brings about safety, brings about sound products. It is working in America. And here comes a bunch of pollster politicians and a downtown group, greedy as they are, trying to ruin small business, that is going to have a problem.

Here is what the Washington Post, which is usually on the other side of trial lawyers and everything else of that kind, said:

> The Senate is considering a bill to limit litigation stemming from the Year 2000 computer problem. The current version, a compromise reached by Sens. JOHN MCCAIN and RON WYDEN, would cap punitive damages for Y2K-related lawsuits and require that they be preceded by a period during which defendants could fix the problems that otherwise would give rise to the litigation. Cutting down on frivolous lawsuits is certainly a worthy goal, and we are sympathetic to litigation reform proposals. But this bill, though better than earlier versions, still has fundamental flaws. Specifically, it removes a key incentive for companies to fix problems before the turn of the year, and it also responds to a problem whose scope is at this stage unknown. Nobody knows just how bad the Y2K problem is going to be or how many suits it will provide. Also unclear is to what extent these suits will be merely high-tech ambulance chasing or, conversely, how many will respond to serious failures by businesses to ensure their own readiness.
>
> In light of all this uncertainty, it seems premature to give relief to potential defendants. The bill is partly intended to prevent resources that should be used to cure Y2K problems from being diverted to litigation, but giving companies prospective relief could end up discouraging them from fixing those same problems. The fear of significant liability is a powerful incentive for companies to make sure that their products are Y2K compliant and that they can meet the terms of the contracts they have entered. To cap damages in this one area would encourage risk taking rather than costly remedial work by companies that might or might not be vulnerable to suits. The better approach would be to wait until the implications of the problem for the legal system are better understood. Liability legislation for the Y2K problem can await the Y2K.

That is the message of Business Week. It was very interesting that they reached the same conclusion. I quote from that March 1 article:

> Other industries are following suit.

It went on to talk about the 2000.

> Through the Automotive Industry Action Group, General Motors and other carmakers have set Mar. 31 deadlines for vendors to become Y2K-compliant.

There is the Pinto case. They know what is coming down the road. They run good business. If I was on the board of General Motors, I would say right on. We are not waiting for political fixes of tort law by politicians looking for silicon contributions.

> In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts. Other companies are sending a warning to laggards and shifting business to the tech-savvy. ''Y2K can be a great opportunity to clean up and modernize the supply chain,'' says Roland S. Boreham, Jr., chairman of the board of Baldor Electric Co. in Fort Smith, Arkansas.

There you go. They look upon it as a wonderful business opportunity, the Y2K problem.

They, in essence, are saying, come on. Let's have the problem. Let's find out who is efficient, who can really supply us. Let's find out who can become compliant in time. You still have 6 more months. But politicians are coming up here, we have to get there and identify. We have to get those contributions. We have to get with the Chamber of Commerce and Victor Swartz at the NAM and that crowd and show them that we are good boys, and we are going to be on their voting charts that they will publish when I run for reelection and everything else. They have a political problem. It is not a Y2K problem. Business says, right on with the Y2K problem. We can clean up the supply chain, find out who is not really compliant and everything else early on here in 1999. We are not waiting for January 1, 2000.

Right to the point, this particular legislation changes 200 years of tried and true tort law, all for a special group that has the unmitigated gall to come in and say all this about punitive damages, lotteries, trial lawyers, frivolous lawsuits, and everything else.

Nothing is going to be frivolous after January. We have talked it to death already this year. They have published the business articles about it. Everybody has known about it. Every case, come January 1, ought to be punitive, I can tell you that, because they ought to know about it.

My particular power company group has already met and they have tested to make sure it works. My State of South Carolina was just cited, by July 1 the entire State system will be ready and going. So everybody is doing it.

What we see and hear at the Washington level with the McCain-Wyden amendment is, sit back, rest on your fanny, don't do anything. We are going to take care of you, because on the one hand we are going to provide a time that will put you out of business waiting the 90 days, because you are a small businessman and you have to do business. And then after the 90 days, we are going to say, by the way, the part was made in Malaysia, so you have the wrong party.

Now, that is the game in this particular McCain-Wyden-Dodd amendment. It should be defeated outright.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. I thank the Chair.

Mr. President, I am going to be brief this morning. I know my colleague from Colorado has been waiting. The Democratic leader of the Y2K effort, Senator DODD, has also been waiting. I will be brief to begin.

It is just a couple of hundred days to the new millennium. It seems to this Member of the Senate that how this body handles this legislation will say a great deal about our Nation's ability to keep our strong technology-oriented economy prospering in the next century.

I believe that failure to pass this responsible legislation would be like sticking a monkey wrench in the high-tech engine that is driving our economic prosperity. There is no question that there are going to be problems early next year stemming from the Y2K matter. What is going to happen, however, is that the frivolous lawsuits will compound those problems.

The sponsors of this legislation—the chairman of the committee, the Democratic leader of the Y2K effort, Senator DODD, and myself and others who have been intensively involved—believe that with this bill our Nation will be in a better position to be on line rather than waiting in line for a courtroom date when the problems occur.

We have heard my chairman, Senator HOLLINGS, and others talk about the matter of changing jurisprudence in our country. Senator HOLLINGS specifically, who I respect so much, talked about how 200 years of case law and jurisprudence is being changed.

This is a very narrow bill. Senator DODD and I insisted that there be a sunset date on this legislation. We believe,

and all the evidence points to the fact, that we are going to see the problems stemming from Y2K trailing off 1 to 3 years into the new century. We have put a tight 36-month sunset date on this legislation.

This is not changing Anglo-American jurisprudence for all time. This is a narrow bill that will apply for 36 months so that we do not have to have, for example, a special session of the Senate early next year to deal with this problem.

Mr. KERRY. Will my colleague yield for a question?

Mr. WYDEN. I have been waiting about an hour. I will be happy to yield to my friend, who I know has also been doing a lot of work.

Mr. KERRY. Mr. President, I ask my colleague if he might yield during the course of his statement so that we may have a good dialogue with respect to some of the issues he raises as he raises them.

The PRESIDING OFFICER. The Senator from Oregon has the floor.

Mr. WYDEN. Mr. President, I will be anxious to yield to my colleague from Massachusetts after I have had a chance for just a few minutes of discussion of this issue.

I will take a minute and outline an example of the kind of issue that we are going to see early next century and how this legislation specifically responds to it.

Let's say that Mabel's restaurant buys $10,000 worth of computers from the Jones Company and they crash on January 3 of next year. Mabel's restaurant loses a million dollars' worth of business as a result. Mabel writes to Jones Computer Company telling them that the crash was as a result of a Y2K failure; they want the computers fixed, she wants compensation for the million dollars.

Here is what happens: The Jones Computer Company has to respond within 30 days of hearing from Mabel's restaurant. They can say: Yes, Y2K failure; we are going to fix the computer the way Mabel wants, and we are going to pay the million dollars as well. Or they can say: We will fix the Y2K problem, but we don't think we ought to be responsible for the entire million dollars' loss. Mabel and Jones Computer agree Jones ought to fix them, they negotiate and come up with what Jones is liable for, and if Mabel doesn't think she is getting everything she ought to, she can go out and sue Jones immediately. Or she can say the situation isn't fixed the way she wants it and she can go out and again file a lawsuit immediately.

Now, some have said, well, what happens if the Jones Computer Company is bankrupt and insolvent? Well, Mabel can name in her lawsuit anybody she thinks is a responsible party. The jury will then decide what portion of the blame each potential defendant ought to bear. Virtually all of these cases are going to be decided on the basis of existing State contract and tort law. We lock into this legislation protection for existing contracts, and in virtually all of the cases State contract and tort law is going to be protected.

So what you are going to have is a situation where Mabel's restaurant, if it isn't fixed to her satisfaction, can go to court essentially immediately and recover all of her economic damages. She is in a position, by the way, to recover up to a quarter of a million dollars in punitive damages. I made my career with the Gray Panthers, the senior citizens group, before I came to Congress and now for 18 years in Congress, around consumer advocacy. It seems to me that is a pretty good deal, what I have outlined in this hypothetical case for this restaurant, for just about any consumer in our country.

I want to talk specifically about whether Americans are losing any legal rights in this particular legislation. I guess we could say they are losing the right to sue for a few days. As I said, they can sue immediately if they choose to. But the reason we are trying to have that 30-day period for defendants is to make sure they fix people's problems. It is better to be on line than waiting in line for that court date.

Second, I guess you can say the cap on punitive damages as it relates to small business means we are not going to stick it to small business. Well, I happen to think those small businesses are making an extraordinary contribution to our economy. So let's have a philosophical debate. The Senator from Massachusetts, who has worked hard on this issue, and I have a difference of opinion on that. We don't disagree on a whole lot of issues. I think we do disagree on that one. But I think we ought to protect the small businesses from these unlimited punitive damages.

Third, I guess you can say our legislation does make some changes with respect to joint and several liability. What we are saying, however, is that anytime you have a corporate defendant who engages in egregious conduct, rips off consumers, is guilty of fraud, joint and several liability applies in those kinds of instances. It also applies when we have individuals with a low net worth as well.

I would like the Senate to also reflect on the fact that essentially what we are doing here is what we did in the Securities Litigation Reform Act. It parallels most of the key issues in that area.

I want to wrap up by just mentioning briefly all of the major changes that were made in this legislation after it left the Senate Commerce Committee where Democrats, in a united fashion, opposed the bill.

I mentioned the 3-year sunset provision. I want it understood by all Members of this body that I will be against any bill that comes out of the conference committee that doesn't have a sufficient sunset provision. This is not changing Anglo-American jurisprudence for all time; this is a 3-year bill. We insisted on it after it came out of the Commerce Committee.

Second, the business community originally talked about a vague Federal defense that would essentially give them protection if they engage in reasonable efforts. On the basis of what we heard from the consumer groups, the Democratic leader of the Y2K effort, Senator DODD, and I thought that was too vague, to give corporate defendants that kind of break. So we cut that out.

Third, we dropped the new preemptive Federal standard for establishing punitive damages. The only people we are protecting are the small business people. We may have a philosophical difference of opinion on that. We think those folks deserve protection.

On the question of joint and several liability, when it came out of committee, even if you engaged in fraud, even if you had a low-net-worth defendant, there wasn't protection for the plaintiff. We insisted on those kinds of changes. We said if a corporate defendant engages in outrageous conduct, if they are trying to rip somebody off, you bet joint and several applies. Senator DODD and I insisted on that provision as well.

Also, a provision which is certainly not popular in the business community: There is liability for directors and officers if they make misleading statements or they withhold information regarding any actual or potential Y2K problems.

So at the end of the day, I believe we have a balanced bill. The defendants have an obligation under this legislation to go out and cure problems, to get their businesses online and make sure they are in a position so that this technology-driven economy can continue to hum as it has. The plaintiffs have equal obligations. They have a duty to mitigate. So there are obligations on the part of the defendants and obligations on the part of the plaintiffs.

But this is a narrow bill. It is going to discourage frivolous claims, but it is also going to make sure that those who have a legitimate, honest concern, as in that example of a small business I outlined here this morning, that that small business is going to be able to go after all of the parties, all of the parties responsible, and hold them liable for the portion of the problem to which they actually contribute. So I am very hopeful the Senate will pass this legislation.

We heard mention of the trial lawyers on the floor of the Senate earlier. Probably, prior to my involvement in this legislation, I was considered one of the better friends of those folks. Mention was made of the tobacco issue. I was the Member of Congress who got the tobacco executives under oath to say nicotine was addictive, which I think has had a little bit to do with helping to protect kids and consumers in this country. So I don't take a back seat to anybody in terms of standing up for consumer rights.

I say to the Senate today that as a result of months of difficult negotiations, led by the chairman of the Commerce Committee, Senator MCCAIN, the Democratic leader of the Y2K effort, Senator DODD, myself, Senator FEINSTEIN, and others, we have brought a balanced bill to the floor of the Senate. It is going to ensure that we do not throw a monkey wrench into this technology engine that is doing so much to ensure our prosperity.

Mr. DODD. Will my colleague yield?

Mr. WYDEN. Yes.

PRIVILEGE OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that Tania Calhoun, a fellow with the Select Committee on Y2K, be granted the privilege of the floor during consideration of the bill.

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

Mr. DODD. Mr. President, I wish to again turn to the Y2K liability bill and the very real importance of this issue. As you know, I have served for the past year with Senator BENNETT on the Senate Special Committee on the Year 2000 Technology Problem. For over a year, we have examined the coming millennium changeover and the possible problems associated with it. We have held hearings to examine the effects of the year 2000, including hearings on industry, finance, energy, telecommunications, international trade, community safety, health, and litigation. Throughout these hearings, the committee has become increasingly alarmed at both the perception and the reality of a gathering storm of potential liability and consequent litigation that could swamp our court system and impact our Nation's businesses.

Mr. President, I would dare say that many Americans, have in one way or another felt the direct effect of our Nation's burgeoning wave of litigation that has been growing steadily over the past half century. Whether it be the increasing cost of health care, insurance premiums or consumer products, we have all experienced the results of litigation costs. Americans have become accustomed to living in a litigious society. Occasional abuses of the legal system generally arise from problems that are generally limited in scope. An example of this can be found within the securities industry where the legal system was no longer an avenue for aggrieved investors but rather had become a pathway for a few enterprising attorneys to manipulate legal procedures for their own profit. So-called strike suits were generated whenever stocks went down and sometimes when they went up. These costly suits were frequently settled by companies seeking to avoid the expense of protracted litigation. I authored litigation reform legislation, which passed despite a veto by the White House. In other words, I have strongly supported litigation reform efforts in the past. As with securities litigation reform, the need for Y2K litigation reform arises from a national problem yet it should be addressed with a narrowly tailored solution.

Mr. President, only a narrowly tailored solution could effectively manage the demands of such a pervasive problem. Potentially, any business in the country might be swept into the Y2K problem, either because it is itself not prepared or because a firm it depends upon is not prepared. The Special Committee on Year 2000 has heard testimony that as many as 15 percent of the businesses in this country will suffer Y2K-related failures of some kind. Even now we read that small and medium-sized businesses across the globe are not taking the necessary steps to become Y2K-compliant, and many think they don't have a Y2K problem. Since businesses are interconnected these days, just one failure in one business may generate cascading failures that may then generate numerous lawsuits.

The mere fact that this is such a pervasive problem is in itself the primary reason why litigation on this matter could cost in the hundreds of billions. It has been suggested that as a result of Y2K, the United States could easily find itself witnessing not only a huge surge in litigation, this potential litigious bloodletting could have long-term consequences on the economic well-being of our country. By now we have all heard that the cost of Y2K litigation could reach the astronomical figures. Various experts, including the Gartner Group from my own state of Connecticut, have estimated that the costs of litigation may rise to $1 trillion. Such estimates, and I must stress that these are only estimates, underscore the need for serious review and a bipartisan approach to this issue. Massive amounts of litigation has the potential to overwhelm the court system, disrupting already-crowded dockets for years into the next millennium. We must be careful that an avalanche of lawsuits does not smother American corporations and bury their competitive edge. A maelstrom of class action lawsuits could have long-term consequences on the American economy and the American people.

There are several things that should be absolutely understood about this bill, first and foremost, the provisions in this bill will sunset in 2003. Secondly, this bill will not affect the rights of plaintiffs and defendants in personal injury actions in any way. Most importantly, this bill seeks to encourage individuals and businesses to do all that they can do to make themselves Y2K compliant and to encourage efforts to mitigate Y2K related damages.

This is a complex bill with many complex legal issues. Some of my colleagues are opposed to the section of the bill that provides for proportionate liability, which generally means that a defendant can be held liable only for the damages for which he is responsible. Some of my colleagues argue that it is unfair for an innocent plaintiff to run the risk that it might not recover 100 percent of its damages if it can't hold the defendant liable for that amount, even if that defendant was only responsible for 20 percent of those damages. I would respond by saying that not only is it equally unfair to demand that businesses with little complicity in a dispute be required to pay for most of the damages just because it has deep pockets. Moreover without some form of proportionate liability, plaintiffs' lawyers will always name a deep-pocketed defendant in a suit because they know the deep-pocket will have to pay for all the damages even if that defendant is only marginally responsible. I would remind my colleagues that the bill retains joint and several liability in cases where the defendant acted with specific intent to injure the plaintiff or knowingly committed fraud and does not affect personal injury cases. As a result, the proportionate liability provision in this bill finds a reasoned balance between the rights of plaintiffs and the rights of defendants.

As I have said on numerous occasions that a Y2K liability bill should not be a vehicle for broad tort reform. And efforts to impose broad caps on punitive damages are just that. The provisions that I propose aren't tort reform, but merely protect small businesses and the mom and pop enterprises by capping punitive damages only for small businesses that have 50 or less employees and caps damages at $250,000 or three times the compensatory damages, whichever is smaller. The White House has expressed concern about the bill's provisions for capping punitive damages, however as my esteemed colleague Senator WYDEN pointed out the last time the Senate considered this issue during last year's products liability bill, it included a cap on punitive damages lower than this, and the White House agreed to this proposal. It is unclear then why they are opposing the cap in this bill which provides for more punitive damages.

Other voices have suggested that this bill relieves businesses and corporations from accountability or responsibility. The bill does not do this, but does try to ensure that those who do sue will do so responsibly and specifically and that there will be ample opportunity for parties to solve the Y2K problem before litigating their Y2K problems. To ensure responsibility on the plaintiff's side, for example, the bill requires the plaintiff to provide specific details about the injuries they've suffered when they file a complaint. Plaintiffs who can articulate the nature of their injuries are less likely to be filing frivolous complaints. To ensure accountability on the defendants side, companies are given a narrow window of opportunity to solve any Y2K problems they've created before a lawsuit is filed. This window of opportunity gives them the chance to maintain a business relationship by providing professional and responsible

service to their customers before the business relationship is soured by a lawsuit.

There are those who say that state courts have been addressing issues like the Y2K problem for years and can continue to do so. They also say the state legislatures are fully capable of addressing the Y2K problem and that there is no need for the Federal Government to become involved. My colleagues should know, however, that nearly every state to date has either passed Y2K liability legislation or is considering such legislation, so Y2K actions in the future will probably not be set on long-standing state precedents. Instead, they may be decided under new untested and untried state laws. The bill provides in most cases, for uniform provisions to be applied to Y2K cases, enabling both plaintiffs and defendants to predict the law that applies to them. Furthermore, since all of these laws are different, firms engaged in interstate commerce—nearly every firm these days—will be at a disadvantage. It is difficult to do business where potentially 50 different and changing sets of laws might apply. The bill's provision of generally uniform guidance for Y2K cases levels the playing field and reduces the cost of doing business for potential plaintiffs and potential defendants. Multiple sets of laws also raise the problem of forum shopping, which occurs when plaintiffs try to bring their lawsuits in states where the laws are most advantageous to them. This leads to imbalances in our state courts, and high costs for defendants. Since the bill provides for generally uniform standards across the country, forum shopping in Y2K cases will not be a problem. State courts can maintain balanced caseloads: and the cost of defending Y2K lawsuits will not be unreasonably high due to forum shopping.

Some are of the view that the Y2K problem has been around for 40 years and should already have been solved, and that the Senate has no business stepping in to protect the high-technology industry. And we should be clear, we are not trying to protect the high-technology industry, but instead we are trying to manage a problem for all business and individuals, the mom and pop grocery and the major enterprise. We are all plugged in today, and the bill speaks to the massive litigation boom that has the potential to bankrupt all kinds of businesses, costing individual Americans their livelihoods.

While we are rushing to solve the Y2K problem and the policy issues therein, we should above all strive to enter the next century with a sense of vision, and this vision should include a prudent analysis of the looming challenges of potential Y2K litigation. As I have said before, no one wants to begin the next millennium by trading a vision of the future for a subpoena.

I commend my colleagues from Arizona, Oregon and others who have worked so hard on this. I thank my colleague from South Carolina, the ranking Democrat of this committee. He feels very strongly about this legislation. It could have—as Members have the right to do—delayed action a long time on this. In fact, to be able to get to the consideration of it today is something that I deeply appreciate. We disagree on this matter. It is one of those rare occasions when we do. But, when we do, that is a normal way of conducting business.

I happen to think this is a good bill. It is a practical bill. It is a 36-month bill—3 years. That is it. It is narrow in scope and narrow in time. It is a practical way to try to deal with a serious problem that looms on the horizon.

We have to have balance. It incorporates the ideas that are fair to the plaintiffs and that are fair to the defendants. It allows resolution of these potential difficulties without having to get to court. We are a very litigious society. Every person in the country knows that. I think every effort that we can make to avoid going to court instead of rushing to fix the problem we ought to do. This bill tries to achieve that goal without denying people the right to get to court.

I commend my colleagues in this effort. I hope that we can pass this bill today or tomorrow after covering a variety of amendments, and go to conference.

I thank my colleague for yielding.

Mr. WYDEN. Mr. President, I will yield the floor in just a moment.

First, I thank the Democratic leader for the Y2K effort, and Senator DODD for all of his counsel and help. He, of course, is the principal author on securities litigation legislation which, to a great extent, this bill is modeled after.

Just before I yield the floor, I, too, want to say to Senator HOLLINGS, the Democratic leader of the Commerce Committee, that I agree with so much of what he has done—whether it is a matter of Social Security surplus or campaign finance. I regret that on this one we have a difference of opinion.

I think that we have brought a balanced bill to the floor of the Senate. But I look forward to the many other issues on which Senator HOLLINGS and I are going to be in agreement.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

AMENDMENT NO. 609 TO AMENDMENT NO. 608

(Purpose: To provide that nothing in this Act shall be construed to affect the applicability of any State law [in effect on the date of enactment of this Act] that provides greater limits on damages and liabilities than are provided in this Act)

Mr. ALLARD. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 609 to amendment No. 608.

At the end of the amendment, add the following:

**SEC. . APPLICABILITY OF STATE LAW.**

Nothing in this Act shall be construed to affect the applicability of any State law that provides greater limits on damages and liabilities than are provided in this Act.

Mr. ALLARD. Mr. President, first of all, I want to say that I support the piece of legislation that has been brought forward by Senator MCCAIN, working with the Senator from Oregon, and also the efforts of the Senator from Connecticut in that regard.

I believe that we need to address a very important issue that is in this amendment. I appreciate the work that Senator MCCAIN and the Commerce Committee have done to craft this important and vital piece of legislation, especially in our high-technology society.

I support this effort to encourage prompt resolution of Y2K problems, minimize business disruptions, and discourage unnecessary and costly lawsuits. However, I am concerned about one aspect of this proposal: State laws addressing year 2000 liability issues will be preempted by Senate bill 96 unless we specifically provide for protection of stronger State statutes. I am proposing an amendment to do just this.

The Colorado State Legislature passed a strong statute which specifically addresses the Year 2000 liability issue.

Our Governor signed the legislation on April 5, 1999, and it will be effective July 1, 1999.

Colorado's law provides certain protections from damages for businesses that experience a year 2000 problem. While the intent of this state law is similar to that of S. 96, the state's protections are stronger than those proposed in S. 96.

Colorado's statute will be overridden by the Federal legislation we are considering today.

My State is not the only one in this situation; Texas, North Dakota, South Dakota, Virginia, Florida, and Arizona have also passed Year 2000 liability legislation that is stronger than this Federal law would be in one way or another.

The State laws are consistent with the intent of S. 96 and were supported by a broad cross-section of concerned groups.

In addition, 17 other States have pending Y2K legislation that is near passage.

We should not be working to nullify the States' efforts. I am offering this amendment in order to allow the greater State limits on damages and liabilities to stand.

The intent of S. 96 as it relates to State law is confusing, and most troublesome is the provision stating that the Federal law will supersede State law to the extent that it is inconsistent with the Federal law.

I am sure that several of my colleagues will be interested in protecting their States' Year 2000 liability laws.

I encourage those Senators to support my amendment, and I encourage

others to consider the justification for preempting State laws outright, especially those laws that establish stronger limits than proposed at the Federal level.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. MCCAIN. May I ask the Senator from Colorado to yield to me?

Mr. ALLARD. I am glad to yield to the Senator from Arizona.

Mr. MCCAIN. I will tell my friend from Colorado that I believe we are going to accept the amendment. So the yeas and nays will not be necessary. So I request that he retract his request.

Mr. ALLARD. Mr. President, I withdraw the request.

Mr. HOLLINGS. Mr. President, let me commend the distinguished Senator from Colorado. This was exactly the intent when we reported this bill out by 11 to 9. Of the nine that was the main concern—that if there were a problem, we have laws to take care of these problems. We have had laws on the books for years. Business was moving.

What the Senator is saying here in this particular amendment is that this shouldn't preempt any greater provisions of State law, that the State law would apply.

I think it is an excellent amendment. I am glad to accept it.

Mr. ALLARD. Mr. President, I thank both the manager for the minority and the manager for the majority for their favorable comments.

Mr. MCCAIN. Mr. President, I don't believe there is any further debate on the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 609) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, I thank the Senator from Colorado. I think it is an important amendment. I appreciate not only his concern for the entire bill but for the State of Colorado, since this obviously would have an effect on the hard work of the State legislature and the Governor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, at an appropriate time I may send an amendment to the desk. But I want to begin at least talking about where we are, where this bill currently puts us, and I have a number of points I would like to make in the effort to do that.

I am struck by one thing that has just happened, which is why I am a little less hesitant.

A few moments ago, the Senator from Colorado put in an amendment that preserved the State law; but at the same time the Senator from Oregon previously had made it very clear that their bill leaves in place the existing State law protections for consumers in both tort law and contract, but, in fact, what has happened is by virtue of the amendment just passed by the Senator from Colorado, they have actually changed that so that we have a different law for both contract and for tort.

It seems to me the bill has already, suddenly, by acceptance, moved to a significantly different place from what they had intended. Maybe this will be worked out later. I think it certainly makes this bill more complicated in many regards and will probably give yet another reason for the White House to veto this.

Let me state where I think we are with respect to this legislation. I supported willfully, happily, and with a sense of pride the securities reform legislation. Senator DODD was a leader on that, and I voted for it and voted to override the veto of the President because I thought it was important to address what was an egregious overreach within the legal community where we saw a pattern of abuse. We took action as a result of that. I think it was the right action.

In addition, I also voted for tort reform with respect to the aircraft industry, because Senator Kassebaum appropriately brought legislation to the Senate that made it clear that liability issues with respect to manufacturers—and she represented a State which is the home base for Cessna, among other aircraft manufacturers—and we made an appropriate change in liability law in the capacity of lawyers to bring these so-called dreaded lawsuits that we hear a lot about on the Senate floor. I voted for that and we changed it. It was for the better.

I say that because I want to make it as clear as I can in an atmosphere where people are quick to try to paint Members into a corner or sweep Members into one position of ideology or another. I am approaching this from a perspective of what I hope is common sense and fairness.

I heard the distinguished Senator from Arizona—who is a great personal friend of mine and a man for whom I have enormous respect and a great relationship—say a few minutes ago, and I will certainly pass it off merely as rhetoric, that the amendment I will offer is ''form over substance'' and it is designed to ''protect the income stream of the trial lawyers.'' It is exactly that kind of polarization in the rhetoric that is preventing Members from looking at what the Senate may or may not do here, what the Congress may or may not do, and what may happen to the American citizens that we represent.

I challenge my colleagues to show me one piece of language in the amendment that I will submit that makes it easier for a lawyer to bring a lawsuit. There is not one. In point of fact, every point raised by the high-technology community that they wanted Members to address is addressed in their favor—in favor of the high-tech community. They wanted a period to cure; we provide a period to cure. They wanted mitigation; we put a responsibility on plaintiffs to mitigate. They wanted economic loss and contract preserved; we preserve contract law. Finally, they wanted proportionality; all we require for them to qualify for proportionality is that they act as a good citizen and do two things: We ask they identify the potential in the product they make for a Y2K failure, and having done so, we ask that they let their purchasers, their clients, know of that potential.

That is all we ask. We don't ask that they fix it. They have a duty; they have a period of cure within which they can fix it. If they fix it within the duty, a period of cure, as the McCain bill, they would be free from any lawsuit.

That doesn't help plaintiffs. That is not a plaintiff's bill. That is not an effort to maintain the revenue stream for lawyers.

Let's talk about the reality of what is happening here. The reality is that an industry is coming to the Congress for the first time in American history and asking for prospective anticipatory relief from liability for something they make—the first time ever.

What would happen if Ford Motor Company came in here and said: Gee, we produced a car that instead of turning right while turning the wheel right, turns left. Forgive us. We will fix it. Don't worry.

There are similar ways in which companies could come to a Senator and say they don't want to be held liable because they ''kind of overlooked something.''

As the Senator from South Carolina said a little while ago, 20 years ago people knew about this. The founder and executive director of RX 2000 Solutions Institute said:

> I am a former computer programmer who used two digits instead of four to delineate the year. Granted, this was more than 20 years ago, but even then I was aware of the anomaly posed by the year 2000. When I expressed concern to my supervisor, he laughed and told me not to worry.

The Y2K bug is not something that just fell out of the sky. The Y2K bug is not a freak occurrence that happened as a God-given act. The Y2K problem is a result of conscious choices that people made or didn't make, deliberate decisions made to delay fixing a problem. They have led us to where we are now.

I represent high-technology companies, and I am very proud of them. I have had the support of high-technology CEOs, workers, and employees. I truly have a respect for the entrepreneurial capacity and the extraordinary path they are leading us on that is second to nobody in the Senate, and I understand the nature and complexity of this Y2K problem that suggests we don't want to have a wholesale slug of lawsuits that clog the courts, that create the capacity for small companies to tie up their capital, to diminish further entrepreneurial effort, to reduce creativity.

I understand all of those arguments. Together with Senator ROBB, Senator DASCHLE, Senator REID, Senator MIKULSKI, and Senator AKAKA, I am offering a compromise. It is not everything that the Chamber of Commerce wants, and it sure isn't everything the lawyers want. However, it is common sense, and it will be signed by the President of the United States into law. The bill that is being offered by Senator MCCAIN and others will not in its current form be signed into law.

If Members are really concerned about the Y2K problem and want to do something about it, we have an opportunity to legislate on the floor of the Senate in a way that is fair, that makes sense, and that will help the companies deal with Y2K, and at the same time, it doesn't turn around and ignore common sense about how to leverage good behavior within the community.

People ask, What are the real differences between this bill and Senator MCCAIN's bill? I will get to that. I will explain that. Two of the most important are on the issue of proportionality. That takes a little bit of explanation. Not everybody in the Senate is a lawyer. There are 55 Members who are, but even among lawyers there has always been a great tension on this issue of joint and several liability versus proportional damages.

Under the bill that Senator MCCAIN, Senator DODD, and Senator WYDEN are offering the Senate, a company will automatically get proportional liability. They don't have to be a good citizen. They don't have to go out and remediate, even though they say that remediation is the purpose of their legislation. There is no leverage in getting out of joint and several liability that encourages them to remediate. They automatically get proportional damages. The bill gives it to them right up front—automatic. So they could display the most negligent, the most reckless behavior, and still they get it. Is that possible? Some people will sit here and say no, that is not going to happen.

Look at the instance the Senator from South Carolina talked about. Ford Motor Company is historically recorded as having made a conscious business decision to measure how much it cost them to move the gas tanks and fix the gas tank problem versus the potential of damages. They chose not to move it and ultimately it caught up to them in a famous, famous case and they paid the price. That is why we have had something called punitive damages.

Punitive damages are not, as the Senator from Arizona said, simply to deter. Punitive damages are punitive. They are to punish in addition to deter. The deterrence is not just as to the behavior of the entity that is creating the problems. The deterrent is as to other potential entities, in the future. The reason we have the potential of punitives within the legal system is not just to deter behavior among a particular set of actors engaged in a particular behavior at a particular time. It is to say to other actors at a future time: If you do not heed the warning that the products you make could subject you to particular kinds of damages, then you, too, may be subject to them in the future. That is why, today, young kids have pajamas that don't catch on fire. That is why, today, people have all kinds of products in their homes where people are sensitive to what the impact of that product may be on a user.

My colleagues come in here and say we don't want punitives. These outrageous lawyers are going to come in and maybe get a punitive damage verdict. Let me tell you what my colleagues, either inadvertently or willfully, are doing. They are protecting companies from a requirement that the behavior they engage in has to be—let me make this very clear. Punitive damages are only awarded if a plaintiff can show the defendant acted in the worst activity possible, worse than mere negligence. We are talking about a defendant who has to commit either an intentional tort or otherwise here, because in their bill they have a very narrow limitation as to who will qualify for joint and several, very narrow. The fact is, they will exempt anybody who acts willfully, wantonly, maliciously, recklessly or outrageously.

I ask a simple question: What is the public policy rationale for coming in here and saying that a company that acted maliciously, willfully, recklessly, outrageously should somehow be completely exempted from the potential of joint and several liability and have a blanket exemption even before the fact? I do not understand that. I do not understand the public policy. Just because we do not like lawyers, just because on a few occasions there have been a couple of bad jury verdicts of punitive damages—which in every occasion, I say to my friends, have been reduced by the court on appeal. Those never get paid. They are great for headlines. They are wonderful for bad reputations for lawyers. But they don't get paid because the courts reduce them.

So I do not want to come here to the floor of the Senate and battle phantoms. I don't want to battle dragons that do not exist. I want to deal with the real problem of Y2K, and we deal with the real problem of Y2K because we make it tougher for lawyers to bring cases. I agree with what my colleague, the Senator from Connecticut, said a few minutes ago. He said we, in a litigious society, do not want a lot of frivolous lawsuits. We do not want to be caught up in court with a whole lot of lawsuits that are inappropriate.

I agree with that. I was outraged when I heard about lawyers automatically triggering lawsuits by computer when stocks changed and so forth. That is an abuse of the system. We ought to do everything in our power to require that the Federal courts, through the rules that are available to them, hold lawyers accountable so that frivolous lawsuits are denied and so forth. But we go farther than that. In my amendment, on Y2K we in fact lay out a series of requirements that make it much tougher for any lawyer to bring a case. Just like the legislation of Senator MCCAIN, ours is a 3-year bill. But ours is a 3-year bill that does not harm consumers. Ours is a 3-year bill that has a fair balance between this interest for remediation or mitigation and what we are prepared to contribute to the well-being of the whole industry, to blanket the whole industry.

Let me be specific about what I mean by that. The Y2K bill of Senator MCCAIN and company provides you automatically get proportionality, proportional damages. Ours says you have to do two things. You have to make the effort to identify the potential for a Y2K failure and then put out the information to the people you have dealt with about that potential.

The purpose of this legislation is to get companies to fix the problem ahead of time. In order to get a company to fix the problem ahead of time, you want to have the maximum incentive to the company. So if you say to the company: Look, you can have the lower standard. You can have what you want—which is you can get out from under joint and several; you can have proportional liability—but we want you to do something so you will encourage the very remediation and mitigation we are looking for. We want you to look at your products and see what the potential is for one of them to have a Y2K failure. When you find the potential, we want you to be a good citizen and tell the people who bought the things from you about it.

Why is that better than Senator MCCAIN's bill? It is better because of the Pinto principle. Some companies may look at the situation and say: Hey, the Senate just gave us proportional liability and we don't even have to worry about paying the full 80 percent if we think we have only 20 percent liability because we don't have to do anything. They gave it to us. It is cheaper for us not to fix it and wait and see if anybody comes after us. And when they do come after us, all we are going to have to do is do the 20 percent, not the 80 percent. I ask my colleagues, how is that an incentive for the good fixing of the problem beforehand that we are seeking?

The answer is, it is not. It will have exonerated people before the fact from the very thing we are trying to encourage, which is the incentive to fix it.

I find it very hard to believe that my colleagues in the Senate want to vote against asking companies to be good citizens. I find it hard to believe that my colleagues are unwilling to say a company ought to just look for the potential of failure. We do not require that they absolutely find it. We do not

require that they identify it. They have to make a good-faith effort to look for it.

Every company with whom I have talked tells me they have already done that. Most companies tell me they qualify today and they would accept that standard. I am proud to say that a company—I have a letter received today from Brian Keane who is co-president of the Keane Company headquartered in Boston, MA. It is a $1.1 billion information technology corporation and has over 12,000 employees located in 26 States. I quote from part of the letter, which I ask unanimous consent be printed in the RECORD.

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

KEANE, INC.,
*Boston, MA, June 8, 1999.*

Hon. Senator JOHN KERRY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR KERRY: Keane, Inc. is a publicly traded, $1.1 billion information technology corporation with over 12,000 employees located in 26 states. As you know, Keane is headquartered in Boston, Massachusetts.

We are encouraged by your leadership role in the ongoing debate over the Y2K liability legislation. Keane is concerned that this important legislation is being used as a ''political football'' and would encourage all parties engaged in the debate to work together to craft legislation that will not only pass the Senate and the House, but also be signed by the President. Y2K liability legislation is a matter of great importance to Keane because, over the past three years, Keane has worked with literally hundreds of American companies to help them solve the Y2K problem.

Keane believes the most recent draft of the Kerry language is a politically viable solution, because it serves the purpose of protecting against frivolous Y2K litigation and would be signed by the President.

Opponents of the Kerry bill argue that it does not adequately address the distribution of damages to responsible parties. However, Keane believes that the proportional liability language in the Kerry bill addresses this issue. Specifically, your staff has assured us that your language would protect defendants who demonstrate that the plaintiff restricted access to or failed to notify the defendant about any function(s) that could corrupt other Y2K vulnerable systems and defendant's who (1) performed a reasonable assessment with a defined methodology for resolution of the plaintiff's Y2K vulnerability prior to implementing a solution; or (2) implemented the Y2K solution with coordinated-comprehensive testing and quality assurance processes; or (3) secured, after completion of the remediation or testing, a formal acceptance agreement from the plaintiff. With such protections, Keane can endorse the Kerry language without reservation.

We appreciate your attention and leadership on this very serious matter and look forward to working with your office in the future.

Sincerely,

BRIAN KEANE,
*Co-President.*

(Mr. BUNNING assumed the Chair.)

Mr. KERRY. It says:

Keane believes the most recent draft of the Kerry language is a politically viable solution, because it serves the purpose of protecting against frivolous Y2K litigation and would be signed by the President.

Opponents of the Kerry bill argue that it does not adequately address the distribution of damages to the responsible parties. However, Keane believes that the proportional liability language in the Kerry bill addresses this issue. Specifically, your staff has assured us that your language would protect defendants who demonstrate that the plaintiff restricted access to or failed to notify the defendant about any function that could corrupt other Y2K vulnerable systems and defendants who (1) performed a reasonable assessment with a defined methodology for resolution of the plaintiff's Y2K vulnerability prior to implementing the solution, or, (2) implemented the Y2K solution with coordinated comprehensive testing and quality assurance processes. . . . Keane can endorse the Kerry language without reservation.

I believe that is reasonable, and I believe it is reasonable because they have looked at the reality of the language we have put forward. I want to go through a little bit of this now.

The McCain bill does not protect the individual consumer. They are requiring the individual person to go through the same hoops and the same requirements as a corporation. Again one has to ask: What is the public policy rationale for asking one—let's say one of these people sitting up in the gallery is assured, when they buy an alarm system for their house, that the alarm system is Y2K compatible. But they leave to go on vacation, the alarm system fails in the year 2000, their house is robbed, and they want recoupment.

They have to go through every hoop of a large corporation. They cannot go right in, file their suit, and get redress. They are going to have to be treated like the other corporate entities, and they cannot even get the discovery. They are left as powerless as, unfortunately, the average consumer is in our society today.

Again, when one looks at public policy rationale, it is hard to discern, and this is the main reason: Most of the Y2K problems that people are envisioning are corporation to corporation. We are talking about contract law. Most of this is contract law, and what we are talking about are companies that are going to have an interest conceivably in suing another company because the product they bought from that company does not do what the company that sold it to them said it would do.

Maybe under their warranties, just under the contract, it will be taken care of. But what the McCain bill wants to do is say to every American consumer: You are going to have to wait 3 months; you are going to have to wait the 30 days for the filing; you are going to have to refile if you were not filing with pleadings that were specific enough, according to what the corporation had to go through.

It is a remarkable thing, in my judgment, to thrust that kind of burden on a lot of situations that would be very difficult. Let me give you an example. This is very specific, and I apologize, it will take a minute, but I want to go through it.

Let's take a Mrs. Barnes who owns a home several streets away from the Acme Chemical Company. There are 85 million Americans who live or work within a 5-mile radius of one or more of the 66,000 facilities that handle or store high-hazard chemicals. Let me repeat that: 85 million of our fellow citizens live in homes near a chemical company.

On January 1, 2000, let's assume Acme's safety system fails and hazardous chemicals are released into the air and on to the land in the neighborhood. It forces Mrs. Barnes and others to evacuate their homes. People are allowed back into their homes after 2 days, but Mrs. Barnes' property is contaminated, including her well. She retains an attorney and she files a tort claim for recovery.

Acme Chemical claims that a Y2K computer failure was partially at fault for the safety system malfunctioning. Mrs. Barnes did not know that Y2K was a defense, of course, because most average citizens will not know this.

Under the new law, the Acme Company will treat the complaint as the notice. She has to wait 30 days for Acme to respond. In 30 days, they respond by saying: We can't pay for the cleanup and lost value. But she has to wait another 60 days to refile her lawsuit, notwithstanding that they tell her that.

Now the average American consumer is out 90 days and does not know where they are going, because we have protected the entity. All discovery is stayed during this period. There is not anybody in our system of justice who does not know what happens when you stay discovery for 90 days.

In 2 months, Mrs. Barnes refiles her suit. She refiles it against the company that installed the safety system. Under the McCain bill, she has to plead her case with a particularity in the complaint. She can state her damages as required, but she is going to have a lot of trouble specifying the materiality effect because she will not know what that is because there has been no discovery. The case is dismissed because the complaint failed to meet the pleadings requirements.

Assume somehow she can meet the pleadings requirement. She comes back, she finds other information to survive another motion to dismiss, and finally gets her day in court.

After hearing the case, the jury finds both defendants acted recklessly and outrageously for not identifying and fixing the problem, and it awards her $300,000 compensation for the property and the need to replace her water supply. They may find that Acme is 70 percent responsible and the safety system 30 percent liable under the proportionality. The total amount of her award might be $1.3 million, with the compensatory and punitive adjusted and reduced by the number of people according to the cap, because they only have 40 people who work for them. Under the cap in S. 96, that would be an adjusted award of $550,000.

We find that Acme cannot pay for all of the damage and files for bankruptcy. The safety system pays Mrs. Barnes $90,000 under their percentage, but that is not enough to clean up her property. She cannot get a new water supply, especially after she pays the legal bills. She tries to collect from Acme but without success. In the end, under the State law she would have received her $1.3 million, but because we are going to take that away, at the end, because of the Senate bill that is contemplated being passed here that does not protect this individual consumer, she will be left with only $135,000—not nearly enough to compensate for her loss, pay her legal fees, replenish her well and make her whole.

What is the public policy here? That is literally how this bill would work. That is taking us step by step through the requirements that are being put on the average American here, even though what we are really talking about doing here is protecting companies from lawsuits by companies.

To the degree that my colleagues say: Wait a minute, Senator. We know about those naughty things called class actions, and we don't want to have a class action brought against us, I say to my colleagues, I agree. We want to have a tough standard for the potential of any class action.

So we have put in our bill something lawyers do not like; we have put in our bill a materiality requirement that means they have to show that very specificity of defect, and it has to be specifically material to the impact on that particular damage that took place for that person. The majority of the people who make up the class have to have the same linkage to the materiality. That makes it very hard to go out and just construct a class. So I think class actions would, in fact, be seriously reduced and impacted in an appropriate way, I might add. So we are raising the bar. We are raising the standard.

Our bill, therefore, in my judgment, protects consumers. The McCain bill would apply all of its procedural burdens and damage limitations to individual consumers. I know that this is one of the things that the White House, the President, is particularly concerned about. We need to try to find some kind of reasonable compromise. We have not. And that begs a veto.

In addition, I have talked about the proportionality issue. It is hard to believe that colleagues would not be willing to vote that a company ought to engage in good citizen behavior of a two-step effort to identify mere potential—I underscore that mere potential; the company does not have to find the problem; the company does not have to cure the problem—they have to find the mere potential that something that they have created may have done it; and, two, let people know that they have done that. It is hard to believe that we would not vote to do that.

In addition to that, we impose an additional duty on the plaintiff. My colleague from Arizona said this is to keep the revenue stream going. We impose an additional duty on the plaintiff because existing State law generally requires plaintiffs to mitigate their losses in the case of a breach of contract. S. 96 puts on the plaintiff an additional burden to mitigate that isn't part of additional contract law, which allows a defendant to argue that the plaintiff should have avoided the damages based on information that was in the public domain.

So what we have done, to encourage information sharing and in order to encourage the remediation that we want, we leave the existing State law duties in place, supplementing them with an additional mitigation requirement if the defendant itself made the information available.

Why is that good policy? Because, again, it encourages the good behavior that our colleagues are saying everybody is going to engage in but for which there is no certainty and there is no leverage.

Here you have an additional burden on the plaintiff if the company undertook to share the information. What does that do? That means that the company is going to say: Oh, boy, if we go out and get the information and we put it out to the people we have sold it to, they are going to have the burden of showing that we somehow did not do what we were supposed to. We have shifted the burden to the people who then would be the plaintiffs. It makes it harder to bring a case. It also does more to encourage the mitigation that we want to get in this particular effort.

I want to make it very clear, I think it was back in April the Senator from Arizona, the chairman, put a letter in the RECORD from Andy Grove of Intel. The letter that was part of Mr. Grove's communication to the chairman. I will read the relevant portion of it:

> Dear Senator MCCAIN . . . The consensus text that has evolved from continuing bipartisan discussions would substantially encourage [bipartisan] action and discourage frivolous lawsuits.

He cited several key measures that are essential to ensure fair treatment of all parties under the law.

One was procedural incentives, the requirement of notice and an opportunity to cure defects before a suit is filed.

Senator MCCAIN has that in his bill. We have that in our bill: The same procedural requirement to cure, the same procedural effort to have alternative dispute resolution. We both encourage alternative dispute resolution and mitigation.

Second point: A requirement that courts respect the agreements of the parties on such matters as warranty obligations and definition of recoverable damages.

Senator MCCAIN does that; we do that. We provide the exact provision of contract protection except where there is an intentional—intentional—injury to a party. I ask my colleagues, what is the public policy rationale for exempting a company from an intentional wrongdoing to an individual that is not a specific intent to that individual but nevertheless fits under the concept of a reckless, willful, or wanton act?

Third, Mr. Grove said he wanted threshold pleading provisions requiring particularity as to the nature, amount, and factual basis for damages and materiality of defects. We do the same thing. Senator MCCAIN does that; we do that.

Finally, appointment of liability according to fault, on principles approved by the Senate in two previous measures. That is the securities reform bill. I have already spoken to that.

Senator MCCAIN gives it to them no matter what, forget it. You just get it because you are who you are. We give it to them if they take two steps: Identify the potential for a Y2K problem, which is what this bill is all about, and let the people they have dealt with know about that potential.

Again, we do not require that they fix it. We do not require with a certainty that they find it. We require that they just say there is a potential. That is what they have to go out and fix.

The fact is that is a minimalist standard that most companies ought to be prepared to live by. Every company I have talked to tells me they are doing that. Of course, they are going to do that. They would have no reason to be concerned about that.

So the real fight here, I suppose, is over punitive damages and over the breadth of reach that some people are making with respect to some other efforts which I can go into later as they arise in the course of the debate.

We have a consumer carveout. We have a duty to mitigate. We have proportionate liability.

The McCain bill also creates jurisdiction for almost all Y2K class actions in Federal court. We do not do that. First of all, the Federal bar has told us they cannot handle it. They do not have room for whatever that might mean. Secondly, I cannot think of anything less respectful of States rights, of the States' abilities to manage their own affairs with respect to how they want to proceed. There is no showing that that is, in fact, necessary. So the reach of the bill, in fact, goes further than that which is necessary to fix Y2K.

I want to emphasize that I still hope maybe we can find some medium where people will come together. It may be that the Senate isn't in the mood to do that right now, so it will just go ahead and pass S. 96—it will go to conference, come back, and then go to the President, and he will veto it, and we will come back. Or maybe when the President gets into the negotiations in the conference committee, the very things I am talking about will be resolved, and it will come back to us in a way that people of good conscience can say: This is good public policy because it protects consumers even as it creates a

fair process for the avoidance of frivolous suits and the avoidance of the burdening of an industry that we all respect and care about.

I think our bill does that. I think our bill justifiably protects the capacity of companies to be free from frivolous lawsuits. It increases the pleading requirements. It provides a cure period. It provides a duty to mitigate. It shifts a greater duty to the plaintiffs, and it does so, I think, in a reasonable and fair-minded way.

I regret that, unfortunately, this debate has been so caught up in a larger agenda of entities that are very forceful outside of the Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I continue to respect the views of the Senator from Massachusetts. He makes some very persuasive arguments.

I strongly recommend to the Senator from Massachusetts that he put his objections in the form of an amendment or amendments and we vote. We have been through, I think the Senator from Massachusetts would agree, literally weeks, if not months, of negotiations with the Senator from Massachusetts. At no time have we been able to agree. I strongly recommend that he just propose an amendment, and we have a vote on it. The Senate will be on record. We will be then able to move forward, as is the legislative process.

I will make a parliamentary point. I have asked the Democratic side to try to get an agreement within about an hour or so on remaining amendments that will be proposed of the 12. We now have about 6 or 7. I think the same is true on the other side. We want to give everybody ample opportunity to propose their amendments. Then I will also ask that we get those amendments in so we can start negotiating time agreements. I see no reason why we can't finish this bill by tomorrow evening.

I urge my colleagues, again, if you have an amendment on either side of the aisle, tell Senator HOLLINGS or me so we can get those 12 nailed down on either side so we can start negotiating.

I think it is very important to recognize that there has been amazing solidarity shown on the part of big, medium, and small business on this legislation, including the parts of it that were just addressed by the Senator from Massachusetts. They do not accept his remedy. I strongly admire the knowledge, the information, and the incredible tenacity that Senator KERRY has shown on this issue.

The reality is—and every once in awhile we have to face reality, I say to my friend from Massachusetts—we are going no further. However, if we are going no further in the process of negotiation, that does not change in the slightest the fact that the Senator from Massachusetts can propose 1 of these 12 amendments, or 2 or 3 or 4 of them, I think there is room, and we can debate and vote on them.

I yield for the Senator from Oregon.

Mr. WYDEN. I appreciate the chairman yielding. I will be brief.

I think what the chairman of the Commerce Committee is suggesting is a practical way to get at it. This Member of the Senate believes, with all due respect to my friend from Massachusetts, that the Kerry amendment would be a lightning rod for additional frivolous lawsuits with respect to Y2K. I think, for example, some of the language is so vague—this question of identifying the potential for Y2K failure.

Mr. KERRY. Will the Senator yield for a question?

Mr. WYDEN. As soon as I have made this point, because it is the chairman's time.

I think that is so vague that it is going to ignite a litigation derby. That is No. 1.

No. 2, we have had a kind of mixing of the concept of punitive damages and proportionality by the Senator from Massachusetts that I think is just not borne out by the bipartisan bill. Our punitive damage limitation applies only to small business. It has nothing to do with reckless behavior or careless behavior.

On proportionality, we are saying that you can hold everybody liable for exactly what they contribute, whether they are a small business or anything else.

Finally, on the example of the person, I believe it was Mrs. Barnes, and the chemical plant, she has all her existing remedies with respect to personal injury and wrongful conduct under negligence law. That is all outlined on page 10.

I appreciate the chairman of the Commerce Committee yielding me the time to briefly make a response to the Kerry amendment. As I say, I am a Senator who agrees with the Senator from Massachusetts on so many things. I do share his view that I hope by the time we are done with this legislation, we can have something that gets upwards of 70 votes. But suffice it to say, this Senator believes, with all due respect, the proposal of the Senator from Massachusetts will be a lightning rod for a variety of frivolous lawsuits.

I thank the chairman of the committee for yielding.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I intend to send my amendment to the desk. It is more inadvertence than anything else, and enthusiasm. I am not going to delay it whatsoever. I agree with him. We want to get on with this and make an effort.

Let me just make a couple of comments and address this. First of all, with respect to what the Senator from Oregon just said, the woman in the hypothetical I used would be precluded from the very kind of damages, because your bill limits it to physical injury. She is not physically injured. The fact is, the property damage and other damage would, in fact, not be subject to it.

Secondly, under the economic losses in the bill from the Senator from Arizona—and I think this is important for the Senator from Arizona to understand—data processing would not be included in the definition that you have with respect to economic loss. You speak to the question of property and you allow certain kinds of property, but you don't include in the definition of ''property'' intellectual property.

What happens if a company has a loss as a consequence of an entire software system that went down and their data being lost and, therefore, they do not provide a service to somebody? You could have a huge economic interruption as a result of that, and you don't include that as an economic loss. I will give you the precise language. There are serious, real consequences here.

Secondly, the Senator from Oregon just said that we are just precluding small businesses from punitive damages. Again, I just spoke at a graduation of a law school. I hate to say it, I had to stand up and say in front of the graduates of the law school, welcome to the most hated profession in America. They understood what I was saying.

You can't come to the floor of the Senate and quote me defending lawyers. That is not what I am doing. I am defending a principle. I am defending a cherished notion within America about how we redress problems.

I know people do not like being hauled into court. I almost laughed when I heard the Senator from Arizona say that all the big businesses and all the business community are united behind this bill. Of course, they are. Big surprise. They are about to get out from under an accountability system that suggests to them that they ought to behave some way.

The Senator from Oregon has just said to me, small businesses will only be held accountable for the proportion that they are liable. OK. What happens in this example? The small businesses in Oregon and the people served are in Oregon, but they are only 20 percent of the problem. The people who sold them the hardware and the rest of the equipment are in Japan. You cannot reach them, because you are a small lawyer and you don't have the long reach. You don't have jurisdiction, and you cannot get them conceivably. There are a lot of companies out there right now operating like that. So all you have is 20 percent of the person being made whole.

The theory of law for years, under joint and several, has been that in America we care first about the victim, and we are going to make the victim whole. Then the companies that have the power and the clout will sort out between each other who gets what. That has been a very efficient and effective distribution system. It is efficient.

What we are now saying is, sorry, average American, sorry, we are going to

give the power back to the corporate entities and you, the little average person, you are going to have to go to Japan and chase them, or you are going to have to just stomach your loss.

Small businesses are most of the business in the country. I am also pretty sensitive to that, because I am the ranking member of the Small Business Committee. I take great pride in the things that I have done to try to further small business efforts. I believe in it. I am the only Senator I know who has a zero capital gains tax bill here for targeted investments in the high, critical technologies. I would love to empower small business to do better. But all that punitives apply to are willful, wanton, reckless, destructive, irresponsible, unacceptable behavior. And what my colleagues are doing is coming to the floor, as a matter of public policy, and saying the Senate ought to go on record saying that we don't care how you behave. We are going to take away the capacity to make the average citizen whole, and we are going to give it to the corporate entity.

Now, I love these corporations. Look, I represent them and I respect the leaders of them. They are doing great work for America. We have created 18 million jobs in the last 10 years or so because of their virtues and capacities. I will come back here and labor on their behalf on encryption and a host of other things. But, fair is fair. Fair is fair. Are you telling me we should not have these companies do two simple things?

My colleague said the language is too vague on those two simple things. Well, let's talk about that for a minute. The bill says ''identify the potential.'' What does that mean, ''identify the potential''? Does anybody have trouble with that? It means to identify whether the product the defendant made or sold had the potential for Y2K failure. How would you know that? You know you have an embedded chip in it. You know whether or not in the digitalization process you use two or four digits. I am not technically competent enough to tell you all of them, but there are people who are; they are running around the country fixing these things.

The IRS has invested $1.3 billion and several years of effort in order to be Y2K compliant, and they are today. How did they get there? They got there because they asked this very question. Do we have the potential for failure? And if we do, what are we going to do to fix it?

My colleagues come to the floor and they are trying to tell us that this bill is to encourage people to fix it. But what do they do? They let them right out from underneath it, give them an upfront, blanket exemption saying: We are not going to require that you be subject to joint and several; you don't have to do anything; you just walk. And that is wrong as a matter of policy.

All we ought to ask them to do is the very thing this bill's purpose is about: Look and see if you have the potential for failure and tell the people you sold it to. If we can't ask them to do that, then we are not standing up for the average citizen in this country. It is that simple.

AMENDMENT NO. 610 TO AMENDMENT NO. 608

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

Mr. KERRY. Mr. 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 Massachusetts [Mr. KERRY], for himself, Mr. ROBB, Mr. DASCHLE, Mr. REID, Mr. BREAUX, Mr. AKAKA, and Ms. MIKULSKI, proposes an amendment numbered 610 to Amendment No. 608.

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

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

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

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, again, I find the logic of my friend from Massachusetts somewhat tortured. He maintains that these ''two simple things'' will meet the approval of the high-tech community. Yet, it doesn't. So in his mind, of course, clearly it should. But the fact is, it doesn't.

So we are in a very interesting kind of hyperbole here that the Senator from Massachusetts keeps saying the high-tech community supports this and this is perfectly acceptable to them. Yet, they don't support it or agree with it—and for good reason—because these ''two simple things'' are directed at the high-tech defendants, not the rest of the business community that will be defendants. When a wholesaler fixes their systems within their company, yet it leases a trucking group to deliver whatever that product is, and then they are subject to joint and several liability, then, of course, it opens the floodgates.

The Senator from Massachusetts seems surprised that, or somehow casts doubt about the motivation of business in supporting this legislation. Of course they are supporting it, because they don't want to be subject to a flood of litigation. That is the whole purpose of the legislation. The whole purpose, I tell my friend from Massachusetts, is to stop a flood of litigation.

Mr. KERRY. Will my colleague yield for a question?

Mr. MCCAIN. In a second. The Progressive Policy Institute of the Democratic Leadership Counsel says:

Despite the number of lawsuits avoided during a 90-day cure period, or the number of disputes settled through ADR, the cost of Y2K litigation will remain exorbitantly high as long as opportunities remain for people to abuse our legal system. However, there are a number of Y2K-specific reforms that can be enacted to curb that abuse and the subsequent costs. To begin with, responsibly strengthening pleading standards would keep many baseless suits out of the systems. Plaintiffs seeking money awards for damages should be required to state the particular nature and effects of material Y2K defects and how they figured into calculating those damages. In addition, to insure fairness, rejected plaintiffs should be allowed to refile their suits with the required specifics in order to protect legitimate claims that are not initially apparent. Furthermore, legislation should deny awards for damages that could reasonably have been avoided.

Class action suits are normally the most expensive and wasteful of product liability lawsuits and often contain enormous numbers of groundless complaints. Legislation should insure that the majority of members in class action suits have truly experienced Y2K-related failures and deserve redress. By reducing the number of invalid claims, waste and fraud could be significantly eliminated from the adjudication of class action suits.

The effects of abusive litigation could be further curbed by restricting the award of punitive damages.

That is what this legislation does. That is where the Senator's amendment will open a loophole wide enough to drive a truck through.

Punitive damages are meant to punish poor behavior and discourage it in the future. However, because this is a one-time event, the only thing deterred by excessive punitive damages in Y2K cases would be remediation efforts by businesses.

I say again to the Senator from Massachusetts—and we have had this dialog for hours on the floor, and for hours in the committee, and I will continue because of the enormous affection I have for the Senator from Massachusetts. We will continue this dialog. We are in fundamental disagreement on the interpretation of the Senator's proposed amendment. It is as simple as that. So I would be——

Mr. WYDEN. Will the chairman yield briefly?

Mr. MCCAIN. The Senator from Massachusetts has asked me to yield first.

Mr. KERRY. I am happy to let my colleague go first, and I will come back.

Mr. MCCAIN. I yield to the Senator from Oregon for a question.

Mr. WYDEN. I thank the chairman.

It seems to me that on the basis of everything we have gone through in terms of the committee, there is a reason that the high-tech community is overwhelmingly opposed to the Kerry amendment. As far as I can tell, there is this company the Senator from Massachusetts has talked about, and I will acknowledge that. But the high-tech community, as far as I can tell, is overwhelmingly opposed to this Kerry amendment. As far as I can tell, the reason they are is that the Kerry amendment introduces vague, ill-defined terms that are going to trigger

more litigation. On the basis of everything we went through in the committee, is it the chairman's judgment that that is the reason the high-tech community is overwhelmingly opposed to the Kerry proposal now before the Senate?

Mr. MCCAIN. That is my understanding.

Obviously, I would like to include the Senator from Massachusetts in this dialog. Under his amendment—and I will be glad to respond to his question—isn't it true that defendants who are in the middle of the supply chain may be sued for a breach of contract caused not by the failure of the defendant's computers but by those elsewhere in the supply chain? That is the fundamental problem we have with Senator KERRY's amendment.

I yield to the Senator from Massachusetts.

Mr. KERRY. Mr. President, let me respond to that because it is very important. May I also respond by saying this, and, again, I say this with great respect and affection for both of my colleagues. But to be on the floor of the Senate using as a justification the passage of something that does somebody a lot of good, the fact that they like that it does them a lot of good, is kind of a strange argument. If the fox is there to guard the chicken coop and you are going to put a big fence around the chickens, and you ask the fox, ''Do you like it?'' and he says, ''No,'' that is no surprise. It is the same thing here. Who is going to be surprised that the companies are going to say: Of course, we support your bill, because it gives us more than we really properly ought to get.

Having said that, let me say to my friend that our bill does everything the Senator from Arizona just said.

We could do all of the things the Senator listed. The only difference is, we asked them to identify the potential for the failure and provide information that is calculated to reach the people. We don't even require that it reach the people.

My colleague just said this is going to open up a whole lot of litigation.

I ask my colleague, has he asked companies? Does he know of a company that isn't trying to identify their Y2K failure? Does he know of a company that, having done that, would not tell the people to whom they sold it?

Mr. McCAIN. First of all, my response to the Senator from Massachusetts is that these companies and corporations that are in favor of this legislation—did the Senator from Massachusetts forget that half of them could be plaintiffs? Why is it that so many of them who could be plaintiffs are in support of this legislation? They are not just the defendants, they are the plaintiffs.

The fact is that we are helping business all over America. I have to tell my friend from Massachusetts that I came here to help business all over America. I came here to help entrepreneurs. I came here to stop the flood of litigation that has so distorted the business system in America. I came here with a clear campaign to say, look, we have too many frivolous lawsuits in America; we have too many class action suits; we have too many lawyers and not enough business people.

I am unashamed and unembarrassed to tell the Senator from Massachusetts that I am here in behalf of defendants who, if I took a poll tomorrow, would number 90 percent. I don't know the percentage that are lawyers, but I know it grows bigger by the day. But all of those who are lawyers would say: Yes, please, Senator MCCAIN, help business get off this terrible burden where we are paying so much, where we have become a litigious society in America and so many terrible things have happened as a result.

As I pointed out, Mr. Tom Johnson—a man who is becoming famous here on the floor of the Senate, I might add—is bringing these lawsuits against honest, hard-working people, especially small and medium-sized businesses.

If the Senator from Massachusetts is astonished—and I include the Senator from Oregon in the category—at trying to help businesses, small, medium, and large, from the incredible burden of litigation which has flooded the United States of America—guilty as charged. Guilty as charged.

The second aspect of this issue is clearly what I, as a business owner, would tell people. It is that I, as a business owner who distributes my product, would not be able to vouch for other people and other businesses that are also part of this distribution chain of my product.

That is again where I get back to the point that I do not know of any business in America that doesn't want to fix the Y2K problem. I know lots of business people who don't know, because of the distribution system—both through distributors and retailers—that they can vouch for those persons' willingness or ability to fix the Y2K problem, which then opens up that flood.

I hope I answered the Senator's question.

Mr. KERRY. Mr. President, I hate to say this. I say it again with affection and respect. But the Senator didn't actually completely answer the question, because he didn't tell me of any company in the country that wouldn't do what I have said or that hasn't done what I have said.

Mr. McCAIN. My answer is, I know of no company or corporation in America that would not want to have the problem fixed.

Mr. KERRY. That is precisely the point. The Senator has just acknowledged precisely the point I am making. I come back to it.

I am not serving on the Banking Committee and the Commerce Committee and the Small Business Committee because I don't care about business. I have the same desires as the Senator from Arizona to see business succeed. He came here for the same purpose—to create jobs and to make the country better for all of our citizens.

But this bill is not going to make lives better for all of our citizens in its current structure. Yes, it is wonderful for those corporate entities to be singled out to get the benefits of it. I agree with the Senator. Everything in the amendment I have offered does the exact same thing—to protect those companies, as his does, with one exception. We are fighting here over one big exception right now. This is the exception. The very thing the Senator from Arizona just acknowledged—he said yes, every company ought to want to find that, and I don't know of any company that isn't trying to.

That is the precise standard that we are trying to be sure companies embrace—to have a guarantee that we are doing the most to encourage mitigation, to fix the problem, inadvertently or otherwise.

The Senator's bill gives them automatic entry into the proportionality of damages, without the guarantee that they tried to make that effort. Why is that important? It goes to the Senator's question to me. It is important because some companies may conceivably choose the cheaper road, which is to not necessarily pay for the fix up front but wait and see what the damage might be and not engage in the very mitigation we have encouraged.

If that company is the midline company that the Senator just referred to, under his proposal they would automatically be subject to get the proportional level of their damage. But they could have weighed on an economic basis whether the bottom line of that proportional damage was such that they would rather wait and see, or weigh that rather than fix the problem and avoid whatever the consequences may be to consumers generally.

I don't think that is good public policy. Maybe we differ on that. I think there is a fair way to provide all of these companies with the protection that we want them to have, and we want them to have an appropriate level of protection.

But, again, my colleagues can't show me why it is unreasonable to suggest that a company can't identify the potential for a Y2K failure. How can you not do that? All you have to do is sit down with your design people, have a meeting, document the meeting, and ask a couple of questions: Do we have a Y2K problem? Do we have any invented processors? What products do we have them in? Whom did we sell them to? Whoops. Let's send a letter to those people and tell them.

Is that asking too much?

The purpose of this bill is to encourage people to fix the problem. If you do not ask people to do that, how can you say you are really exhausting all of the possibilities of how you are going to fix the problem? I don't understand that. I

say to my colleagues that that is one thing we are fighting about.

The other thing is the question of dealing with damages. I know I have said it before. Some people do not like dealing with damages. But the standard you have to get over to have punitive damages apply—I don't know of anyone in the high-tech industry, I can't imagine a company in the high-tech industry, that would be subject to that. Any CEO I have met has as much public conscience as anybody in the Senate and is engaged in a bona fide effort to make their company work. I don't know anybody who is not.

But if there is some junk artist out there who is just hungry for the bottom line, trying to gamble on all of the Internet success and everything that has happened with high-tech stocks, who started out fly-by-night, who wanted to go out there and make a quick hit, if that person did it, and willfully, wantonly, recklessly, outrageously impacted the life of an American citizen, I want that American citizen to be able to have redress for that. I don't think it is right to deny them that.

Mr. WYDEN. Will the chairman yield?

Mr. McCAIN. If I could respond very quickly about one aspect of this, I have confessed with great pride and sometimes with pleasure that I am not a member of the legal profession. But I am afraid the Senator from Massachusetts does not quite comprehend what we are dealing with here.

This is a book, ''Year 2000 Challenge, Legal Problems and Solutions,'' from the National Legal Center for the Public Interest. Let me quote for the Senator what we are facing so we can really put this in the proper perspective.

The unfortunate fact is there is no ''silver bullet'' solution to the year 2000 problem in any organization, and the risks and difficulties in any Year 2000 project of even moderate size and complexity can be enormous. None of the remediation techniques described above is without disadvantages, and for many IT users the time and resources required to accomplish Year 2000 remediation far exceed what is available. Most major remediation programs involve finding and correcting date fields in millions of lines of poorly documented or undocumented code. There is no single foolproof method of finding date fields, no assurance that all date fields will be found, corrected, or corrected accurately, and no assurance that corrections will not produce unintended and undesirable consequences elsewhere in the program. In many cases it will be necessary to rely on information or assurances from third party vendors regarding the Year 2000 compliance of their products, even though experience teaches that many such representations are inaccurate or misleading. Comprehensive end-to-end system testing of remediated systems in a simulated Year 2000 ''production'' environment is often impractical or impossible, and less intensive testing may fail to detect uncorrected problems. And even where an IT user succeeded in making its own systems Year 2000 ready. Year 2000 date handling problems in external systems (such as the systems of customers or suppliers) can have a devastating effect on internal operations.

With all due respect to my friend from Massachusetts, this is what we are trying to get in our legislation and this is what the Senator's amendment basically prevents us from doing.

Here is the problem. I don't claim to have the expertise that the Senator does on punitive damage or on joint and several liability. I know the problem pretty well. We have had extensive hearings in the Commerce Committee, and we have talked to all the experts. This is really what we are trying to take care of—not as the Senator from Massachusetts asked me, in good faith, do I believe there is any company or corporation that is not trying to fix a problem. I don't know of any.

I think what I read to the Senator from Massachusetts explains how difficult and enormously complex solving this problem is. This is why, although I respect and admire the Director of the FAA who will fly all day long on January 1, the year 2000, I intend to remain at home that day. However, I encourage others, as the Senator from Massachusetts, to fly around the country.

I say seriously to my friend from Massachusetts, I hope this explains to him the complexity of the problem. We not only can take care of the individual manufacturer, but all the systems and subsystems that are connected with it are not addressed, in my view, adequately, in the Senator's amendment.

Before I yield to both Senators, could we agree to some time on this amendment?

Mr. KERRY. Mr. President, I want to cooperate. I cannot agree at this particular instant, because I need to canvas the cosponsors to figure out who desires to speak. We have no intention of prolonging this.

Mr. McCAIN. If the Senator from Massachusetts and his staff will work on that, I appreciate that.

I yield the floor.

Mr. KERRY. Mr. President, let me come back to the remarks of the Senator from Arizona, because I appreciate everything he just read. I would like to be associated with putting it into the RECORD. However, I don't associate myself with the notion that the consequences of what he just read ought to be automatically given a bye, a pass, if you will, without some duty to make the determination of what he just read.

Any company that is going to be subject to what the Senator from Arizona just read would answer the standard I have put forth about a potential for failure in the affirmative in 10 seconds. The Senator from Arizona has acknowledged that. We are almost fighting about a difference that is not a huge distinction here, but it is significant enough because of what we want to do to achieve the mitigation we want to get out of this bill.

There isn't a company in good standing in this country that cannot answer affirmatively the two-step qualification for proportional damages. To suggest that we will give every company an automatic bye without requiring them to do that is to actually adopt a bill that doesn't go as far as it can to achieve the purpose that the Senator from Arizona states we are trying to achieve.

That is why there is a fundamental difference here.

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

Mr. WYDEN. Mr. President, I will be very brief. I want to respond to the point the Senator from Massachusetts made with respect to the standard that he would apply in identifying the potential for Y2K failure.

I believe that using language that vague virtually ensures that a significant number of frivolous cases are going to end up going to juries—exactly what we fear. What will happen, companies will attempt to defend themselves, the judge will be offered a motion to dismiss, and the company will say: It is frivolous; we move to dismiss the case. The judge will look, and if this were the standard that were actually adopted, he would say: I don't know whether they identified the potential for Y2K failure. And we would, in fact, be igniting an additional round of frivolous lawsuits.

A motion to dismiss under this standard will get by because it is so vague.

With respect to the economic losses the Senator from Massachusetts has talked about and believes are inadequately addressed under our bipartisan legislation, in this bill we keep State contract and tort law in effect. We keep State contract and tort law in effect. The problem is that there are some who disagree, some who would essentially like to create torts out of these contractual rights where no torts exist.

Finally, with respect to punitive damages, the Senator from Massachusetts said again that our bipartisan bill would hollow out, for example, protections that are needed for consumers. We ensure our standard of evidence with respect to this is in line with State requirements. Again, we are trying to take a balanced approach.

I hope my colleagues will oppose the Kerry amendment. I think it ensures we will see a significant number of frivolous suits not being dismissed where they ought to be but essentially ending up going to juries and causing great economic duress early in the next century.

I yield the floor.

Mr. McCAIN. Mr. President, for the purpose of proposing some amendments, I ask that the pending Kerry amendment be set aside for that purpose, with the proviso of returning immediately to the Kerry amendment.

I send to the desk two amendments by Senator MURKOWSKI, an amendment by Senator GREGG, an amendment by Senator INHOFE, and two amendments by Senator SESSIONS, and I ask for them to be numbered.

The PRESIDING OFFICER. Without objection, the amendments will be numbered and laid aside.

Mr. MCCAIN. Mr. President I ask unanimous consent we return to the pending Kerry amendment.

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

Mr. MCCAIN. One of the irate staff just came over here. I saw no harm associated with that process. If there were an objection, I would be glad to remove those amendments. They were simply amendments to be numbered in case when we get an agreement on both sides of the aisle.

I ask unanimous consent to withdraw those amendments, and we will leave everything as it was before.

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

Mr. MCCAIN. Regarding the Kerry amendment, I want to mention that a company that has made no effort to prevent failure or fix its systems will undoubtedly be found more responsible for a plaintiff's injuries under the terms of S. 96 in liability already proposed, without the hazard of making a company that can't control the entire chain of distribution liable for the entire damage awarded the plaintiff. Our opposition to the pending Kerry amendment is almost that simple.

I note that the Senator from California is waiting to speak. I hope by the time the Senator is finished, perhaps we could have some agreement for a vote on this amendment so we could move forward, as well as agreement on the other side for resolving the remaining 12 amendments on both sides.

I yield the floor.

The PRESIDING OFFICER. The Senator from the great State of California.

Mrs. FEINSTEIN. Mr. President, I rise to support the underlying McCain-Dodd-Wyden-Lieberman-Feinstein bill, because I believe this bill is a once in a millennium, 3-year law. Without it, I believe we could see the destruction or dismemberment of America's cutting-edge lead in technology. We all know that the year 2000 is rapidly approaching and with it there comes a wide variety of possible disruptions relating to the so-called Y2K problem.

It is true, though, that no one really knows how big the problem will be or how small it will be, so government organizations, businesses large and small, and private individuals are all scrutinizing the area from their own particular perspective. The area that has received the most attention is concern over a possible flood of lawsuits that could clog courts and distract businesses from solving these problems early in the next millennium. Several well-known consultants and firms, including the Gartner Group, have established that Y2K litigation could quickly reach as high as $1 trillion. So concerned Members of Congress, including Senators MCCAIN, HATCH, DODD, and others, have been working for many months in an attempt to craft a solution to what has recently been described as this trillion-dollar headache.

The genesis of the bill now pending on the floor was a request by literally dozens of companies and more than 80 industry groups—including the Semiconductor Industry Association, the National Association of Manufacturers, the Chamber of Commerce, the Information Technology Association—to develop legislation to prevent frivolous and baseless lawsuits that could jeopardize companies moving to quickly solve Y2K problems. The trick was not at the same time to prevent the suit with merit.

I began working on a similar bill with Senator HATCH almost 6 months ago, because I became convinced that the Congress did need to intervene in order to ensure that Y2K problems are quickly and efficiently solved. Now, after several months of negotiating and a combined effort among a number of different Senators, I believe we have reached a fair compromise. This bill is especially important to California where over 20 percent of the Nation's high-tech jobs are located. The problem actually extends even beyond high-tech companies to the lives of employees, stockholders, and customers in a wide range of American businesses.

One of the first indications I had of the depth of the concern was when groups of consultants began to come to us saying they refused to become involved in helping companies solve Y2K problems for fear that they would open themselves up to being sued later on. Instead, they would rather just not get involved. One such group was the American Association of Computer Consulting Businesses that represent 400 companies and more than 15,000 consultants. They told me personally that they were going to refuse to enter into any Y2K consulting contract until they had some kind of additional protection. So it became very clear to me that, indeed, we do have a real problem. I believe the underlying bill crafts a real solution.

I think it is important to say, and say again and again, that nothing in this bill is permanent. It is simply a 3-year bill, limited to specific cases. The bill applies only to Y2K failures and only to those failures that occur before January 1, 2003. Let me quickly go over the provisions as I see them.

The 90-day cooling off period during which time no suit may be filed enables businesses to concentrate on solving Y2K problems rather than on fending off lawsuits.

The bill provides for proportionate liability in many cases, so that defendants are punished according to their fault and not according to their deep pockets. I am not an attorney and I have always felt this was the most fair way to go, except in certain situations, and the bill does provide for those certain situations. I would like to go into this in greater detail.

The bill also encourages parties to request and use alternative dispute resolution at any time during this 90-day cooling off period. For Y2K class actions, the bill requires, in order to qualify, that a majority of plaintiffs must have suffered some minimal injury. That would avoid cases in which thousands of unknowing plaintiffs are lumped together in an attempt to force a quick settlement.

For small businesses, the bill limits punitive damages to $250,000, or three times compensatory damages, so as to deter frivolous suits. It prevents the ''tortification'' of contracts with several provisions that require businesses to live up to their agreements rather than turning to the courts in the hopes of avoiding their responsibilities.

These are not the only provisions in the legislation, but these provisions represent the basic premise of a bill that does not seek to prevent the truly injured from recovering damages, but will hopefully prevent the frivolous lawsuit and keep companies from solving problems without delay.

There is much that is not in this bill, and there have been many changes made in the bill, certainly since I became involved in it. I would like to just indicate a few of them.

All caps on attorney's fees have been removed. Punitive damage caps for large businesses have been eliminated. Punitive damage caps for small businesses have been increased from three times actual damages to three times compensatory damages. All government regulatory or enforcement actions have been exempted from the bill, and three exceptions to the elimination of joint and several liability are provided in order to protect smaller plaintiffs and those who cannot recover from every defendant. The caps on liability for officers and directors have been removed, and the bill has been changed to provide that per suit there is only one 90-day cooling off period.

I think the cooling off period is probably very well known and probably very well accepted, so let me dispense with any further explanation on that point. But let's go to one of the more controversial parts, proportionate liability.

One of the reasons this bill is important to the affected companies is that it prevents plaintiffs from forcing quick settlements from innocent defendants who should be trying to solve Y2K problems. Additionally, under the system of joint and several liability, a defendant found to be only 20, 10, or even 1 percent at fault can nonetheless be forced to pay 100 percent of the damages. This system, as we all know, encourages plaintiffs to go after deep-pocket defendants first in order to force that quick settlement. It is my basic belief that this is fundamentally unfair, and the bill eliminates joint and several liability in some Y2K cases.

Under the new system, for this brief 3-year period, defendants will be responsible only for that portion of damage that can be attributed to them. The bill does have, as I have said, three specific exceptions to the elimination of joint and several liability, and those

were taken from the Private Securities Litigation Reform Act recently passed overwhelmingly by the Congress and signed into the law by the President.

First, any plaintiff worth less than $200,000 and suffering harm of more than 10 percent of that net worth may recover against all defendants jointly and severally. This exception in the bill protects those plaintiffs with a low net worth but will not unduly injure defendants, because the damages recovered will not be that great.

Second, any defendant who acts with an intent to injure or defraud a plaintiff loses the protections under this bill and is again subject to joint and several liability. The bill does not protect those acting with an intent to harm.

Finally, the bill provides a compromise for those cases in which defendants are judgment-proof. In cases where a plaintiff cannot recover from certain defendants, the other defendants in the case are each liable for an additional portion of the damages. However, in no case can a defendant be forced to pay more than 150 percent of its level of fault.

These proportionate liability provisions offer a more fair and, I truly believe, rational approach to the system of damages in Y2K cases. Without this more balanced system, a few large companies will soon be forced to bear the entire brunt of Y2K litigation regardless of fault, and that is the problem. That is what will destroy the cutting edge of American prominence in this area, and that will result in jobs being lost.

Under the system of proportionate liability, this bill holds defendants responsible for the extent of their fault and no more, with the exceptions I have just mentioned.

Another area that I think deserves a little bit of clarification is the class action area. Under the class action section of this bill, a year 2000 class action suit cannot proceed unless the defect upon which the action is based is material to a majority of class members. This section is very important. Essentially, this clause prevents the type of ''strike suits'' we saw in the securities litigation area.

In the Y2K context, this provision will stop overly aggressive plaintiffs from searching out small defects in computer programs, gathering together thousands of software users who do not even know they have been injured, and trying to force a quick settlement out of the software manufacturer.

Once this bill passes, if a class action suit alleges that software does not function properly, the action can proceed only if the alleged defect affects a majority of the class members in some significant way. Trivial defects that would not even be noticed by most class members would not be cause for a class action. Again, plaintiffs with good cause may still proceed, but frivolous suits would be stopped. That is the purpose of the provision and the purpose of the bill.

There has been a lot of discussion in this Chamber about punitive damage caps. The Dodd-McCain compromise caps punitive damages, for small businesses only, at the lesser of $250,000 or three times compensatory damages.

The idea of capping punitive damages is one of the most controversial issues in this or any other bill dealing with changes to our system of civil justice. In this case, I believe reasonable and carefully drafted caps on punitive damages can deter frivolous suits. Additionally, capping punitive damages reduces the incentive to settle meritless suits because companies will not be at risk for huge, unwarranted verdicts.

I recognize that this is a controversial issue and that intelligent, well-meaning people may disagree over whether this is the time or the place to address punitive damages. But I have continually emphasized that this bill is not about punitive damages, and the compromise dramatically limits the punitive damage caps compared to earlier versions.

In summary, this $1 trillion litigation headache is approaching. This Congress can provide thoughtful, preventive medicine and some anticipatory pain relief in the form of reasoned, fair, and thoughtful compromise. I think the bill sets forward clear rules to be followed in all Y2K cases. I believe it levels the playing field for all parties who will be involved in these suits. Companies and individuals alike will know the rules and will know what they have to do. Most important, there is an element of stability that can come from this bill which will allow companies to prevent Y2K problems when possible, fix Y2K defects when necessary, and proceed to remediate damages in an orderly and fair manner.

It is true that some plaintiffs may have to wait a little bit longer to file a suit for damages, but their rights will not be curtailed and recovery will not be prevented. In fact, the waiting period in the bill will make it far more likely that problems will be solved quickly, allowing potential plaintiffs to get on with the activities that were disrupted by the Y2K problem at issue.

This bill has been through a tortuous legislative drafting process with criticisms, suggestions, and changes made from every side and by every sector of our society. I hope we can pass this bill and send it to the President, and let us show the Nation that the Y2K crisis will not cripple our courts, will not disrupt our economy, and will not slow our progress toward a 21st century world.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. DODD. 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. 610

Mr. DODD. Mr. President, I am grateful to Senator KERRY of Massachusetts for offering his amendment, which allows us now to have a full debate on what is a comprehensive amendment. It covers a whole series of provisions which are included in the pending bill before the Senate.

Let me try, if I can, to take each of the critical provisions in the amendment, address them, and explain why I believe, despite the good intentions of its author, it would do significant damage to the underlying purpose of the bill that Senator MCCAIN and Senator WYDEN and myself and others have offered to the Senate for its consideration.

I said at the outset of my remarks earlier today that this bill is very narrow in scope, very narrow in duration, and limited to a fact situation which most Americans, I think, have a growing awareness of today.

In 204 days the millennium clock will turn, and there is a very serious set of issues that could affect many Americans and many people outside of our shores: that is the so-called Y2K glitch or bug in computers based on information that is included in embedded chips and other items within these computers which would read the date of the year 2000 incorrectly.

I am, of course, simplifying the situation. I think the Senate is well are aware of the danger inherent in the Y2K problem. That problem could, of course, create serious disruptions in a variety of mission-critical functions in telecommunications, transportation, medical care, Federal services, and the like.

Over the last year and a half the Senator from Utah and I, as chairman and vice chairman of the Y2K Special Committee, have conducted some 21 hearings to examine where we were with the Y2K problem, what the Federal Government was doing, what State governments were doing, what local municipal governments were doing, and what the private sector and nonprofits were doing in order to remediate the problem; to fix the problem as soon as possible; and, where that may not be possible, to have contingency planning to avoid the kind of potential disruptions that those who are most knowledgeable about this issue suggest could occur.

Over that period of time we have seen significant improvement in the remediation done by the private and public sector, State and local governments, all across this country. In fact, we are at the point where we believe, as of this date, in June, with some 204 days to go, the country is by and large in good shape. We should not anticipate or be worried about any major disruptions here in the United States. There could be exceptions to that but, by and large, we think that is the situation today.

One of the things we are trying to do is see to it that when January 1 arrives, the best effort of a business—small, medium, or large—does not go for naught as a result of its inability to detect problems with embedded chips that ultimately result in Y2K-related failures.

Last year we passed a bill on disclosure to encourage the various sectors of our society to share as much information as possible with each other so that we could contribute to the remediation effort and avoid the kinds of problems some are anticipating will occur after January 1. That bill created a safe harbor provision, which allowed for the sharing of information—not sharing of lies and knowingly false information, but sharing as much knowledgeable information that businesses had—without worrying that someone would come around later and say, ''what you said in June of the year 1999 was not exactly right,'' and, therefore, you would be subject to litigation.

That bill was passed overwhelmingly by this body and the other body and signed into law. It is making, we think, a significant contribution to avoiding the kinds of problems that we could have had after January 1 of the year 2000. But it does not eliminate all the problems. In fact, no one can pass a piece of legislation that will eliminate all the difficulties.

We realize with those problems that may emerge that you could have disruptions as a result of the failure to detect such things as faulty embedded chips. So this legislation before us is designed to be a complementary piece of legislation to the disclosure act of last year, a complementary piece of legislation to the efforts of Senator BENNETT, myself, and others who have worked on that committee, who strived to encourage, jawbone, do whatever we could, to minimize the kind of difficulties Americans could face.

We do not claim we have achieved all of that yet. But with the adoption of this bill, a 3-year bill, a 36-month bill, we say to potential plaintiffs and defendants: If, in fact, a problem arises that under any other circumstances might give rise to a lawsuit, we want you to try to avoid that lawsuit, if you can. We want you to try to work out the problem. We want you to spend your time, your money, and your efforts to fix the Y2K problem, not to run to the nearest courthouse and then spend weeks and months, potentially years, at the cost of millions of dollars, litigating an issue and not solving the underlying problem which is causing the kind of disruptions this issue can potentially cause.

That is the purpose of this bill. That is the rationale behind it: to try to avoid rushing to the courthouse.

We are a litigious society. We love lawsuits. Most Americans are painfully aware of this. There is nothing wrong with going to court to try to solve your problems. But I think most would agree that if you can avoid going to the courtroom to solve your problems, you can get better results in many instances.

So this legislation is designed specifically to avoid rushing to the courthouse for 36 months—not for a lifetime, not for eternity, but for 36 months—during the critical period where this issue is upon us, to see if we can't work out these difficulties. We only do that for 36 months with issues directly related to the Y2K issue, not any matter that comes up, but specifically the Y2K issue. We do so in a very limited way.

Specifically, we do not prohibit lawsuits. We merely are trying to see if we cannot come up with an alternative vehicle to solve the problems.

Mr. President, what Senator KERRY of Massachusetts has done is offered a series of ideas that he and those who have joined him believe will enhance the underlying legislation. They state—and I believe them—that they are desirous of making this a better bill, of making it less likely that we are going to have a race to the courthouse.

As you analyze what they have proposed, despite their good intentions it would appear they are doing just the opposite of their intentions. I can accept, although I do not entirely understand, those who are just fundamentally opposed to what we are trying to do, and then offering a series of provisions which would gut our very underlying intent. I do not support it. I vehemently oppose it. But I can't understand how a rationale could be made for you to oppose the idea of trying to avoid litigation for 36 months, if you can, on this Y2K issue.

Let me take, if I can, some of the provisions included specifically in the Kerry proposal and explain why I think those provisions directly undercut the underlying intent of the McCain-Wyden-Dodd proposal.

One deals with the bill's proportionate liability provisions. As I read the legislation, the Kerry bill, on page 13 of this proposal, states that notwithstanding the proportionate liability sections, the liability of a defendant in a Y2K action is joint and several if the defendant fails to demonstrate by a preponderance of the evidence that prior to December 31, 1999, the defendant identified the potential for Y2K failure, and then, in paragraph two, provided information calculated to reach persons likely to experience Y2K failures. Consider what those two provisions would do. Those are findings of fact, not findings of law. So even if a defendant has made some effort to identify potential Y2K failures, and made efforts to provide information calculated to reach the likely persons, you know very well that those are questions of fact, not of law. I would be hard pressed to identify a judge that was not going to say that questions of fact go to a jury.

As a result, there will be litigation on the very issue upon which my colleague from Massachusetts is trying to avoid litigation. Again, I can understand why some may disagree with the proportional liability provisions of the bill. They do not like the idea of having proportional liability. But I think it is only fair and just, under these fact situations. Otherwise what you get, very clearly, is attorneys who will go shop around for some company that is infinitesimally involved but simultaneously has deep pockets, and that becomes your defendant. They will then try to get that fractionally involved defendant as becoming totally responsible and culpable for the Y2K failure.

That is directly contrary to what we are trying to do here in this bill, directly contrary to what we are trying to do with the 90-day cooling off period, directly contrary to our saying that you have to go after the people responsible for the injury. By suggesting here that if they would just identify the potential Y2K problems and provide information to reach the persons likely to experience these failures, it seems to me that you have undercut entirely the desired goal in the underlying bill by avoiding the proportional liability provisions of the legislation. It is these provisions that we think will do a great deal to minimize the rush to the courthouse.

These matters just do not end up in court miraculously. It takes an energetic and aggressive bar that wants to pursue them. That would be the case, in my view, if this amendment were adopted.

Again, these are findings of fact, not of law. No judge that I know of would dismiss a case where there are findings of fact to be determined. Those should go to a jury. Therefore, your motion to dismiss fails. Therefore, you are in court. Therefore, you have destroyed what we are trying to accomplish with this 36-month bill, just to deal with a Y2K issue, where the issue ought to be to try to resolve the problems the American public faces.

As a practical matter, we have 204 days left before the millennium clock turns. If you adopt these provisions here over the next 204 days, instead of remediating the problem, setting up your contingency planning, which is what you ought to be doing at this point, we will have people running around here trying to figure out ways to meet some standard here so they can avoid the joint and several liability provisions.

I can see them suggesting that we ought to be spending resources here to identify potential Y2K failures and provide information to persons likely to be subjected to those failures. With 204 days to go—if my colleague from Utah were here, I think he would echo these comments—we need everyone in this country involved in this issue spending every available moment of time and every bit of resources fixing these problems instead of trying to avoid the kind of legal hurdles placed in the way that the Kerry amendment would require, if his amendment were to be adopted.

An excellent point that should be made is that this proportional liability section would also encourage results where U.S. companies could end up paying for the wrongs of foreign companies, non-U.S. companies. It has been stated over and over again, and I can tell you that it is true based on our information, that Y2K remediation efforts abroad are lagging. If a U.S. plaintiff can't recover against a non-U.S. company, he is going to try to recover against the closest deep pocket in this country. So you end up having U.S. companies that have made a significant remediation effort having to bear all the burden because a foreign manufacturer has not done the job as well. The plaintiff has a hard time reaching that potential defendant, so he races to the most fractionally involved U.S. company in order to get their full compensation. That is just not fair.

The amendment's contracts preservation section does not preserve contracts. Although it is essential that Y2K contract rights be fully enforceable, the bill's formulation allows contractual provisions to be set aside, even by vague State common law rules. This approach would give State court judges the power to throw out contract provisions they don't like.

One thing that has been sacrosanct is, when there is a contractual relationship, that is what prevails. If the parties enter into a contract, then the contract rules. If you are going to allow, as you would if the Kerry amendment is adopted, State court judges to undo contracts, because you don't like contract law but you want tort law, then you are expanding an area of the law that we have never done. Where there is a contract in place, the contract rules. If you are going to allow State courts to undo that and then allow attorneys to shop around the country until they find a State jurisdiction where they have avoided these contracts, you have just gutted this bill.

If you want to gut the bill, gut the bill. If you want to destroy this effort, destroy the effort. But do not stand up simultaneously and tell me you are trying to enhance what we are trying to do and then allow State courts to gut contract law in this country.

The Kerry amendment also makes liability for economic losses more expansive than current law. Under current law in most jurisdictions, plaintiffs who are in a contractual relationship with the defendant cannot circumvent the contract by trying out the tort idea.

I understand lawyers want to do this. We don't like the contract my client entered into, so let's try going to the tort idea here. Not terribly clever, not terribly unique, pretty commonplace. But we are not going to all of a sudden say that contracts are no longer valid here.

In essence, if you adopt this amendment, at least this part of it, that is what you are doing. If there is a good contract, then the contract rules. The idea you can circumvent that contract by seeking to bring a tort suit to recover your economic losses permits all intentional torts to go forward, whether or not the parties have a preexisting relationship. Whatever else you may like about this amendment, that provision alone ought to cause it to be overwhelmingly defeated.

The amendment's carveout for noncommercial suits, in my view, will permit a huge range of abusive actions. The Kerry proposal carves out suits by individuals from most of the provisions of this bill. I believe that abusive class actions on behalf of consumers are one of the greatest dangers in the Y2K area, because such suits are easily created and controlled by plaintiffs' lawyers. That also was the case in the securities area prior to the enactment of the securities legislation, a bill that we adopted several years ago.

Again, in this area, the McCain-Wyden-Dodd bill does protect class action lawsuits. They are not done away with here. We simply try to tighten up the rules under which class actions can be brought, and I think wisely so. We don't want to be going back and saying basically that in these areas you can file vague complaints where no one can determine what the charges are against you. Remember, in this area of Y2K—unlike securities litigation where clearly the defendants are going to be securities firms and the like—a small business can be a plaintiff and a defendant very quickly. It is not going to be as clear as to who the consumers are here.

Is one going to suggest to me that a small business where there is a computer glitch that all of a sudden gets sued is a nonconsumer, in a sense? I think we are trying to draw lines here that don't apply in the area of law that we have crafted with the McCain-Wyden-Dodd bill.

So by suggesting that all the other provisions of law are OK here is to basically just say this bill has been defeated. If that amendment is offered as a single freestanding amendment, we may as well not take the time of the Senate to go further. I will recommend that you pull the bill down because, frankly, then you have said this proposal here has no merit.

So I am not suggesting these are all the provisions of the Kerry amendment, but they are the ones I think are most egregious and which I think would do the most damage to the underlying effort that the Senators from Oregon and Arizona, and others, have tried to craft here.

Again, this is a bill for 36 months, that is it. We have 204 days left to do something to minimize a serious problem. I hope we have no problems come January 1 and February, and that all of the talk about a serious Y2K problem turns out to be wrong. Then we can look back and say maybe we didn't need this bill. But I would rather be standing here and have that happen than to be sitting around in January and all of a sudden watch serious problems occur, people racing to courtrooms all over the country because this body didn't think 36 months set aside in this area was a worthy exercise to defend against a potential problem that could cause Americans a lot of difficulty.

For once, this body, the Congress, is taking action in anticipation of a problem. What we normally do is wait for the problems to happen and then scurry around trying to fix them. Here in June we are trying to do something to avoid potential catastrophes in January. I commend my colleagues again—those who have been involved in this—for having the wisdom to step up and try to take meaningful action here.

Do we have a perfect bill? No, I can't tell you that. We realize we are sailing in uncharted waters here. But we think we are on the right side of this and our footing is strong—36 months, narrow in scope and time—to try to avoid the millions, if not billions, of dollars that ultimately taxpayers and consumers may end up paying for a lot of worthless lawsuits to satisfy the appetites of a few narrow members of the bar. I think it is a risk worth taking. I think in the long run the American public will support our efforts. With all due respect to my colleague from Massachusetts, for whom I have a great deal of admiration, we fundamentally disagree. Were his proposal to be adopted, I believe it would do significant, if not irreparable, damage to the McCain-Wyden-Dodd approach we have drafted and submitted for our colleagues' consideration.

I yield the floor.

UNANIMOUS CONSENT AGREEMENT

Mr. MCCAIN. Mr. President, I ask unanimous consent that the following amendments on this side be in order and these amendments only:

Senator MURKOWSKI, two amendments; Senator INHOFE, one amendment; Senator GREGG, one amendment; Senator LOTT, one amendment; Senator SESSIONS, two amendments.

Although it may be redundant, I add to that the amendments that were already agreed to in yesterday's CONGRESSIONAL RECORD: Senator HOLLINGS, three amendments; Senator KERRY, one amendment; Senator BOXER, one amendment; Senator FEINSTEIN, one amendment; Senator FEINGOLD, one amendment; Senator GRAHAM of Florida, one amendment; Senator LEAHY, one amendment; Senator DODD, one amendment; Senator EDWARDS, two amendments; Senator DASCHLE, one amendment.

Would it be agreeable to Senator HOLLINGS if that is included in the unanimous consent agreement?

Mr. HOLLINGS. Yes. I thank the distinguished Senator. The Feinstein and Dodd amendments are now cared for. As listed in the calendar for today, it is correct. We agree.

Mr. MCCAIN. I ask unanimous consent that those amendments be the

only ones in order in consideration of the bill.

Mr. HOLLINGS. The Senator from Florida, Mr. GRAHAM, has switched with the Senator from New Jersey, Mr. TORRICELLI.

Mr. MCCAIN. The amendment under Senator GRAHAM will now be listed under Senator TORRICELLI.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I also want to mention that I think the Senator from Massachusetts wants to discuss this amendment again. We are prepared to enter into a time agreement with the Senator from Massachusetts when he returns to the floor for his further discussion of the amendment. Perhaps we can enter into an agreement at that time. I will also be contacting Members whose amendments are still listed as relevant to reach time agreements with them so that perhaps by the close of business this evening we could have time agreements allocated, if possible. If not, we will just proceed with the amending process tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to speak in support of the Y2K Act. I commend Senator MCCAIN for the leadership he has provided the Senate on an issue that is of critical importance to small businesses across this country. I do not know if we have highlighted enough the cost of the Y2K problem on small business. That is what I would like to briefly address. I also thank the Chamber of Commerce for the effort they have made to bring this problem to the attention of the Congress and to the public.

I support protecting businesses from unnecessary and frivolous litigation that will arise from the Y2K problem. While businesses are hard at work trying to fix potential problems arising from the Year 2000, others are trying to exploit it through excessive and expensive litigation. It has been reported in that the cost of litigation in the U.S. arising from this problem will range from $200 billion to $1 trillion. It is just incredible. The Senate Commerce Committee has reported that up to 48 lawsuits relating to the Y2K problem have already been filed. What has been described as a ''tremendous new business opportunity'' for lawyers is done at the expense of the private business sector, in particularly small businesses. Small businesses are most at risk from Y2K failures because many have not begun to realize the potential problem and they do not have the capital to remedy any Y2K difficulties.

This bill goes a long way toward preventing litigation from the Y2K problem by establishing punitive damage caps, alternative dispute resolution, and proportional liability. While this bill will limit the amount of frivolous litigation, it will not prevent those who are blatantly negligible in becoming Y2K compliant or have caused personal injuries as a result of their noncompliance from escaping their responsibilities. They will still be held responsible.

Although I believe S. 96 will prevent and limit any litigation arising from the Y2K problem, I am still concerned that the greatest beneficiaries of the Year 2000 computer problem will be the trial lawyers. I am disheartened that there is no provision in this bill that places a reasonable cap on attorneys' fees. An attorney fees' cap will help prevent excessive litigation against small businesses by creating a financial disincentive for trial lawyers. Unlike the big corporations who have millions to spend on solving the Y2K problem and defending themselves in any Y2K civil action, the small businesses do not have the financial resources and are therefore the primary targets of any potential Y2K litigation. A reasonable and fair attorney fees' cap will decrease the amount of excessive and frivolous litigation arising from the Y2K problem. But without a reasonable cap, I am concerned that the Y2K problem could become a boondoggle for the trial lawyers at the expense of small businesses. However, in the interest of passing this legislation, I will not be offering an attorney's fee amendment at this time. I do hope that the Senate will be able to consider and debate this issue in the future.

That having been said, I ask that the Senate move quickly to pass this legislation and protect small businesses from potential Y2K litigation.

Thank you very much, Mr. President.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, as one of the original cosponsors of both S. 96 and the bipartisan amendment that now constitutes the base bill before the Senate, I am, of course, strongly in support of that proposal and opposed to the Kerry amendment, even including all of the changes, almost all of which are constructive, that have been added to it during the course of its development.

But in reflecting on both my support of the base bill and my opposition to the Kerry amendment, I wish to reflect on the fact that most, though not all, of the major actors in this bill have been Members of the Senate for a decade or so. Each of them can remember that it is a decade or less ago that one of the constant refrains on the floor of the Senate—and for that matter, throughout our society—was our deep concern about American competitiveness.

Volumes of the CONGRESSIONAL RECORD are filled with speeches about the fact we were losing ground to many of our competitors, most particularly the Japanese, because of their work ethic, because of their educational system, or for a half dozen other reasons. Probably the last such speech was made on the floor of this Senate more than half a decade ago.

It is obvious that the United States, whatever its problems then, has had a magnificent recovery and dominates the economic and technical world by as great a margin as it ever has had during the course of the 20th century.

While all kinds of American geniuses are responsible for this change, I think it is safe to say that the extraordinary, imaginative, entrepreneurial work of the men and women whose companies make up the Year 2000 Coalition supporting this legislation have the greatest responsibility and deserve the greatest amount of credit for changes in the nature of our economy and of our society and the way in which we live, the way in which we communicate with one another and the way in which we preserve and enhance knowledge. These factors have changed as much in this last decade as in the previous century.

It is, therefore, the very people and the very companies that have done more to enhance the quality of life in the United States and the quality of life around the world who have done more to break down barriers between people and regions and nations. It is these people who seek the modest relief proposed in this bill, these people who are so responsible for our economic success.

I have been handed a letter to the distinguished junior Senator from Massachusetts from the Year 2000 Coalition. I ask unanimous consent that letter be printed in the RECORD.

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

YEAR 2000 COALITION,
*June 8, 1999.*

Hon. JOHN F. KERRY,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR KERRY: The Year 2000 Coalition, a broad-based multi-industry business group, is committed to working with the Senate to enact meaningful Y2K liability legislation. We fully support S. 96 sponsored by Senators McCain and Wyden, with amendments to be offered by Senator Dodd. This is also supported by Senators Hatch, Bennett, Gorton, Feinstein and others. S. 96 is the most reasonable approach to curtail unwarranted and frivolous litigation that might occur as a result of the century date change.

While we appreciate any effort that further demonstrates the bipartisan recognition of the need for legislation, the Coalition does not support the amendment to S. 96 that is being circulated in your name. We urge you to support S. 96 and to not introduce an amendment to it. Your vote in favor of cloture is important to bring the bill to the floor and allow the Senate to address the challenge of Y2K confronting all Americans. A vote in favor of S. 96 is a vote in favor of Y2K remediation, instead of litigation.

This letter was also sent to the following Senators: Robb, Daschle, Reid, Breaux, and Akaka.

Sincerely,

Aerospace Industries Association, Airconditioning & Refrigeration Institute, Alaska High-Tech Business Council, Alliance of American Insurers, American Bankers Association, American Bearing Manufacturers Association, American Boiler Manufacturers

Association, American Council of Life Insurance, American Electronics Association, American Entrepreneurs for Economic Growth, American Gas Association, American Institute of Certified Public Accountants, American Insurance Association, American Iron & Steel Institute, American Paper Machinery Association, American Society of Employers, American Textile Machinery Association, American Tort Reform Association, America's Community Bankers, Arizona Association of Industries, Arizona Software Association, Associated Employers, Associated Industries of Missouri, Associated Oregon Industries, Inc.

Association of Manufacturing Technology, Association of Management Consulting Firms, BIFMA International, Business and Industry Trade Association, Business Council of Alabama, Business Software Alliance, Chemical Manufacturers Association, Chemical Specialties Manufacturers Association, Colorado Association of Commerce and Industry, Colorado Software Association, Compressed Gas Association, Computing Technology Industry Association, Connecticut Business & Industry Association, Inc., Connecticut Technology Association, Construction Industry Manufacturers Association, Conveyor Equipment Manufacturers Association, Copper & Brass Fabricators Council, Copper Development Association, Inc., Council of Industrial Boiler Owners, Edison Electric Institute, Employers Group, Farm Equipment Manufacturers Association, Flexible Packaging Association.

Food Distributors International, Grocery Manufacturers of America, Gypsum Association, Health Industry Manufacturers Association, Independent Community Bankers Association, Indiana Information Technology Association, Indiana Manufacturers Association, Inc., Industrial Management Council, Information Technology Association of America, Information Technology Industry Council, International Mass Retail Council, International Sleep Products Association, Interstate Natural Gas Association of America, Investment Company Institute, Iowa Association of Business & Industry, Manufacturers Association of Mid-Eastern PA, Manufacturer's Association of Northwest Pennsylvania, Manufacturing Alliance of Connecticut, Inc., Metal Treating Institute, Mississippi Manufacturers Association, Motor & Equipment Manufacturers Association, National Association of Computer Consultant Business.

National Association of Convenience Stores, National Association of Hosiery Manufacturers, National Association of Independent Insurers, National Association of Manufacturers, National Association of Mutual Insurance Companies, National Association of Wholesaler-Distributors, National Electrical Manufacturers Association, National Federation of Independent Business, National Food Processors Association, National Housewares Manufacturers Association, National Marine Manufacturers Association, National Retail Federation, National Venture Capital Association, North Carolina Electronic and Information Technology Association, Technology New Jersey, NPES, The Association of Suppliers of Printing, Publishing, and Converting Technologies, Optical Industry Association, Printing Industry of Illinois-Indiana Association, Power Transmission Distributors Association, Process Equipment Manufacturers Association, Recreation Vehicle Industry Association.

Reinsurance Association of America, Securities Industry Association, Semiconductor Equipment and Materials International, Semiconductor Industry Association, Small Motors and Motion Association, Software Association of Oregon, Software & Information Industry Association, South Carolina Chamber of Commerce, Steel Manufacturers Association, Telecommunications Industry Association, The Chlorine Institute, Inc., The Financial Services Roundtable, The ServiceMaster Company, Toy Manufacturers of America, Inc., United States Chamber of Commerce, Upstate New York Roundtable on Manufacturing, Utah Information Technology Association, Valve Manufacturers Association, Washington Software Association, West Virginia Manufacturers Association, Wisconsin Manufacturers & Commerce.

Mr. GORTON. This letter was signed by companies or groups too numerous for me either to name or to count. They explicitly state support of the Year 2000 Coalition for S. 96 in the form in which it finds itself now, explicitly opposing the Kerry amendment to that bill.

Personally, I think that letter deserves great weight and our most solemn consideration without regard to any of the details of the debate on the differences between S. 96 with its bipartisan amendment and the Kerry amendment. When one goes into the details of those differences, the justification for this letter becomes even more apparent.

My long-time friend and distinguished rival in this matter, the Senator from South Carolina, and I have differed on a substantial number of legal concepts that go far beyond Y2K legislation. He knows, as does the distinguished occupant of the Chair, that my own personal preference—and I suspect the preference of the Year 2000 Coalition—would be to abolish the concept of joint liability in its entirety. The concept of joint liability is one pursuant to which a person, a group, a defendant, only partially or even marginally responsible for a given legal wrong, nonetheless can be held responsible for all of the damages caused by all of the defendants against whom a judgment is entered.

On its surface and beneath its surface, such a concept is extraordinarily difficult to justify.

In the case of potential Y2K litigation, it is even more difficult to justify, as in any typical Y2K lawsuit there may well be dozens of defendants—the manufacturers of all of the elements of what can be an extremely complicated software and hardware production, its distributors, both wholesale and retail, and perhaps many others. The risks to companies, whether sophisticated or unsophisticated in the nuances of the law, the panic created in them, the disruption of their priorities, both in the development of new technology and dealing with potential Y2K litigation, is impossible to overestimate.

At first, this bill, or any bill that has seriously been considered here on subjects like this, abolishes in its entirety the concept of joint liability. Even though I prefer the original S. 96 to this proposal, it is a matter that has been worked out very carefully by a group of Republicans and Democrats—one of the most important of whom is the Senator from Connecticut who is present on the floor—to be a result that has broad support not only in this Chamber but around the country as a whole.

Just as the Senator from Connecticut and many of his colleagues have compromised on some elements they wish like to have in the bill, so have we on our side, and we have with respect to joint liability. There are some very real limits on it and S. 96, as it appears before the Senate now, and there are a few in the Kerry substitute, but they are largely illusionary.

A second field in which there are differences in this bill has to do with punitive damages. How anyone even in this isolated Chamber could come up with a proposition that software companies, members of this Year 2000 Coalition, are so indifferent to the problems of Y2K that somehow or another they deserve to be punished—not in a criminal court but by the potential loss of unlimited punitive damages—is difficult for me to imagine. It is clear by the vehement opposition to limits on punitive damages that there are those in the legal profession who at least hope for the bonanza of huge punitive damage awards, however difficult it is to imagine the justification for such awards as we debate this matter. Or perhaps it would be more accurate to say they hope they can force settlements, even on the part of companies they believe have not been negligent at all, because of the threat, the mere possibility of a very large punitive damage award.

I represent one of the handful of States in the United States of America that does not permit punitive damages in civil litigation, that believes that punishment should be a part of the criminal law and not the civil law. I have not noticed, in a long career, that justice is unavailable to plaintiffs in the courts of the State of Washington on that account. I believe we would have a more responsible legal system, a more fair and more just legal system, if the concept of punitive damages in civil litigation was abolished across the country. It is not going to be. It was not even in the product liability legislation of which I have been a sponsor in the past. It was not in the original form of this bill, and it is not in the form that appears before us now.

But there are some distinct limitations on punitive damages for relatively small companies, companies that could obviously be bankrupted by punitive damage awards—a bankruptcy that, I submit, in almost every case

would not benefit the economy or the people of the United States. Yet, for all practical purposes, even those minor limitations are removed from this bill in the Kerry amendment.

Finally, the Kerry amendment allows for the single form of litigation that may most disturb the members of the Year 2000 Coalition, class actions on the part of consumers, actions in which almost invariably the plaintiffs are nominal plaintiffs, actions in which many of the plaintiffs often do not even know they are plaintiffs, actions that very frequently have been far more on behalf of the lawyers who bring them than on the nominal class of plaintiffs themselves. To allow such actions seems to me to be a serious mistake and seriously to undermine the entire goal of Y2K relief.

In summary, I do not think S. 896, as modified, is a terribly strong bill. I think it provides a degree of appropriate relief to a fundamentally vital element of the American economy and the advancement of our own standard of living in a fashion which is important to that industry and in a fashion that is beneficial to that industry. But I do not think it goes far enough. Others think it goes too far. I do believe, however, we have now reached a conclusion that will be supported by a significant majority of the Members of the Senate, members of both parties.

I can no longer say, with the changes that have been made in it, that the Kerry amendment is useless, that it provides no relief at all. It does include in it some constructive elements, some which may be appropriate for consideration during a conference subcommittee meeting between the House and the Senate as we put this bill in final form. But in comparison with the base bill before us, it does not provide appropriate relief. It does not meet the minimum needs of the year 2000 Coalition. It does not meet the minimum needs of a standard of reasonable justice with respect to a single problem that will go away shortly after the beginning of the new millennium in a piece of legislation that will not become a part of the permanent law of the United States, because it will not be needed.

So, I return to the remarks with which I began. The members of this coalition, the signatories to this letter, have done an extraordinary service, not only to themselves, not only to the American people and the American economy, but to the entire world and to the task of building bridges among people in the entire world. They have asked for help for a single specific problem that faces them and that faces us and will for a few short months and for a relatively short period of time thereafter. They deserve that relief. They deserve it as promptly as we can possibly pass it. And they deserve it with our enthusiastic support.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, as a Senator from Virginia, with one of the most vibrant high-tech communities anywhere in the country, I am acutely aware of the problems the Y2K bug presents. And I want a bill. I have worked with the high-tech community in Virginia, particularly Northern Virginia, but throughout the State since my days as Lieutenant Governor and as Governor.

During the time I was Governor, I created a task force on high technology and they came up with 44 recommendations, the most prominent of which was to create a Center for Innovative Technology, which, for the benefit of our colleagues, is housed in that funny-shaped building very close to Dulles International Airport. Colocated with it was the Software Productivity Consortium, because we wanted to be able to provide a central point for consideration of all the issues and concerns of the technology industry and a way to broker the release of the scientific work on technology-related projects.

So, I come with a lengthy background of working with the high-technology community and a specific interest in getting legislation that will address the Y2K problem.

The potential wave of litigation which could accompany the turn of the century could, in fact, be crushing, and many businesses have indicated that the threat of litigation could keep them from devoting the necessary resources to addressing their own Y2K problems. A reasonable bill, which would weed out frivolous lawsuits and encourage parties to remediate their Y2K disputes outside the courtroom, would be to everyone's benefit. But while there is general agreement that some sort of bill should pass, regrettably, we do not yet have consensus on exactly what language should be in this bill.

Passage of almost any legislation requires some elements of compromise. We have seen that process ongoing. Indeed, I entered this debate several weeks ago—actually, now months ago—to help find the necessary consensus on this issue. Given the rapidly approaching new year, as well as the dwindling number of legislative days left in the Senate, it is important for us to act on this legislation now. Further delay will only make it more difficult to reach the consensus most of us are looking for.

With the tight timeline we are facing, I am concerned with the direction the debate still seems to be taking. Notwithstanding my own misgivings about certain provisions in S. 96, the administration strongly objects to the bill in its current form, and the President has promised that if Congress sends S. 96 to the White House without significant modifications, he will veto it. Thus, we are presented with a dilemma. If we want a bill that will solve a legitimate problem, we need a bill that the President will sign or at the very least will not veto, or we need 67 hard votes in order to override a veto. Otherwise, we are just playing with politics. I regret to say I am afraid that is where we are now. We do not at this point, on this language, have the necessary 67 hard votes.

The President has promised to veto this bill if it comes to him in its current form. So we are going through an exercise to polarize and politicize an issue instead of providing a solution to an issue.

I appreciate the very hard work that my distinguished colleague from Massachusetts has put in trying to find the necessary language that would provide the relief that is legitimate and on which virtually everyone in the Chamber can agree and still get the President to sign.

If we continue to approach this legislation with a vehicle we know the President has already promised to veto, we are not giving the industry the relief they so critically need. All we are doing is scoring political and debating points, but we are not coming up with a solution. We have that dilemma.

I am, therefore, a cosponsor of the legislation offered by my distinguished friend, the Senator from Massachusetts, because the White House has indicated they will sign that particular legislation if these changes are made. It has line-by-line changes to certain provisions, and they are relatively limited at this point.

I applaud the good will that has prevailed on both sides to this point in reaching this particular position, but we are still not there. For this reason, I hope that our colleagues will support the amendment that has been drafted and negotiated by my distinguished partner from Massachusetts because, at that point, we will have a bill. It will not be a perfect bill, but it also will not be a vetoed bill.

It is inconceivable to me, given the many demands that have come to this Chamber from all of the interests that are involved, that we could ever come up with a perfect bill, but at least we will have protection from the kinds of lawsuits that the industry is most concerned about, and we will have it in time to make decisions to remediate some of the problems they could otherwise deal with if they were free from the threat of litigation in this particular area.

I thank my colleague from Massachusetts for his patience in working out the amendment which is now before us, and I urge my colleagues to pass this particular amendment.

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. DODD. 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. KERRY. 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. 610

Mr. KERRY. Mr. President, I know my colleagues on the other side are anxious to know how we will proceed. Senator DASCHLE intends to speak, and I suspect that may be it on our side. I am sure our colleagues on the other side will be thrilled to hear that, and we can move forward.

I want to say a couple of things about what has been said in the last hour of debate. Some of my colleagues have mentioned the ''vagueness'' of the standard that is being applied to ask whether or not a company ought to determine if they have a potential for Y2K liability. First of all, there is no vagueness whatsoever in any company's capacity to determine on its own, through its technological knowledge, whether or not it has a potential of liability, and that is because of the nature of the problem.

We are talking about inventing chips with time-sensitive digitalization on ''00'' and its capacity for interpretation. People can run through their programs and run through the demand list, so to speak, on that program and pretty thoroughly test it to make the kind of determination about potentiality. Anybody who has sufficiently done that is going to qualify automatically for proportionality.

To the degree that my colleagues complain and say, well, gee, they are coming in here with this standard that might have to go to jury—the Senator from Connecticut is worried about a standard that goes to the jury—turn to their bill, page 28, Section 9: Duty to Mitigate.

> Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers. . . .

So there is an issue for the jury. There is an issue. They have no problem putting the responsibility on the plaintiff. They have no problem at all finding a vague standard, so to speak, using their terminology. I do not believe our standard is vague, but they have no problem at all requiring the jury to determine the reasonableness of what the defendants have done. And the plaintiff is going to have to prove it.

So that is part of the imbalance of this bill. Every step of the way, there is a shifting, a change in tort law, a requirement for a higher standard that goes beyond the original purpose.

I have heard my colleagues say the purpose of this bill is to help technology companies that are an important part of the American mainstream, economic bloodline, if you will, for all of our country. I agree with that. I absolutely agree with that. I do not want frivolous lawsuits. I do not want lawyers lining up for some kind of constructed settlement process that is based on a fiction.

But our bill does not provide for that. Our bill is very clear in the way in which it requires a period of cure, just as S. 96 does, a period of mitigation, just as S. 96 does. It requires the same underlying relationship with contract law, with one exception—where you have an intentional, willful, reckless action by a company. No one for the other side has been able to answer the public policy question of why any entity that acts recklessly, with wanton, willful purpose, ought to be exonerated from a standard that holds them accountable. I do not think any American, average citizen, who is subjected to the consequences of those kinds of actions would believe that is true.

Finally, on proportionality, the argument was just made by the Senator from Washington that you ought to have this proportionality available to a company. I agree with him. But it ought to be available to a company that has at least made a de minimis effort, a de minimis effort to determine whether its own product might have the potential to have a Y2K problem.

I think our colleagues are going to have a hard time explaining why a company should not have to at least show that it inventoried its own products to determine that. It would be irresponsible, in the context of a bill that is supposed to encourage mitigation and encourage remedy and cure, to suggest that companies should not be encouraged to go out and determine what they may have done wrong. It is just inconsistent.

So I believe our effort is a bona fide effort to do precisely what the sponsors of S. 96 want to do. I believe it achieves it in a more fair and evenhanded way. I believe that, as a consequence of the White House agreement with our position, ultimately we are going to have to adjust.

I say to my friends in the high-technology industry, I hope they will carefully read the language in our proposed amendment. If one of them wants to come to me and suggest language that is clearer, to suggest how they could conform in a reasonable way that they are not afraid of, I will adopt that language.

If any one of them wants to show me a reasonable way to have a standard here that makes them a good citizen or qualifies them as such, I am all for it. I have not yet found a CEO of a company who has been able to suggest to me anything except wanting to not be sued as a rationale for why, from a public policy perspective, we should change the law of this country prospectively in an anticipatory fashion to change a longstanding relationship. And I do not think that case will be made.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. HOLLINGS. 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. WYDEN. 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. WYDEN. Thank you, Mr. President.

I would like to take just a few minutes, as we wait for the minority leader to address some of the concerns that have been raised by the Senator from Massachusetts, to describe why I and the Democratic leader of the Y2K efforts, Senator DODD, believe that the Kerry amendment, though certainly sincere, is really a glidepath, an invitation, to frivolous lawsuits with respect to this Y2K matter.

I come today to say we know we are going to have problems early in the next century. That has been documented on a bipartisan basis by the Y2K committee. What we are concerned about is not compounding the problem with frivolous lawsuits. Regrettably, the KERRY proposal is going to do just that.

What the Senator from Connecticut and I have tried to do is to talk first about the vagueness of the language in the Kerry proposal. This notion that you would simply have to identify ''potential'' with respect to the Y2K issue and Y2K problems is just going to be a lawyers' full employment program. What is going to happen is, you are going to have frivolous cases brought; you will very quickly have companies, particularly small business defendants, move to dismiss those cases because they are patently frivolous.

Because the Kerry standard is so vague, a judge is going to have really no alternative other than to send that to a jury. So I think that provision, identifying ''potential,'' is a real lightning rod for frivolous lawsuits. That would be our first concern.

The second, it seems to me, is that the Senator from Massachusetts has, to a great extent, mixed together, commingled, the principles of punitive damages and proportionality. I would like to try to step back for a minute and see if I can clarify that.

The Senator from Massachusetts has spoken repeatedly, he has come to the floor repeatedly, and said that under the bipartisan legislation, if defendants are engaged in reckless, irresponsible, wanton conduct, there is going to be no remedy for the plaintiff in those situations.

The fact of the matter is, under proportionality—clearly laid out in our legislation—you are liable to the extent that you contributed to the problem. That is true if you are a small business, if you are one of the Fortune 500 businesses—it is true no matter who you are. Under our language, with respect to proportionality, you are liable for what you contribute. It is just that simple.

With respect to punitive damages, besides keeping in place the State evidentiary standards on punitive damages, what we in fact say is the only

people we are really going to try to protect are those who are such a key part of the technology engine for our country, and that is the Nation's small businesses.

Finally, colleagues, I think there is some confusion with respect to this issue of economic losses as well. The Senator from Massachusetts has said that in some way the bipartisan proposal we bring has narrowed the availability of coverage for economic losses. We very specifically, in our legislation, make clear that existing State contract and tort law is kept in place.

What the dispute is all about is that the Senator from Massachusetts, and perhaps others, is in effect trying to tortify existing contract law. They would like to try to create some torts for 36 months in the Y2K area where those torts do not exist today in existing law.

My reputation, my background is as a consumer advocate. That is what I was doing with the Gray Panthers for 7 years before I was elected to the Congress, what I have tried to do for 18 years in both the House and the Senate. I feel very strongly about protecting consumers, and there are areas where it is appropriate to create new torts. Certainly, I have created a few causes of action during my years of service in the Congress.

If I can just finish, then I will be glad to yield to the Senator from Massachusetts. I think it would be a mistake, given the extraordinary potential for economic calamity in the next century, to change the law with respect to economic loss. We are neither broadening it nor narrowing it. We are keeping it in place. I know that those State laws with respect to economic loss do not do a lot of the things that the Senator from Massachusetts thinks are important, but that is, in fact, what we do in our legislation.

I want to be clear, our legislation does nothing, absolutely nothing, to limit remedies that are available to plaintiffs when, in fact, they are victims of a personal injury or wrongful death. So if an individual, early in January of the next century, is in an elevator, for example, and the computer in the elevator breaks, and the individual tragically falls to his or her death or suffers a grievous bodily injury, all existing tort law remedies apply in that kind of instance.

The bill that is before the Senate now is a very different one than the one that was voted on on a partisan basis by the Senate Commerce Committee. In fact, in the Senate Commerce Committee, I joined the Senator from Massachusetts in saying that it was wholly inadequate in terms of protecting the rights of consumers. I happen to think the bill the House of Representatives passed is wholly inadequate.

The legislation that we have now is a balanced bill. The defendants have strong obligations to cure defects. The plaintiffs have an obligation to mitigate damages. I think our failure to pass this bill, which has now included 10 major changes to favor consumers and plaintiffs since the time it left the Commerce Committee, our failure to pass this bill, I think, is a failure to meet our responsibilities as it relates to this technology engine that is driving so much of our Nation's prosperity.

I think when we look at the potential for calamity early in the next century, I don't think there is any dispute that we are going to have a significant number of problems. The question is, does the Senate want to compound those problems by triggering a round of unnecessary and frivolous litigation?

I hope we won't do that. I urge my colleagues to oppose the Kerry amendment.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the comments of the Senator from Oregon now have highlighted the sort of difference between what they say they do and the reality of what is done here.

I am not going to ask the reporter to read back the comments, but let me just quote the Senator. He can tell me if I have said differently. The Senator just said on the floor of the Senate that the Kerry bill seeks to create new torts. Am I correct? Am I stating what the Senator said?

Mr. WYDEN. Mr. President, if the Senator will yield, I am happy to engage him.

I am saying that our proposal protects State contract law with respect to economic losses. It seems to me that the gentleman's proposal, in wanting to change existing State contract law, is clearly moving us in a different area which legal experts have come to describe, pretty arcanely, as the notion of tortifying contract law doctrine, yes.

Mr. KERRY. Let me say to my colleague, he has just confirmed what I said. He is insinuating that we are creating a new tort.

I want to make it very clear, what the Senator and Senator MCCAIN and others are doing is taking away the right of State law, with respect to existing contract law, to be applied. They are saying that if a State allows a particular tort with respect to economic loss, they can't do it.

I will be very specific about it. My provision with respect to economic loss does exactly what the provision of the Senator from Oregon and the Senator from Arizona does. We are both trying to hold on to contracts, to avoid contract limitations on liability, and not to have people move into tort. Neither of us want contract law to become tort. So we both prevent that.

Here is the distinguishing feature. What we do that Senator MCCAIN and company do not do is, we say the following: If the defendant committed an intentional tort, you are not going to void the contract law, except—and this is the only exception—where the tort involves misrepresentation or fraud regarding the attributes or capabilities of the product that is the basis of the underlying claim.

Mr. WYDEN. Will the Senator yield on one point?

Mr. KERRY. In a moment I will yield.

Mr. WYDEN. Is that available under current law?

Mr. KERRY. I want to make this clear, Mr. President. Under the McCain bill, if a party is induced by fraud to enter into a contract, they can't recover damages for that. So what if in a conversation they say to the salesperson of the company: Is your product Y2K compliant? And the person says: Oh, absolutely, our product has been Y2K compliant. We are terrific, blah, blah, blah.

If they intentionally were to induce them into the contract on misrepresentation and they lose business as a result of that, they are being denied the ability to sue for that by S. 96.

I think that is wrong. I don't know, again, what public policy interest is served by suggesting that fraud and misrepresentation ought to be protected. Why should they be protected?

Mr. WYDEN. Will the Senator yield?

Mr. KERRY. I will yield for an answer to the question. Why should fraud or misrepresentation be protected?

Mr. WYDEN. We apply State contract law to these economic losses. What we say is, you get your economic loss under current law if your State law lets you. The Senator from Massachusetts is absolutely right. There is a sincere difference of opinion here. We are saying economic losses should be governed by State contract law. The Senator from Massachusetts says that he would like to go with a different concept. That is the difference of opinion here.

Mr. KERRY. Let my say to my colleague, with all due respect, that he is dead wrong. He is even more so dead wrong, because moments ago they adopted an amendment by the Senator from Colorado, the Allard amendment, which makes it very clear that State law is superseded. That is the amendment they adopted. So State law takes precedence, period, end of issue. You cannot protect people from misrepresentation or fraud, and there is no public policy rationale for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, with consent across the aisle, I believe, I ask unanimous consent that there be 1 hour equally divided on the Kerry amendment No. 610, followed by a vote on or in relation to the amendment, with no amendments to the amendment being in order prior to the vote, but that the vote will take place at a time to be determined by the managers.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, I wonder if my friend from Washington could hold that unanimous consent request for a few minutes. We have to make a couple calls.

Mr. GORTON. I will withdraw the request for the moment.

The PRESIDING OFFICER. Who seeks time? The Senator from Nevada.

Mr. REID. Mr. President, I am here to speak as one of those who is a cosponsor of the amendment now pending, the Kerry amendment. People have spent a tremendous amount of time coming up with the various proposals that are now before the Senate. I commend and applaud those who have worked so hard on this issue. I see on the floor my friend from Oregon. He has spent not hours and days, but weeks on this legislation. I commend him for the efforts he has made.

I do, however, say that in addition to the work he has done as a principal author of the bill, the junior Senator from Massachusetts has also spent a tremendous amount of time on this issue—as much if not more than my friend from the State of Oregon. The problem we have with this legislation—and we all recognize that it is extremely important—is that we have 204 days left until Y2K. We don't have time to play partisan politics and wait until the next session to produce a bill.

With 204 days left, we have to get to some serious legislation here and get something that is not perfect, but doable. I suggest that the amendment I am cosponsoring, which the chief author, the Senator from Massachusetts, has spoken at some length on, is legislation that the President will sign. We have to take that into consideration.

In the last several months I have traveled around the country meeting with high-tech companies, small businessmen and women, and individuals who have done so much to help this robust economy in which we are now involved. These individuals who run these companies want a bill. They don't want or expect a perfect bill, but they want a bill. They want a bill that would become legislation. They want a bill that would meet the demands they have. These small business men and women are successful enough, and certainly smart enough, to realize that with 204 days left there is a lot that has to be done. They would much rather have something signed into law than nothing at all.

We have to make sure that whatever we do is reasonable. The Kerry amendment is reasonable. The amendment now pending before this body is reasonable. We reward people for making an effort to address the Y2K problem. We also discourage frivolous lawsuits. I hope this amendment will receive a resounding vote.

I submit to this body that what we are doing is offering an amendment to the underlying bill that would make the legislation something the President would sign. We hope that when this bill, with this amendment, gets out of here, it will go to conference, and at the conference the differences will be worked out.

As it now stands, the underlying bill simply will not be signed by the President. I submit to my friend from the State of Oregon, who has worked so hard on this, that his legislation will not be signed. They have amended the McCain legislation, but the President of the United States will not sign this legislation. He has said this orally and he has said it in writing.

So I think, we have to push something through, in good faith, to help this problem that we have, something that would be signed by the President. I hope that people of good will on both sides of the aisle will join together and offer support for the underlying amendment.

Mr. GORTON. Mr. President, I ask unanimous consent that there be 1 hour equally divided on the Kerry amendment No. 610, followed by a vote on or in relation to the amendment, with no amendments in order prior to the vote, with the vote to take place at a time to be determined by the managers.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Reserving the right to object. I actually didn't hear it.

Mr. GORTON. It provides for 1 hour equally divided, with no more amendments while that hour is going on, and that the time for the vote will be determined by the managers of the bill.

Mr. KERRY. The managers, plural?

Mr. GORTON. Yes.

Mr. KERRY. I have no objection.

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

The PRESIDING OFFICER (Mr. SESSIONS). Who yields time?

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that I be permitted to talk as in morning business for up to 10 minutes, and that it not be charged to either side.

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

(The remarks of Mr. LAUTENBERG pertaining to the introduction of S. 1193 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

AMENDMENT NO. 610

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thought our colleagues might find it worthwhile to know that there are literally dozens of organizations, representing a significant percentage of the gross domestic product of this country, that endorse the McCain-Wyden-Dodd legislation, the Y2K bill. Beginning with the aerospace industry organizations, running through to the Wisconsin Manufacturers and Commerce Association, the West Virginia Manufacturers Association, Valve Manufacturers, Service Masters—all of the high-tech organizations, many of the State organizations—the North Carolina Electronic and Information Technology Association, Technology of New Jersey—it just goes on down this long list. My colleagues may want to have some idea and sense of the people we have worked with mostly now for many months to try to craft this legislation in a timely fashion.

This list represents almost 70 percent of the gross domestic product of the United States and thousands and thousands of working men and women in this country who would like to see Congress come up with some answer of how to solve the Y2K problem and yet not create a cost and an action that doesn't solve the problem but ends up with more costs and without resolving the very serious issue that Y2K poses. I ask unanimous consent that list be printed in the RECORD.

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

YEAR 2000 COALITION,
*June 8, 1999.*

DEAR SENATOR: The Year 2000 Coalition hand-delivered the attached letter to Senators KERRY, ROBB, DASCHLE, REID, BREAUX, and AKAKA, who have prepared a staff working draft of a proposed amendment to S. 96, The Y2K Act. The Coalition supports passage of S. 96 with incorporated amendments to be offered by Senator DODD. We have urged the Senators that are working on the staff draft to support S. 96.

Sincerely,

Aerospace Industries Association; Airconditioning & Refrigeration Institute; Alaska High-Tech Business Council; Alliance of American Insurers; American Bankers Association; American Bearing Manufacturers Association; American Boiler Manufacturers Association; American Council of Life Insurance; American Electronics Association; American Entrepreneurs for Economic Growth; American Gas Association; American Institute of Certified Public Accountants; American Insurance Association; American Iron & Steel Institute; American Paper Machinery Association; American Society of Employers; American Textile Machinery Association; American Tort Reform Association; America's Community Bankers; Arizona Association of Industries; Arizona Software Association; Associated Employers; Associated Industries of Missouri; Associated Oregon Industries, Inc.; Association of Manufacturing Technology; Association of Management Consulting Firms; BIFMA International Business and Industry Trade Association; Business Council of Alabama; Business Software Alliance; Chemical Manufacturers Association; Chemical Specialties Manufacturers Association; Colorado Association of Commerce and Industry; Colorado Software Association; Compressed Gas Association; Computing Technology Industry Association; Connecticut Business & Industry Association, Inc.; Connecticut Technology Association; Construction Industry Manufacturers Association; Conveyor Equipment Manufacturers Association; Copper & Brass Fabricators Council; Copper Development Association, Inc.; Council of Industrial Boiler Owners; Edison Electric Institute; Employers Group; Farm Equipment Manufacturers Association; Flexible Packaging Association; Food Distributors International; Grocery Manufacturers of America; Gypsum Association; Health Industry Manufacturers Association; Independent Community Bankers Association; Indiana Information Technology Association; Indiana Manufacturers Association, Inc.; Industrial Management

Council; Information Technology Association of America; Information Technology Industry Council; International Mass Retail Council; International Sleep Products Association; Interstate Natural Gas Association of America; Investment Company Institute; Iowa Association of Business & Industry; Manufacturers Association of Mid-Eastern PA; Manufacturer's Association of Northwest Pennsylvania; Manufacturing Alliance of Connecticut, Inc.; Metal Treating Institute; Mississippi Manufacturers Association; Motor & Equipment Manufacturers Association; National Association of Computer Consultant Business; National Association of Convenience Stores; National Association of Hosiery Manufacturers; National Association of Independent Insurers; National Association of Manufacturers; National Association of Mutual Insurance Companies; National Association of Wholesaler-Distributors; National Electrical Manufacturers Association; National Federation of Independent Business; National Food Processors Association; National Housewares Manufacturers Association; National Marine Manufacturers Association; National Retail Federation; National Venture Capital Association; North Carolina Electronic and Information Technology Association; Technology New Jersey; NPES, The Association of Suppliers of Printing, Publishing, and Converting Technologies; Optical Industry Association; Printing Industry of Illinois-Indiana Association; Power Transmission Distribution Association; Process Equipment Manufacturers Association; Recreation Vehicle Industry Association; Reinsurance Association of America; Securities Industry Association; Semiconductor Equipment and Materials International; Semiconductor Industry Association; Small Motors and Motion Association; Software Association of Oregon; Software & Information Industry Association; South Carolina Chamber of Commerce; Steel Manufacturers Association; Telecommunications Industry Association; The Chlorine Institute, Inc.; The Financial Services Roundtable; The ServiceMaster Company; Toy Manufacturers of America, Inc.; United States Chamber of Commerce; Upstate New York Roundtable on Manufacturing; Utah Information Technology Association; Valve Manufacturers Association; Washington Software Association; West Virginia Manufacturers Association; Wisconsin Manufacturers & Commerce.

Mr. DODD. Mr. President, again, I listened to the debate on the Kerry amendment. Again, as I stated earlier, I went down the various points of the proposal. The amendment basically is designed to open up the McCain legislation to the kinds of unbridled litigation that can occur in this area.

As I said earlier, we have not argued that we have crafted a perfect bill. It is our fervent hope that this legislation will become unnecessary, because the problems that many anticipate we hope will not occur. But if they do occur, if, as some claim, we are going to face serious problems in this country, then we think it is the wiser course of action for Congress to enact legislation that would encourage the resolution of the Y2K problem.

That is what we have attempted to do with this bill. We have had to compromise it, because it asks for compromise. Senator WYDEN, our distinguished colleague from Oregon, is responsible for at least 11 or 12 changes, that I know of, in this bill from its original crafting. I worked on three or four of the ones dealing with the punitive damages and directors' and officers' liability in the States in this bill. We have compromised slightly. But every day you have to move the goal post to serve yet another constituency.

We would like to have a bill that everyone would support. It would be wonderful to have a piece of legislation that 100 Senators would get behind. But candidly, you have a handful—really just a handful—of law firms that are opposed to this, it is a total misstatement to suggest that the trial bar in general is opposed to this bill. It is a couple of law firms in this country that are opposed to this bill. That is the fact of the matter. Because of a couple of law firms, we have an amendment that I am confident these law firms are very attracted to, like, and support for the obvious reasons. It basically makes this bill meaningless or worse; it actually expands an area of the law that didn't exist prior to the consideration of this bill. It is one thing if you want to change the bill. It is another matter to take existing law and create yet new opportunities. That is what the Kerry amendment does. When you allow State law to obviate contract law, you are not only disagreeing with our bill but you are disagreeing with existing law.

For Members to come in and support this amendment, understand that if it carries and ends up being adopted, it will encourage the adoption of it. Then we are not only not dealing with the Y2K problem, we are expanding areas of litigation that do not presently exist. Whatever disagreements you have with the underlying bill, if you want to vote against that bill, fine; but don't expand areas of litigation.

With all due respect to my colleague from Massachusetts, clearly his amendment does that. I think it would be a tragedy, as we are trying to shut down and reduce the proliferation of litigation, that we find we are expanding those opportunities.

Again, a lot of compromise has been involved in this and a lot of time and a lot of effort to bring it to this point.

Again, I have a great deal of respect for those who disagree with this work product. They have a different point of view—one that I disagree with, but I respect. To come in and to somehow suggest that we are improving this legislation and that we are in fact minimizing the possibility of further litigation with the adoption of the Kerry amendment is just not the case. You are expanding the opportunities for litigation.

For those reasons, the high-tech communities of this country feel strongly about this amendment, and for good reason.

When the amendment comes up for a final vote, I urge my colleagues to reject it and to let us move along and try to pass this legislation, and send a message that we care about this issue and want to minimize the problems the Y2K issue can present.

I do not know if there is any more time. I know there is some talk about other Members who wish to come over. I urge them to do this. This has been going on for 6 hours now. We have 21 other amendments to consider. My hope is that we can get this completed fairly quickly and at least have one or two votes today before we adjourn.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, we are now under controlled time, are we not?

The PRESIDING OFFICER. The Senator is correct.

Mr. KERRY. How does that stand? How much time does each side have at this point?

The PRESIDING OFFICER. The Senator from Massachusetts has 26 minutes 50 seconds, and the opposition has 23 minutes 53 seconds.

Mr. KERRY. I yield myself 5 minutes.

I listened to the Senator from Connecticut. I must say that I am a little disappointed, from what I heard, for a simple reason. I haven't come to the floor of the Senate and talked about the Chamber of Commerce. I haven't come to the floor of the Senate and talked about specific companies and interests that are represented or the dynamics this raised. I think to suggest that somehow what I have put on the floor represents the interests of just a few law firms really is an insult to the legislative effort that has taken place here. There is nothing in here that lawyers like. There is a restraint on plaintiffs almost every step of the way. This has been negotiated with many different people. I have sat with high-tech people at great length.

I have tried to do the bidding of the high-tech community to the greatest degree possible. I have listened to them. I have talked to Andy Grove three or four times. In his letter to the committee chairman, he stated that of his four interests, each had been met in this legislation.

We do exactly what the McCain bill does on cure. We do exactly what the McCain bill does on the mitigation. We do exactly what they do with respect to contract preservation. The one distinction in the four ingredients is a requirement that a company be a good citizen by looking over its inventory and making a determination as to what it did or didn't put out into the marketplace that might have the potential for creating a problem.

My colleagues come to the floor say again and again: We want remediation; we want to make it get better; we don't want lawsuits. I don't, either. We want the same remediation.

But if you ask a company to investigate its inventory, in my judgment, you are doing a better job of encouraging them to remediate than if you give them a blanket ''out'' from under one of the great leverages of our judicial system, which is the joint and several liability. They get it no matter

what they do. How that is an invitation to fixing the system and making it better is beyond me.

I think we need to be very clear here. Moreover, we have been told we are changing contract law. We are not changing contract law. We are suggesting contract law ought to be respected, and we are very clear about that. In fact, we uphold the contract law as it is, State for State.

No one has answered this question: Why should a company be able to escape responsibility for an intentional, willful, wanton, reckless or outrageous, willfully committed fraud against an individual when it creates economic loss? If you have economic loss under the provision of S. 96, you are not permitted to sue with respect to the intentional willfulness that took place. Why you want to protect a company that so behaves is beyond me. Another company may have a huge loss of intellectual property; they may drop their entire database; they may not be able to provide their contracts to other companies for months; they have economic loss; there was an intentional defrauding. And we are not going to hold them accountable for that.

We should be clear as to what we are talking about. This is a very moderate, very legitimate effort, just as legitimate without any insinuations of who may be directing the interests of the other side and just as legitimate to legislate a sound approach to Y2K liability.

I reserve the balance of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I am reluctant to get into this fight because, as I said before, I am unburdened with legal education. Occasionally when I hear these legal debates, it makes me grateful for the fact that I did not go to law school.

However, I feel the need to stand and comment on some of the things that have been heard and some of the statements that have been made with respect to this particular amendment.

It is my understanding that anybody who commits an intentional act of fraud has no relief as a result of this bill. If anybody can contradict that, I will be happy to hear it, because I do not want, in any way, to be part of supporting a bill that protects people from intentional fraud. That is not my purpose.

I must stand, as the chairman of the Senate Special Committee On The Year 2000 Technology Problem, and tell my colleagues that this is a unique situation. This has the potential of creating a unique chain of events that requires a unique solution. That is the purpose of the McCain-Dodd-Wyden bill, and that is why the bill has a 3-year sunset in it. We are not changing the world forever. We are crafting, as carefully as we can, a piece of legislation to deal with the unique circumstance of the Year 2000.

Mr. KERRY. Will the Senator yield?

Mr. BENNETT. I am happy to yield.

Mr. KERRY. I appreciate the Senator's comment enormously. I want to call the Senator's attention to the language of the bill. Section 121, Damages and Tort Claims:

> A party to a Y2K action making a tort claim may not recover damages for economic loss involving a defective device or system or service unless——

And you have two conditions under which they could.

No. 1, where the loss is provided in the contract; and, No. 2, if the loss results directly from damage to the property caused by the Y2K failure.

I have a third, and the Senator's folks are opposed to it. Here is the third. The defendant committed an intentional tort. Except where the tort involves misrepresentation or fraud regarding the attributes or capabilities of the product. Does the Senator want to pass a bill without that, without the fraud and misrepresentation?

It is in the bill.

Mr. BENNETT. I see my colleague from Oregon wishes to respond to this and perhaps has a better legal handle on it than I do.

My own layman's reaction would be not to sign a contract that didn't have a provision for fraud in it, as a businessman.

Mr. WYDEN. I appreciate my colleague yielding.

This goes right to the heart of the debate. We essentially say that State contract law will govern in these jurisdictions. The Senator from Massachusetts believes in a variety of instances that there should be other remedies. He is creating other remedies during this 36-month period where we are trying to present frivolous lawsuits.

The key principle here and what is now being debated is that under what Senator MCCAIN, Senator BENNETT and Senator DODD, the leader on our side on the Y2K issue, have said, we are going to protect State contract law with respect to economic losses. But we don't feel it is appropriate to try to create new remedies at this time when we are trying to prevent these frivolous lawsuits.

I am very appreciative to the Senator from Utah for yielding to me. I hope our colleagues will see that on this point of economic loss, State contract law is fully protected.

Mr. BENNETT. I yield to the Senator from Connecticut.

Mr. DODD. Let me give a factual example to make the case. Assume you have two identical computer systems, system A and system B, sold by the same manufacturer. They prove to be defective and cause economic damages of $100 million and lost profits to each purchaser, A and B.

System A crashed because of defective wiring, while system B crashed because of the Y2K bug. If Congress enacts the proposal suggested by my colleague from Massachusetts, that would allow no recovery of economic damages in tort cases. Purchaser B in the example would be able to sue for economic losses under the Y2K legislation while purchaser A would not.

There is no justification for such a result. In effect, the net result of the Y2K bill would be to expand liability in Y2K cases. Indeed, it would create an incentive for plaintiff's lawyers to look for any Y2K problem and then make that the predicate for legislation, exactly the opposite of the policy aim of the legislation.

In the faulty wire case, you only get economic damages and you have to apply State law. Under the Y2K legislation as proposed by my colleague from Massachusetts, you are expanding this. We are not trying to expand law here; we are trying to at least follow a similar pattern. So there is a fundamental difference: the defective wire in one case, the defective Y2K problem in the other. You end up with completely different results and encourage, of course, groping around, looking for Y2K issues, rather than defective wire which may be the cause of the problem.

I don't think that is the intent of our colleagues who are generally supportive of the very proposal we have before the Senate. That does expand existing law.

Mr. BENNETT. I thank the Senator from Connecticut. I realize the Senator from Massachusetts wants to engage in this. I ask unanimous consent that such time as is taken up by the Senator from Massachusetts be charged to the time of the Senator from Massachusetts rather than charged against my time.

With that understanding, I am happy to yield to the Senator further.

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

Mr. KERRY. That is entirely fair. What I would like to do is just respond and then I will sit down and reserve the remainder of the time.

Let me say to both of my colleagues, and I am glad we are getting to the nub of this, I say this gently and nicely: Both of the presentations that were made are incorrect with respect to what I said. The Senator from Oregon made a bold defense of contract law, and the economic loss argument that he made refers to the preservation of existing contract law. But economic loss is a tort claim. It is a tort claim. His argument is simply irrelevant when he says he is protecting the capacity of the contract law, so to speak, to be preserved within the framework of the economic loss argument. Here is why: My colleague from Connecticut just said we are trying to open this up to some broad, new thing, and the example he cited would not be, in fact, included. It absolutely would be included because our language includes both of the examples that he gave.

If it is provided in the contract, the person would be made whole. Or if it is the result of a Y2K failure, the person would be made whole. Here is the only difference. We go one step further. We do not allow them a whole lot of intentional torts except—and I read from

the language—''where the tort involves misrepresentation or fraud.'' That is the only ''new thing'' here. So, if the Senator from Connecticut is really concerned, what he is concerned about is that a lawyer might be able to lay out, according to the tough standards in both of our bills, sufficiently precise pleadings with a period to cure.

You may never have a lawsuit because everybody is going to have a 90-day period to cure, and we hope they are going to do exactly that. But if they do not do that and they do meet the sufficiency of the pleadings, and there also is a sufficiency of a showing of fraud or misrepresentation, they ought to get their economic losses. What we are saying is that under S. 96, under the current way it is written, you are denying economic losses if there is fraud or misrepresentation. That is the only ''new thing.''

The Senator from Connecticut says we are going to open up some great Pandora's box, a whole lot of lawyers bringing cases. We have tough pleading requirements here, really tough. Even after you send in your first notice of a lawsuit, the company is going to get 90 days to fix it. Any company that does not fix it in 90 days probably ought to be held accountable for the fraud and misrepresentation. But your bill says no to fraud and misrepresentation. Ours says yes. I ask anybody which they think is more fair.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, again I witness this clash between great legal minds. Yet, I am informed by a number of other legal minds the Kerry amendment would, in fact, destroy the effect of the bill. As a businessman, I always ended up asking my legal team whether it was appropriate for me to sign a particular lease or contract. I had to learn to depend on good lawyers. I think we have hired good lawyers in this situation and I am accepting their advice. I am moved by the eloquence of my friend from Massachusetts, but I shall not vote with him.

I want to once again focus on what it is we are doing here. We are dealing with a unique situation the likes of which we have never seen in international commerce and probably never will see again. That is why specific legislation is necessary.

Let me go back to a statement made by my friend from Massachusetts in the earlier debate when he said: We want people to be driven to examine their inventory to make sure it is compliant, but if the liability is limited they will not do that. This is not a question of examining your inventory to make sure it is compliant. We are already getting examples of people who have done everything prudent and possible to make sure that things were compliant with Y2K, only to discover after they had done everything prudent that it still didn't work. There are bugs hidden in this kind of problem that cannot in reasonable fashion be discovered in advance. There is a presumption on the part of the Senator from Massachusetts that those bugs were there because of some misrepresentation or fraud. My concern is that there will be that presumption on the part of a lawyer bringing suit if those bugs occur in equipment that at one time or another has passed through the hands of a very wealthy corporation.

This is where proportionality of joint and several liability comes in. If a corporation with deep pockets has at one time or another had its hands, figuratively, on a product where such a Y2K glitch occurs, there will be an obvious invitation to sue that corporation and then settle out of court for a large settlement because the corporation will decide, on business terms, it is cheaper to settle than proceed with the suit.

I have had the experience as CEO of a company of settling a lawsuit where I felt the merits were firmly on our side but where the economics said you do your shareholders a better service by taking this settlement than you do by going to court. I have had personal experience with that. I know how those kinds of decisions are made. In a situation where there will be unforeseen consequences and products that have passed through many hands in order to finally get to where they go, the temptation to sue the deep pockets will be overwhelming unless we pass this legislation. Every lawyer that I have spoken to who has examined the legislation from that point of view has said you cannot adopt the Kerry amendment. It will gut the legislation. It will render the whole thing moot, as far as we are concerned.

So I stand here not as a lawyer but as a businessman who has now, for 3 years, immersed himself in the Y2K issue and, frankly, who feels he understands that issue fairly well. I call on my colleagues to defeat the Kerry amendment, to pass this legislation, and to give to American firms—not just high-tech —give to American firms that will be involved in products that will suffer from Y2K problems the ability to solve those problems without the specter of huge lawsuits and huge settlements hanging over them.

Let me go back to one thing I said and repeat it. As I have been immersed in this issue for the period of time I have, I have come to realize that it is not strictly a high-tech issue. Yes, the high-tech community has been the most visible in pushing for this legislation. But they are by no means the only part of the American economy that will be affected by this issue. There will be municipalities that can be sued. There will be cities around this country that will suddenly discover that essential services do not work, that will have done everything they thought reasonable to get there only to have some glitch that they were unaware of come out of the blue.

Then the lawsuits will start. The question will be who was in the supply chain to produce whatever the device is that failed. Let's see who has the deepest pockets. It may not be a high-tech company at all. States are scrambling now to try to pass their own limited liability. I think that is a mistake. I think the Federal legislation makes a lot more sense. But let us understand, once again, we have a unique situation here. We already have anecdotal evidence that shows us how capricious it can be, in spite of the greatest effort to remediate and be in control. We do not want to turn this into a playground for plaintiffs' lawyers who want to take advantage of the class action circumstance, sue the deepest pockets, take a settlement, and walk away in a way that is of no advantage to anybody.

If we are making a mistake in this bill, if as we draft it there is mischief, it is not permanent mischief because the bill is gone at the end of 3 years. Everything is over at the end of 3 years. No one—no one—will make any attempt to extend it. Certainly I will not. By virtue of what the voters of Utah did, I will be here 3 years from now, if I am still alive, and I will certainly oppose any extension of this bill. I would think everybody would oppose any extension if somebody were to bring it up.

We are facing a unique situation. We have a piece of intelligently crafted legislation to try to deal with that situation, and we should not let ourselves get convinced that we are somehow changing the basis of American jurisprudence for all time as we try to take a prudent step in this particular circumstance.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I yield myself such time as I use.

Let me begin by paying tribute to both the Senator from Connecticut and the Senator from Utah. I know they have spent a huge amount of time, and they have done for the entire Senate and the country a great service in calling attention to and helping people understand the nature of this problem. I genuinely give both of them great credit for their leadership and their vision, understanding well over, what, 3 years ago that it was a problem and we needed to address it.

Our difference is not in good faith, in purpose, or intent. It is how we will or will not do something. I know my colleague from Utah is a very thoughtful and diligent student of these kinds of issues, and I share with him his own language with respect to the damages of limitation by contract, for instance. This is section 110, page 11, of the bill. It says:

> In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—
>
> (1) by the express terms of the contract; . . . .

Mr. BENNETT. Will the Senator yield? Mr. President, I suggest the Senator is reading from an old version.

There is no section 110 in the current——

Mr. KERRY. I apologize, it is now section 11.

Mr. BENNETT. I thank the Senator.

Mr. KERRY. I am reading from the accurate language. The point I am making is that you only allow damages according to the express terms of the contract. That contract could be illegal. That contract could be unenforceable or enforceable under other circumstances under State law. The language we have added simply says ''unless enforcement of the term in question would manifestly and directly contravene applicable State law in effect on January 1, 1999.'' Here is a major difference. You would, in fact, allow the contract to supersede applicable State law even if the contract were illegal. That is the way it reads.

There are serious implications in the language that is in the bill that would have a profound impact, and that is the kind of difference we have tried to address in pulling together our amendment.

I reserve the remainder of our time.

Mr. DODD. May I address——

Mr. KERRY. On your time.

Mr. BENNETT. I yield to the Senator.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, we are getting arcane. If a contract is illegal, it is not a contract. Just to say we have a contract, if there is no consent, if all the principles necessary for it to be a valid contract are missing, if a contract is inherently illegal, two people who engage in a contract for illegal purposes is not a contract to be protected under State law.

Mr. KERRY. With all due respect to my colleague, under the language in this bill, you will have given it life because you have, in fact, made it a contract that is binding.

Mr. DODD. We do not protect illegal contracts in this legislation. If there is any question, let the legislative history confirm that. I do not think we need confirmation. Upholding an illegal contract by legislation would require herculean efforts that do not exist in this particular proposal.

I yield the floor to others who may want to speak.

Mr. KERRY. I yield myself 30 seconds. If there is an illegal provision in a legal contract, you have the same problem I just defined. I do not want to get arcane, either. But you have, in the language of this bill, superseded the capacity of that illegality to be either a defense or a problem. That is all we are saying. These ought to be curable issues. We are passing a bill where they have not been cured. I promise you, if you want to create litigation problems, there they are.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, with some trepidation, I am going to read some legal language. As a layman, I have a hard time with this, but I will do my best and I think it is fairly clear. Under section 4 of the act:

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

State law is preserved. State law is not overridden in this catchall provision, if you will, at this stage. At this point, I will quit trying to practice law.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Mr. President, I will make one additional comment. Mention was made of Andy Grove. The Senator from Connecticut and the Senator from Oregon and I, along with several other Senators, had breakfast with Andy Grove this morning.

Just so the record is clear, the subject of the Kerry amendment came up in that discussion, and Mr. Grove, if I am quoting him correctly, said that his lawyers felt that the Kerry amendment would destroy the bill and leave it with no value. Indeed, my memory says he said that if the Kerry amendment was adopted, they would be better off without any bill. I ask the Senator from Connecticut if he has the same memory or if I am embroidering things.

Mr. DODD. I say to my colleague, we had a very delightful meeting for an hour and a half with Andy Grove. Those were, as I recall them, his sentiments expressed to us. He is someone who has been quoted over and over in the last number of weeks, and we finally got to meet the man quoted endlessly and found out where he stood on this legislation. Four or five of us had the privilege this morning of spending an hour and a half with him and discussing a wide range of issues, including education policy. He was very clear, I thought, in his expression of concerns about this effort and the damage that can be caused by the adoption of this amendment.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum and ask that the time be charged equally against both sides.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, how much time is remaining on both sides?

The PRESIDING OFFICER. The Senator from Massachusetts has 14½ minutes, and the Senator from Utah has 5½ minutes.

Mr. KERRY. I have no objection.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant 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.

Mr. DASCHLE. Mr. President, I thank my colleagues for the opportunity to express the views of this Senator on a very important amendment.

I think the biggest question facing the Senate today is not whether to support the Y2K liability reform. Most supporters, on both sides of the aisle, agree that we need to protect the high-technology companies from frivolous lawsuits.

For more than a decade, this industry has been the driving force of our economy. Its well-being is extremely important to this country and to all of us.

In South Dakota, Gateway computers is the largest private employer in the State today. I want a bill that provides Gateway—and every other member of this industry—with reasonable protections from frivolous Y2K-related lawsuits.

Businesses need to be able to focus on fixing the problem—not defending against lawsuits.

But the high technology industry is not the only group that faces potential difficulties as a result of this problem.

Consumers and other businesses that use and depend on computers face potential risks as well.

We need to protect consumers who might be hurt by the Y2K bug. We need to protect their right to seek justice in the courts.

A major problem with the underlying bill, as we consider just how we do that, is an issue of great importance to many of us; that is, how we resolve the issue of capping punitive damages that go beyond what is needed to prevent frivolous Y2K-related lawsuits.

The amendment offered by the Senator from Massachusetts, Mr. KERRY, and developed by him, and a number of our colleagues, corrects these problems.

Before I describe the differences between our approach and the underlying bill, it is important to point out that—on most of the basic issues—the two proposals are identical to the pending bill.

Both approaches encourage remediation by giving defendants 90 days to fix a Y2K problem before a lawsuit can be filed.

Both approaches would discourage frivolous lawsuits by allowing either party to request alternative dispute resolution at any time during the 90-day waiting period.

Both approaches require anyone seeking damages to offer reasonable proof—including the nature and amount of the damages—before a class action suit could proceed.

Both approaches would permit class-action lawsuits to be brought only if a majority of the people in the lawsuit suffered real harm by real defects.

Our approach addresses 95 percent—if not 100 percent—of what those in the high-technology community have asked for. It addresses all of the principles they have said are essential.

But there are a number of important ways in which our approaches differ.

Our proposal carefully balances the rights and interests of the industry, and consumers.

It limits its remedies to problems that are truly, legitimately Y2K related.

Our alternative offers high-tech companies more incentives than the underlying bill to fix the problem—now, while there is still time.

We are concerned that the underlying bill may—perhaps inadvertantly—provide such blanket protection against all Y2K problems, including those that could have and should have been avoided, that companies will lose the incentive to fix problems now.

For example, our amendment provides a balanced and reasonable solution to the issue of ''proportionality.''

The underlying bill preempts State laws on this issue. It would grant defendants proportional liability in almost all Y2K cases—no questions asked.

Our amendment, simply says that Y2K defendants would have to pass a simple test to quality for this protection.

It is sometimes referred to as the ''good corporate citizen'' test. And I know my colleague from Massachusetts has discussed this in some detail this afternoon. All a company has to do to pass the test is to show that it has identified potential problems and made a good-faith effort to alert potential victims.

This is a major concession. But we are willing to make it in this case because of the extraordinary circumstances.

These are reasonable conditions. Every single high tech company we know of has already met it.

If there are others that have not done so, they do not deserve special protection from Congress—plain and simple.

There are a number of other ways in which our amendment improves on the underlying bill:

It does not prohibit consumers from seeking justice in the courts for real and legitimate Y2K-related problems.

The underlying bill would require consumers to meet so many conditions before bringing suit that it would effectively shut the courthouse door.

Our bill establishes strict requirements for class actions to protect against frivolous suits.

The underlying bill shifts virtually all Y2K suits to the Federal courts. This has two effects. In many cases, it makes it harder for consumers to bring a suit. It also increases the strain on an already backlogged Federal court system.

This is strongly opposed by the Judicial Conference—not only because of the additional strain it would place on Federal courts, but also because it would upset the traditional division of responsibility between State and Federal courts.

I might say, I am continually amused by those on the other side of the aisle who have expressed themselves as being advocates of States rights and the Constitution and the requirement that States be given the prerogative in matters of jurisdiction on this and so many other areas; but when my colleagues on the other side of the aisle find it convenient, it seems this shift to Federal responsibility comes so easily. This is just yet another example of that shift. There have been scores of those examples in recent years.

Our alternative would not enforce illegal contract terms.

The underlying bill might. It could enforce any and all contracts—even those that are currently illegal under State and Federal laws.

Our alternative does not protect defendants from liability for intentionally wrongful acts. It allows victims of such acts to sue for economic losses.

The underlying bill protects companies even when they knowingly harm consumers, or use fraud to pressure someone into signing a contract.

Finally, our bill does not include a cap on punitive damages.

The pending bill would limit the amount of punitive damages that smaller businesses and municipalities could be assessed—regardless of whether they acted responsibly.

The people who would benefit from a cap on punitive damages are bad actors who injure others.

Ironically, many of those who would be hurt if this passes are themselves small businesses.

In summary, our amendment is identical to the underlying bill in every important, necessary way.

But, it does differ in ways that are critical to consumers, to businesses, and to the functioning of our courts.

Perhaps the most important difference between our approach and the underlying bill is that our approach is the only version the President will sign. We know that. The administration has said so unequivocally on numerous occasions. Make no mistake, unless the improvements in this amendment are adopted, the President will veto this bill for going too far.

So the choice is ours, and the year 2000 is fast approaching. Do we want to engage in an exercise that would be fruitless? Do we want to waste precious days debating a bill we know will be vetoed and then have to start all over? Do we want to limit frivolous Y2K lawsuits? This year is now more than halfway over. How much more time are we willing to let go before we agree to work together on a real solution?

The bottom line is, we have the power to fix the Y2K problem today. We have before us now an approach that targets the real problem and can be signed into law.

I urge my colleagues to join us in adopting the Kerry-Robb amendment.

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

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

The legislative assistant proceeded to call the roll.

Mr. BENNETT. 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. BENNETT. Mr. President, I will make one observation, and then I have a motion.

We hear again on the floor the threat of a Presidential veto. We hear that increasingly, as if the President should write legislation and we should supinely accept whatever the President recommends, that our function is simply to listen to the President, pass legislation that he announces in advance is acceptable and, thereby, abdicate our legislative responsibilities.

I am perfectly willing to risk a Presidential veto. I think that is the appropriate posture for a Member of the Senate.

I ask consent that following the debate in relation to amendment No. 610, the Senate proceed to an amendment to be offered by Senator MURKOWSKI or his designee and no other amendments in order prior to 6 p.m., and that at 5:50, there be 10 minutes for explanation followed by a vote in relation to the Kerry amendment No. 610.

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

Mr. BENNETT. Mr. President, I am prepared to yield back all further time on the Kerry amendment, if Senator KERRY is prepared to yield back.

Mr. KERRY. Mr. President, I cannot do that. I think Senator EDWARDS wants to use a little time.

Mr. BENNETT. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Utah has 1 minute 13 seconds; the Senator from Massachusetts has 3 minutes 47 seconds.

Mr. BENNETT. Mr. President, I reserve the remainder of my time.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to yield back my time, with the understanding that if Senator MURKOWSKI is not permitted to go forward, Senator EDWARDS can talk until he is, and if he has gone forward, that Senator EDWARDS would then be recognized to speak within the confines of the unanimous consent agreement just agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. There is no objection.

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

Mr. KERRY. Mr. President, I yield back the remainder of my time.

Mr. BENNETT. Mr. President, I move to table the Kerry amendment, with the vote to occur at 6, and 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.

Mr. BENNETT. For the information of all Senators then, the next vote will occur at 6 in relation to the Kerry substitute.

AMENDMENT NO. 612

(Purpose: To require manufacturers receiving notice of a Y2K failure to give priority to notices that involve health and safety related failures)

Mr. BENNETT. Mr. President, earlier today Senator MCCAIN filed an amendment No. 612 to the bill on behalf of Senator MURKOWSKI. It is my understanding this amendment is acceptable to both sides. Therefore, I ask unanimous consent to call up the amendment.

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

The clerk will report.

The legislative assistant read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. MURKOWSKI, proposes an amendment numbered 612.

The amendment is as follows:

Section 7(c) of the bill is amended by adding at the end the following:

(5) PRIORITY.—A prospective defendant receiving more than 1 notice under this section shall give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

Mr. MURKOWSKI. Mr. President, as we consider S. 96, the Y2K bill, I want to point out an area of concern that will affect many northern states, especially my home state of Alaska. January 1, 2000, will arrive in the middle of winter. Unlike many states in the lower 48, where a power failure on the first of the year is a major inconvenience, a power failure in Alaska can have serious consequences if climate control systems fail.

Earlier this year my home town of Fairbanks saw the thermometer plummet below 40 degrees Fahrenheit. While I do not doubt the industrious nature of my fellow Alaskans who have for so long used their ingenuity and determination to survive in Alaska's cold climate, any delay in resolving a health or safety related failure in Alaska cannot only be costly, but also deadly.

Therefore, I am offering an amendment that would require that companies notified of a Y2K problem must first respond to requests where the Y2K failures affect the health or safety of the public.

Mr. MCCAIN. I thank my colleague from Alaska for offering his amendment. I point out that his amendment does not only protect Alaskans. If a consumer radio fails, it's an inconvenience. If a radio used by the Phoenix police department fails, not only does it put the life of the police officer carrying it in jeopardy, but it also jeopardizes the safety of the public he or she protects. A company should give priority in responding to the Phoenix police station's need for Y2K failure assistance.

I am pleased to accept the amendment.

Mr. MURKOWSKI. I thank my friend from Arizona for his attention to this issue.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. The Senator had two amendments. Is this one related to the safety and health conditions? Is that the Murkowski amendment? That is the one. OK. No objection.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. BENNETT. The Senator from Connecticut may have an objection.

Mr. DODD. I was going to urge that it be set aside for 5 minutes or so. There is an item that I think might make that a bit stronger.

Mr. BENNETT. Mr. President, I ask unanimous consent it be set aside for 5 minutes.

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

Mr. BENNETT. Mr. President, under the previous order, I understand now that Senator EDWARDS will be recognized.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. I thank the Chair.

Mr. President, I will speak briefly to the McCain bill and to Senator KERRY's amendment, which I think should be recognized as a real effort by Senator KERRY to cure some of the problems that exist with the McCain bill.

From my perspective, I think what we are trying to accomplish here is to find a reasonable, moderate approach that both protects the rights and interests of consumers while at the same time ensuring that computer company manufacturers have the protection that they need and deserve.

There has been a lot of talk today about frivolous lawsuits. The McCain bill has very little, if anything, to do with frivolous lawsuits. The two provisions in that bill that all of the Senators have spent a great deal of time on and that have caused the most controversy are joint and several liability and economic loss. Those two provisions have absolutely nothing to do with frivolous lawsuits.

Speaking for myself, and, I think, speaking for Senator KERRY, both of us are opposed to any kind of frivolous lawsuit. I would be willing to support any provision that would provide protection against frivolous lawsuits. The two provisions that we are talking about, the elimination of joint and several liability and the elimination, from my perspective, of the right to recover economic loss, are both things that occur after a defendant has been found responsible. In other words, before you ever get to those two provisions, you have to first determine that there has been some irresponsible behavior on behalf of a defendant.

The idea that those provisions, which are really the most controversial provisions in this bill, have anything to do with frivolous lawsuits just doesn't make any sense. They have absolutely nothing to do with frivolous lawsuits.

For example, joint and several liability has to do with who you can recover against and what percentage or proportion of your damages you can recover, once a jury has determined that the defendant acted irresponsibly or in violation of a contract.

The economic loss provision has to do with whether the small business owner or the consumer is allowed to recover for lost profits, lost overhead, out-of-pocket costs, once it has been determined that, in fact, the defendant is at fault. So the idea that this has anything to do with frivolous lawsuits is just misleading. The bill has very little, if anything, to do with frivolous lawsuits.

If what we are concerned about is getting these cases resolved, creating incentives for consumers, small business people, people who have purchased computers, people who have a Y2K problem, to work with the computer manufacturers, with the people who manufacture the component parts of computers, I think that makes a great deal of sense. But this bill doesn't do that. Instead, what this bill doesn't do, in contrast to Senator KERRY's amendment, is strike a proper balance between providing reasonable protections for computer companies, while at the same time making sure we protect consumers. There has been an awful lot of discussion on the floor today about lawyers and the interests of lawyers. The reality is that lawyers and the discussion about frivolous lawsuits have little or nothing to do with this bill. Lawyers didn't make these computers; lawyers didn't have anything to do with the manufacture of these computer chips. And it is not lawyers who are going to be injured as a result of this bill. The people who are going to be hurt are consumers, the people who have purchased these computers.

I think it is really important that we as Senators focus on the people who are most likely to be injured as a result of the passage of this bill. Now, there are two provisions in the McCain bill that I think Senator KERRY's amendment addresses that are critically important. The first, and the one I want to focus most of my attention on, is a provision about economic losses. This is under section 12 of the bill entitled ''Damages and Tort Claims.''

What this provision does—and this is a provision of the McCain-Dodd-Wyden bill—is it eliminates the right to recover economic losses by a small businessman if a computer or a computer chip manufacturer irresponsibly creates a Y2K problem. Let me give you an example, and I think this example is very important. A small businessman in Murfreesboro, NC, is in his business establishment one day and a computer salesman comes in the door and says: I have this great computer system I

want to sell you that will make your operation more efficient. It will help you operate your cash registers. It will help with your accounting. It will help with your collections. The businessman heard about all these Y2K problems, but he was told by the salesman this system is totally Y2K compliant.

This small businessman, believing what he was told, buys the computer system. Well, come the year 2000, he begins to have problems, and the problems shut down his cash registers, shut down his accounting system, shut down his ability to collect; and this business, which he and his family have been involved in all their lives, all of a sudden has no cash-flow. So they lose profit and they continue to incur overhead, and over a period of 2 or 3 months they essentially lose everything they have spent their lives working on—all as a result of a Y2K problem that, in my example, the computer salesman knew existed when he sold them the computer.

In other words, when he made the statement to this businessman that this system was totally Y2K compliant, he knew full well what he was saying was not true. In fact, the evidence available to him indicated it was not Y2K compliant. So he made a fraudulent misrepresentation, a misstatement to this businessman.

Under that example, under the terms of the McCain bill, this is what that businessman who has been put out of business for the rest of his life—a family business they spent their entire lives building up—is entitled to recover: The cost of his computer.

So if he spent $3,000 on the computer as a result of this misrepresentation by the computer salesman, and he has been put out of business forever, under this bill—which will, by the way, control all of these cases regardless of what State law provides, and I want to talk about that in just a moment—this small businessman is out of business and what he can get back is the cost of his computer. So what the bill does, in essence, is it provides absolute immunity, with the exception of the cost of the computer.

I want to be clear about one other thing. There has been a lot of discussion about punitive damages on the Senate floor. Punitive damages are damages that are awarded to punish a defendant for highly egregious conduct. But punitive damages have nothing whatsoever to do with what I am talking about now. We are now talking about a small businessperson being able to recover lost profits, having to shut down his or her business, having to continue to pay overhead in connection with the operation of that business. These are normal damages to be recovered without reference to punitive damages.

What I am saying is a very simple thing. If this bill passes, then a negligent computer chip manufacturer, a computer salesman, or computer company that sells computers, that outright lies—I am talking about engages in a fraudulent misrepresentation in their sales—can only be held responsible for the cost of the computer. That is exactly what this bill provides.

I respectfully disagree with what my colleague, Senator WYDEN, said earlier today, that all Federal and State remedies for economic loss are left in place. I think exactly the opposite is true. In fact, what this bill does is eliminate, to the extent that a cause of action exists under State law, the ability to recover for economic losses.

So what we have is a huge, huge problem. We have a provision in the bill where, prospectively, we are going to say to small and large businessmen and women around this country that if somebody has made a misrepresentation to you about the computer system you were buying, No. 1, and No. 2, if they irresponsibly and recklessly sold you a computer system that was not Y2K compliant, i.e., they didn't act with reasonable care or they acted negligently, what we are going to let you recover is the cost of your computer; and you cannot recover any of the costs associated with the operation of your business, your lost profits, and all of the costs associated with the day-to-day running of the business.

I don't believe there is an American out there listening to this who would believe that is fair. It is not fair. Now, I might add, for Senators WYDEN, MCCAIN and DODD, that there are provisions in this bill that I have absolutely no problem with. I think we want to create incentives for people to work together. We want to create incentives for manufacturers to solve this problem. I think a 90-day cooling off period is a good idea. I think the idea of having an alternative dispute resolution so that folks have a mechanism outside having to file a lawsuit and go to court is a very good idea. These are all very positive things.

The problem is that, ultimately, there are going to be people across this country who, because of somebody acting irresponsibly or somebody misrepresenting something to them, are going to have problems with their business that will cause lost profits, lost overhead, which could ultimately lead to a shutdown of their business. And they will be able to recover absolutely nothing but the cost of their computer. I might add that later I intend to offer an amendment that specifically addresses this problem.

I just don't believe that is what the American people would support. It is fundamentally unfair because what you have is a small businessperson who acted in good faith, innocently, in purchasing a computer system, and as a result of a law passed in this Congress, that person would be out of business, through no fault of his own. But the person who is at fault and is totally responsible for what happened to him is only responsible for paying for the cost of the computer. The bottom line is, if this guy gets hurt and they get caught, what they have to pay is the money they originally got from these folks, which is the cost of the computer. That is fundamentally unfair. It violates every principle of fairness and equity that exists in the law of this country and has existed for over 200 years. That alone is clearly enough that this bill should not be supported.

Senator KERRY's amendment addresses that problem. It also addresses another problem that exists with this bill, which is the issue of joint and several liability. I have talked about this once before on the floor, but I think it is really important for the American people to understand what joint and several liability is. Essentially, it has existed in the law of this country for a couple hundred years now. It says that where you have an innocent—as in my example—small businessman and you have multiple parties on the other side who may be responsible for what happened, under joint and several liability the innocent party never has to pay for the loss, that the loss is shared in some way among the parties who are responsible for that loss. In this case, it may be the computer chip manufacturers; it may be the computer company that actually sold the entire system—a whole multitude of defendants. It is for them to resolve who pays what among themselves. In my case, the small businessman is innocent. And, as a result of the current law on joint and several liability, this innocent party is relieved of having to share the loss with guilty parties.

That is the reason joint and several liability exists. It is the reason it has existed in law in this country for a long time.

Senator KERRY's amendment sets up what I consider to be a very moderate, thoughtful approach—that responds to the computer industry and the high-tech industry's request for some protection against joint and several liability.

What Senator KERRY says is basically, if you come in and show you have acted responsibly as a good citizen, you get proportionate liability; that is, you can never be held responsible for anything more than your fair share of the damages.

It seems to me, although that is not the law in a great number of States in this country, that is a reasonable approach. It is a compromise. There is no question about that. We all recognize that, while I personally believe joint and several liability makes a great deal of sense, because it essentially says as a matter of policy we are going to always make people who are responsible for the loss share that loss, and never the innocent small businessman pay for the loss.

Senator KERRY has attempted to fashion a compromise that provides protection for what I believe to be the great bulk of computer companies that are out there doing business, who have acted responsibly, who can show that

they have been good corporate citizens, and when they do that, then they get proportionate liability, which is what they want.

But there is still, I have to say, the most fundamental problem in the McCain-Wyden-Dodd bill, which is the provision about economic losses. Ultimately what it means is, if you can't recover anything but the cost of your computer, we are giving prospective absolute immunity to an industry, not knowing at this point what the losses are going to be for anything except the cost of the computer. It is something we have never done in the history of this country. It would be a remarkable thing to do now.

I have to say in response to some remarks I heard from Senator DODD earlier, whom I greatly admire and respect, that he talks at great length about this being a 36-month or a 3-year loss, that there is not some dramatic change in the law, that it is just 3 years.

Here is the problem. That 3-year period is going to cover every Y2K loss that occurs because of the nature of this problem. These losses are going to come up quickly, and they are going to occur starting in January of the year 2000, or before. By the end of that 3-year period, the problems will have shown themselves, or they will be gone, or they won't exist at all.

When Senator DODD says it is just a 3-year provision, it is a 3-year provision that covers every single Y2K loss that is going to occur. It covers them all. We just have to recognize that when he talks about this being just a 3-year period of time that is being covered, that is what it is. It covers every Y2K loss that may occur.

The bottom line is this: I think it makes great sense to have a bill that provides some reasonable protection for the computer industry. I think Senator KERRY's amendment works very hard at doing that.

I think there are at least two huge problems with the McCain bill, the most dramatic of which, to me, is that no businessman, no matter what has been done to him, whether he has been lied to, whether he has been the victim of irresponsible conduct, whatever it is, all he or she can ever recover is the cost of the computer, even if he or she has been put out of business. I don't believe the American people would think that is fair.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, on this point, Senator EDWARDS is such a magnificent lawyer and I am always reluctant to get into this, but the bottom line in this matter of economic losses is, whatever the plaintiff is entitled to get under State contract law with respect to economic losses is what our bill does. That is just the bottom line. Whatever the plaintiff is entitled to under State contract law is what they are going to get for economic loss—no more, no less. The bill keeps the status quo.

I want to take a minute to go to one example. I want to take a minute to talk about the options available to the typical small business in these kinds of cases.

Let's say we have a company that buys $10,000 worth of computers from another company, and they all crash January 3 of 2000. They lose $1 million worth of business as a result. Obviously, they are unhappy. They write the computer company and they say that crash was the fault of the computer company, the Y2K failure, and they want it fixed, and they want their money, they want their $1 million. I want to take a second and describe what happens in those situations.

The computer company has to get back to the small business within 30 days. It has to make it clear. You have to move. They can say it was a Y2K failure. The computer company says, ''It is our fault. We will fix it the way the business wants—the restaurant. We will give you $1 million.''

That is that. They can say they will fix the Y2K problem, but they should not be responsible for the whole $1 million. They might say, ''We will fix it, but we have to negotiate this out. We are liable for some. You are liable for some.''

If the small business isn't satisfied with what the computer company does, they can basically go out and sue immediately in that kind of situation.

The third kind of example would be, the computer company just stiffs the small businessperson, is completely unresponsive to what the small business needs. In that case, the plaintiff, the small businessperson, can go out and file a suit immediately against the computer company.

Finally, we have raised the example of what happens if that computer company is bankrupt and insolvent. At that point, the small businessperson can name in their lawsuit anybody they think is a responsible party. They can name Intel; they can name Microsoft; they can name anybody they want. It is at that point the jury is going to decide what portion of the blame each potential defendant ought to bear.

That strikes us as sensible. That is the principle of proportionality. We are saying that you ought to pick up the burden of the problem you actually produced, but if you did something intentional, if you ripped somebody off, if you engaged in egregious conduct, then joint and several applies.

If we are talking about a low net worth of a defendant, it is the same sort of situation. So the plaintiff isn't left hanging.

As we get towards the final vote, I ask my colleagues to remember that is what a typical small business is entitled to—those four kinds of situations, so that at the end of the day they are going to have their economic losses dealt with just as they would under State contract law—no more, no less.

Really, we have what amounts to only a handful of real protections for this 36-month period. Yes, we do say that if a small business is operating in good faith, we would put some limits on punitive damages. I guess there can be a philosophical difference of opinion on that. Reasonable people can differ. But we think that if a small business acts in good faith, there ought to be some limit in terms of these punitive damages. There are only a handful of protections.

Again, the 30-day period is a limitation on somebody's right to sue. That is why we say if you really think you are stiffed, you can go out and sue immediately. We think it makes sense for a 30-day period to try to cure these problems.

On the proportionality issue, we are making a change to deal with a situation where we think that unless somebody engages in an egregious offense-type of conduct with a low net worth defendant, it is appropriate in this situation to say you are liable for what you actually produced.

In addition to this being a bill that lasts for a short period of time, it does not apply to personal injury problems at all. If somebody is in an elevator and the computer system falls out and the elevator drops 10 floors and somebody is badly injured, all existing tort remedies apply.

I am very hopeful we will have a significant number of our colleagues, particularly on the Democratic side of the aisle, supporting this. There have been 10 major changes made in this legislation since it left the Senate Commerce Committee. Our senior Democrat, the distinguished Senator from South Carolina, was absolutely right—the bill that came out of the Senate Commerce Committee was completely unacceptable in terms of the rights of consumers and the rights of plaintiffs. I joined him in opposing it.

Since that time, we took out the items that were unfair. A lot of them happened to be in the House bill—which is completely unacceptable to me, as well.

This bill is a balanced bill. It tells defendants they have to go out and cure problems; it tells plaintiffs they have to go out and mitigate damages. I hope our colleagues recognize that failure to pass a responsible bill in this area is just like hurling a monkey wrench into the technology engine that is keeping our economy humming. I hope we won't do that.

The Senator from North Carolina asked me, before I went through that enlightening example of small business, to yield. I am happy to do so.

Mr. EDWARDS. I appreciate the work of the Senator from Oregon. We have talked about this matter a good deal. I appreciate the time spent doing that.

We do have a fundamental disagreement. My reading of Section 12 says that people cannot recover economic

losses. I think if you can't recover economic losses as a result of the negligence or intentional acts or misrepresentations by a defendant, then essentially that means all you can ever get is the cost of the computer—even if you have been put out of business.

I don't think anybody in America would think that is right, fair, or just.

My first question is if, in fact, all the remedies for recovery of economic loss—that is lost profits, et cetera—are left in place under Federal and State law, why do we need a section, Section 12, on that matter at all in this bill?

Mr. WYDEN. If the Senator will let me reclaim my time, I will read the precedence we are citing with respect to our opinion that our bill covers economic losses in line with State law and common law.

Let me read to the Senator the precedent:

> The prevailing common law rule is that ''recovery of intangible economic losses is normally determined by contract law.''

That is Prosser, 1984.

Accordingly, the courts have essentially allowed plaintiffs to address these matters in State contract law by Clark v. Int'l Harvester Company, Chrysler v. Taylor, Inglis v. American Motor Company.

Our position is that the economic loss rule in our bill is merely an explicit recognition of this sensible principle, which is in line with the legal precedence I cited, and also Prosser.

Mr. EDWARDS. If the Senator will yield, the problem I have, if it is true that all State and Federal remedies for economic loss are left in place, it seems we would need to say nothing about that in this bill. We could say absolutely nothing and they would remain in place as they are under existing law, or we could have one sentence and that sentence would say ''economic losses are permitted as presently exist under applicable Federal or State law.''

Instead, I have a 2½ page section on economic loss, and before it ever gets to mentioning Federal or State remedies for economic loss, it sets forth a long description of requirements that have to be met—requirements that don't exist in any State or Federal law.

The reality is this bill sets up requirements that are far more draconian than exist across this country. Then the amendment says if you can meet all of those requirements, and the recovery of these economic losses are permitted under State and Federal law, then you can recover economic losses.

The truth of the matter is, if it were true that economic losses as they presently exist in the law and as they exist across this country—which means people can recover, in my example, more than the cost of their computer; they can recover for lost profits, their overhead, and all the costs associated with that, things that most Americans would consider completely fair, reasonable, and just—if that were true, we do not need a provision about this at all. We sure do not need 2½ pages about it. Or we could do it in one sentence: Existing recoveries for economic losses are permitted under applicable Federal or State law.

Instead, we have 2½ pages. We have a provision that essentially eliminates the right to recover economic losses, even in the case of someone who has had a fraudulent representations made to them about the product they are purchasing.

Can the Senator show me the specific language that simply says all Federal and State law remains in place, without any other requirements?

Mr. WYDEN. I appreciate having the chance to look at any alternative language the Senator from North Carolina wants to pursue.

The Senator raised the question of whether or not plaintiffs ought to be able to circumvent the provisions of State contract law by repackaging suits as tort claims. That has not been allowed by the courts.

If the Senator is talking about something else, we are happy to look at this. What we have in our legal analysis, and I have cited the specific cases that back up our particular point, is an indication that we believe we are protecting plaintiffs and plaintiffs' rights to recover in line with State contract law on economic losses.

If the Senator is not trying to ''tortify'' contracts, I am certainly willing to work with him on any kind of language.

Mr. EDWARDS. Mr. President, I don't have any problem at all with the idea of protecting existing contracts. I think Senator KERRY's amendment does exactly that. I think the problem we are confronted with—and I have asked this question a couple of times—this 2½ pages on economic loss does not say that State remedies prevail.

I might add, I believe your home State of Oregon allows the recovery of economic losses under the circumstances that I am describing where someone has acted irresponsibly. So we have a bill that will change laws not only in other places around the country but in your home State.

Let me give you an example of what I am talking about.

Mr. WYDEN. If I could reclaim my time to respond to the Senator, first, we made it very clear regarding economic losses. We want to see people recover in line with their State contract law.

If the Senator can show me something in the 2½ pages that he is so alarmed about—he has referred to the 2½ pages now three or four times—if the Senator can show me something in those 2½ pages that indicates that a plaintiff could not recover through their State contract law economic losses, I guarantee myself, Senator DODD, and Senator MCCAIN are interested in working with the Senator on it.

We cannot find anything. We have precedence and we have a legal analysis that backs up our point of view. If the Senator finds something in those 2½ pages that the Senator thinks indicates that a plaintiff cannot recover their economic losses according to State contract law, we will be very open to seeing it.

Mr. EDWARDS. For just a moment, if I could just give an example of what I am referring to, let's suppose a computer has been sold by a computer company that sells a system. They have sold it to a small businessman. There is a Y2K problem and the small business is put out of business. They have lost millions of dollars over the course of several months. What we determine, when the investigation is done, is that what caused the problem is a chip, a computer chip that was sold by a manufacturer with whom this purchaser never had any interaction. Or it was some program that was loaded onto the computer. And the plaintiff never had any relation with the software manufacturer. Of course they would not; they bought the computer at a computer store from some computer salesman.

Under the provisions of this bill, the person who was actually responsible, that is the manufacturer of the computer chip or software that was not Y2K compliant—you cannot recover against that responsible person for economic losses under the express provisions of this paragraph in Section 12. In fact, the Senator and I both know in reality that is what is most likely to happen. What most people are going to confront when they have a Y2K problem is some very isolated, discrete part of their computer system that caused the problem. It is not going to be the entire system. My point being there is no contract between the purchaser and that responsible party, that party in my example who is acting irresponsibly.

What you are doing in this bill is you are absolutely cutting off the right of this innocent businessman to recover anything more than what he has lost, what he has lost out of his pocket, what he has lost as a result of not being able to make sales. This bill is very clear about that, I say to Senator WYDEN. I don't think it can be interpreted in any other way.

Mr. WYDEN. Our interpretation and our legal analysis, which I am happy to give, indicates the plaintiff can recover exactly what they are entitled to today. They are not going to get any more.

I recognize what the agenda is here. I respect that we have a difference of opinion. But the bottom line is—I am happy to give our legal analysis—they can recover exactly what they are entitled to today.

Mr. KERRY. If the Senator will yield for a moment on just a point further, the language in section 2 says ''such losses result directly from damage to tangible personal or real other property.''

The economic losses my colleague is skillfully referring to may be the much

larger losses that come from, say, the intellectual property failure.

Mr. WYDEN. I think the Senator is talking about the tort section.

Mr. KERRY. No, he is referring—excuse me, yes, I am, at this point. But that is a similar complication here of what the Senator is eliminating without being aware that is, in fact, being eliminated.

Mr. WYDEN. Mr. President, if I can reclaim my time, there is a difference of opinion here on the matter of economic losses. In the 2½ pages the Senator from North Carolina has cited, we believe every plaintiff is going to be able to recover exactly what they are entitled to recover today. If in fact there is some evidence to the contrary, we will certainly be happy to pursue that.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. KERRY. Will the Senator yield?

Mr. WYDEN. Let me yield, if I can, to Senator HOLLINGS.

Mr. HOLLINGS. When the Senator says ''exactly what he is entitled to under the contract,'' when I go buy a computer from you, under my contract I am not contracting for any economic loss or loss of customers, or wasted moneys for advertising because the business has closed down, or any of the other economic losses. When the Senator says ''exactly under State contract law,'' the contract is only for the item itself. State contract law is not State tort law. I take it that is the difference. ''Exactly what he is entitled to,'' not under State tort law but under State contract law; isn't that the Senator's position?

Mr. WYDEN. If I could refer the distinguished Senator from South Carolina to the specific section, I have been talking about section 11, contractual damages. I gather the Senator from North Carolina, who is getting us into this area, was largely talking about the tort section. That, of course, is the difference of opinion here. I believe it would be a mistake to try to ''tortify'' these contractual rights at this time when we are staring, early in the next century, at all of these liabilities.

I have three good friends with whom I agree on probably the vast majority of issues that come up in this body who see it otherwise. I recognize that. But I want to, again, in the name of trying to work things out, make it clear if there is anything in the contract section—in the contract section—that would suggest a plaintiff cannot get the economic losses they are entitled to under State contract law, I am very certain Senator MCCAIN and Senator DODD and I will be happy to look at that. We do have a difference of opinion on this matter involving torts.

Mr. HOLLINGS. How could they be entitled to anything, any economic losses under State contract law when it was not contracted for? You see, you just contract to buy the item. If I go into Circuit City, or whatever it is, and get the computer, I don't say: Now, wait a minute, if something goes wrong with this computer here 60 days from now or something else like that and my business is closed down for 90 days or whatever, then I want the loss of customers, the loss of good will, and all these economic losses. I am only contracting for the item.

So when you say ''exactly what he is entitled to under State contract law,'' it is saying in the same breath he is not entitled to any economic loss under tort law. Isn't that the case?

Mr. WYDEN. The jurisdictions differ. But what we are trying to adhere to, with respect to economic losses and contracts, is the status quo. If there is some evidence we can be shown indicating otherwise, we will be happy to take a look at it.

I have taken an awful lot of time. I yield the floor.

Mr. EDWARDS. Can I ask Senator WYDEN one last question?

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from North Carolina.

Mr. EDWARDS. I want to make sure we are clear about this for purposes of our discussion. Does my colleague now concede that for any claim other than under contract, that economic losses are being completely eliminated by this bill? Does he concede that?

Mr. WYDEN. No. Not at all. In fact, let me again read from our legal analysis:

> The economic loss rule is a widely recognized legal principle that has been adopted by the United States Supreme Court in the vast majority of States. It states a party who has suffered only economic damages must generally sue to recover those damages under contract law, not under tort law. Tort law generally applies only where a party has suffered personal injury or damages to property other than the property in dispute.

So we are having, I guess, a duel of legal analyses. But we are happy to share ours. We believe, again, the court precedents and the specific analysis I am citing make it very clear that recovery that is available today for economic losses under State contract law is not being altered in any way by this bill.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, if I can respond just very briefly, there are two fundamental problems I respectfully disagree with Senator WYDEN about. The first of those problems is he talks at great length about State contract law. I do not have any problem with State contract law being totally enforced. I believe the law generally ought to be enforced and that includes State contract law. The problem is in the real world, most of the time, as Senator HOLLINGS pointed out, to the extent there is any written contract that contract is drafted by the manufacturers. It is not drafted by a small businessman who is buying a computer. So the Senator knows as well as I do it is a farce to say there is going to be a provision in the contract that provides for economic losses. It is not going to be anywhere in any contract, because the contracts have been written by teams of lawyers who drafted these contracts to protect the seller. They are the people who are in the position of economic power.

So the reality is there is not going to be anything in the written contract if there is a written contract. That is one problem.

But there is a second problem that is even larger than that, which is in many cases it is not going to be the contracted-with party who is responsible. The contract is between a purchaser and a seller. The seller is selling a computer system and the negligent or irresponsible party is not the seller who has included many computer chips in his computer system.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, the KERRY amendment is now up for 5 minutes of debate on each side, equally divided.

Mr. EDWARDS. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. EDWARDS. If I can finish this thought, the bottom line is in many cases—in fact, in the vast majority of cases—the computer company that is responsible for putting a small businessman out of business, for all the losses that the small businessman incurs is not going to have a contract. In fact, the only way the person who is ultimately responsible can be held accountable is through a cause of action for breach of warranty or breach of product warranty and negligence, and this bill eliminates the right of that small businessman to recover any of his losses other than the cost of the computer.

The result of this discussion is Senator WYDEN now recognizes that, and with all due respect, I do not believe the American people will find that fair.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time will be charged to both sides.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, this country is facing an unusual and very dangerous legal situation. I understand and appreciate the details given by the Senators as they have debated the nature of contracts and damages and economic loss rule and negligence as compared to contract law. It is pretty complex.

Historically, we have created rules under which to file. For contracts, you have burden of proof. If you file under tort, you have another standard you have to prove. All of those are complex, and we ought to be openminded to make sure we are proceeding in a way so as to create a statute that is effective and will achieve what we want.

It is time for us to face up to the fact that we do need some change in this Y2K computer problem. Our Nation is facing a real challenge. We could end

up with massive litigation in every single county in America: lawyers on both sides filing lawsuits arguing over how much business was lost in this grocery store, how much this bank lost; arguing over punitive damages, standards of proof; the computer companies situated in one State are having to defend themselves against 50 separate State laws; sometimes individual judges within individual States, if they do not have guidance, may rule differently than one expects them to rule.

Under the circumstances of this situation, as a person who does believe States ought to do those things they do best, and the Federal Government ought not to take over, when we are dealing with the computer industry—which is not only interstate but international and is a fundamental source of our productivity increases—that industry can be sued thousands of times throughout the country, and as a result, they will be weakened economically, they will be substantially less able to fix a problem that may occur and will spend more and more time with lawyers and on litigation than they need.

We need to create a system which focuses on fixing the problem, and that does mean changing the way we have to do business for this one problem for a maximum of 3 years. This is what we need to do. We do not need to allow our Nation to assault from every possible venue that exists in this country the computer industry, which Alan Greenspan has indicated is one of the primary reasons for our productivity increases as a nation, why our Nation is doing better than other nations, and why we need to keep it that way.

I see the distinguished Senator from Arizona has arrived. There may be some time remaining. I will be glad to yield the floor to him.

The PRESIDING OFFICER. One minute 25 seconds remains.

Mr. DODD. How much time remains on all sides?

The PRESIDING OFFICER. The Senator from Massachusetts has 5 minutes; the Senator from Alabama has 1 minute 24 seconds. Who yields time?

Mr. SESSIONS. I yield the floor.

Mr. MCCAIN. We reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, over the course of the day, there has been a lot of argument about what we seek to do and do not seek to do. I want to make it very clear. Both sides are seeking a fair and sensible way to address the Y2K problem. There is no argument that one side wants frivolous suits, the other does not. There is no argument that one side somehow wants to keep business from flourishing. We are all on the same side of the high-tech industry and of the capacity of that industry to flourish.

The question is, what is the fairest, most balanced way to effectively approach the question of how we will do that.

Senator EDWARDS from North Carolina has very effectively demonstrated one of the real flaws in the bill as presented by the Senator from Arizona. The economic losses will be denied in a way, particularly in a situation where there is fraud or misrepresentation, that no American deems to be fair.

Equally important, when you balance the fundamental components of this bill on the question of proportional damages and who gets them and when, there is a difference between us in what we assert is the appropriate qualification for businesses to merit the proportional damages.

The McCain bill automatically makes available, with a few small exceptions, those proportional damages to businesses without any fundamental mitigation requirement; that is the essence of this bill. On the other hand, the proposal I submit with Senator DASCHLE, Senator REID, Senator ROBB, Senator AKAKA, Senator MIKULSKI, and others, is a proposal that embraces 90 days for a cure period, just as the McCain bill does. It embraces a responsibility to mitigate, just as the McCain bill does. It preserves contract law, just as the McCain bill does. But it also requires a good citizenship standard, an effort by companies to determine the potential—not the reality—the potential, not to find to a certainty, but to declare the potential that they may have a Y2K problem, and then in good faith to make available to the people with whom they have dealt the information about that potential.

It is hard to believe the Senate would not be willing to embrace the notion that companies ought to embrace the full measure of the purpose of this bill, which is mitigation, by making that good effort in order to determine what their liability may be.

Our bill encourages remediation. It requires notice and opportunity to cure. It imposes additional duty on plaintiffs when the defendant does act responsibly. It requires the plaintiff to undertake certain mitigation efforts which is fairly unprecedented. It discourages frivolous lawsuits by encouraging alternative dispute resolution. It increases the pleading requirements. None of these, incidentally, are things the lawyers have asked for and none of them are things the lawyers like.

It asserts an increased materiality requirement so that the complaint has to identify with specificity the basis of the complaint which they make. We discourage frivolous class action lawsuits with a minimum injury requirement for any class action and a materiality requirement.

We protect business with contract preservation, with strict limitations on damages awarded for economic loss, and also, unlike the McCain bill, we embrace the notion that individual consumers should not be cut out from their capacity to redress their problems.

In the end, I believe the real issue is: Do we want to accomplish what we have set out to do, which means, will the President of the United States sign the bill? The President has made it clear the McCain bill will not be signed into law without the kinds of changes Senator EDWARDS and I and others have articulated.

So we can go through the Pyrrhic exercise or we can try to fully legislate. I think it is clear that we are offering an alternative that is fair, sensible, protects consumers, and at the same time protects businesses in this country.

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

Mr. HATCH. Mr. President, I rise today to support what will be offered as the bipartisan amendment to S. 96, the Y2K Act. I also rise to oppose Senator John KERRY's alternative to the Y2K Act.

The Y2K Act has gone through significant and myriad changes. In the spirit of constructive compromise, Senators of both parties have come together to work out their differences to produce S. 1138, the bipartisan Dodd-McCain-Hatch-Feinstein-Wyden-Gorton-Lieberman-Bennett amendment. Why? Because these and other Senators realize the importance of resolving a potential Y2K litigation crisis. These and other Senators have placed the vitality of the nation over any exaggerated loyalty to one political party.

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

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

Many fear that if Congress does not act, the American high tech industry, a leader in the world and a significant source of our exports, will be severely damaged. This is particularly true for the economies of cutting-edge high tech states—such as my home state of Utah—whose private sector is a leader in the information revolution. Why retard the industry that has led the recent boom of the American economy? Why kill the goose that lays the golden egg?

Let me restate what I have said on numerous occasions. The potential financial magnitude of the Y2K litigation problem is enormous. To understand this enormity, we should consider the estimate of Capers Jones, Chairman of Software Productivity Research, a provider of software measurement, assessment and estimation products and services. Mr. Jones suggests

that ''for every dollar not spent on repairing the Year 2000 problem, the anticipated costs of litigation and potential damages will probably amount to in excess of ten dollars.'' The Gartner Group estimates that worldwide remediation costs will range between $300 billion to $600 billion. Assuming Mr. Jones is only partially accurate in his prediction—the litigation costs to society will prove staggering. Even if we accept The Giga Information Group's more conservative estimate that litigation will cost just two dollars to three dollars for every dollar spent fixing Y2K problems, overall litigation costs may total $1 trillion.

Even then, according to Y2K legal expert Jeff Jinnett, ''this cost would greatly exceed the combined estimated legal costs associated with Superfund environmental litigation . . . U.S. tort litigation. . .and asbestos litigation.'' Perhaps the best illustration of the sheer dimension of the litigation monster that Y2K may create is Mr Jinnett's suggestion that a $1 trillion estimate for Y2K-related litigation costs ''would exceed even the estimated total annual direct and indirect costs of all civil litigation in the United States,'' which he says is $300 billion per year.

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

Looking at a rash of lawsuits—there already have been 66 Y2K lawsuits filed nationwide and the number is growing—we must ask ourselves, what kind of signals are we sending to computer companies currently engaged in or contemplating massive Y2K remediation? What I fear industry will conclude is that remediation is a losing proposition and that doing nothing is no worse an option for them than correcting the problem. This is exactly the wrong message we want to be sending to the computer industry at this critical time.

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

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

The bipartisan compromise amendment accomplishes these ends. It is significant to note that the Chair and Vice-Chair of the Senate's Special Committee on the Year 2000 Technology Problem, my good friends and respected colleagues ROBERT BENNETT and CHRISTOPHER DODD, endorse the bipartisan amendment. Both these Senators have developed great expertise in Y2K and related matters during their leadership of the special committee. They were instrumental in crafting the compromise amendment.

The Kerry proposal, on the other hand, is partisan. As I understand it, it was in part drafted with the White House. It has not been endorsed by one Republican. While I firmly believe that Senator KERRY and other Democrat Senators who crafted the amendment sincerely believe that they are doing good, their amendment clearly eviscerates the protections established by S. 96. It reduces the incentives created in the bill for reducing litigation and resolving Y2K problems outside the court room. Let me explain.

The Kerry Amendment significantly weakens the class action section of S. 96. Class actions are a significant source of abuse. I have seen this as Chairman of the Judiciary Committee. Both plantiffs and defendants' attorneys have all too often been successful in rigging the system. Far too often, sweetheart deals are entered into whereby the plaintiff's attorneys negotiate huge fees, the defendants buy litigation peace through a nation-wide class action settlement that acts as res judiciata and bars all, even meritorious, future litigation, and class members are given mere trifles, such as coupons for products that hardly can be considered just compensation.

Far too often, Federal jurisdiction is defeated by joining just one nondiverse class plaintiff—even if the overwhelming number of parties are from differing states. This wrecks the clear purpose of Federal Rule of Civil Procedure 23—to provide for a Federal forum for class actions where the litigation problem is national in scope. A federal forum ameliorates myriad state judicial decisions that are conflicting in scope and onerous to enforce. Now, I am a great proponent of federalism and the right of our states to act as what Justice Brandeis termed national laboratories of change. But it is axiomatic that a national problem needs an uniform solution. That is the justification for Congress' Commerce Clause power and its consequent promulgation of Rule 23. That is the justification for the Y2K Act itself, in which the Y2K defect is clearly a national problem in need of a Federal answer.

Because of the short 2 or 3 year timespan for litigation, all of these problems are magnified in the Y2K context. There already have been filed 31 Y2K class action lawsuits with all the attendant problems associated with class action abuse. Before all is said and done, I expect many more to be filed. S. 96 deals with the problems generated by class actions in two ways: first, a certification requirement to demonstrate a common material defect is mandated. This assures that class action joinder is available only if common questions of law and fact exist. Second, minimal diversity is allowed. Thus, a substantial number of parties must be from different states and joinder of one or two nondiverse parties cannot defeat Federal jurisdiction. Moreover, to assure that Federal courts are not saturated with class actions independently filed or removed from state court, the amount in controversy must be over one million dollars.

To its credit, the Kerry Amendment adopts the common material defects showing requirement. But it is silent as to the need for minimal diversity to assure that the Federal courts will have jurisdiction over what is after all a national problem. To be sure, I am aware that the Judicial Conference opposes this provision fearing a substantial increase in Federal class actions. But I am also aware of their tendency to overreact. They made no study of the issue. Their concerns were mere ipse dixits, statements made as true with no foundation as to their truth.

To the contrary, the nonpartisan Congressional Budget Office has made a study of both S. 96, the bill reported out of Commerce, and S. 461, the Hatch-Feinstein Y2K measure, the bill reported out of the Judiciary Committee. Both bills have nearly identical provisions.

Concerning the class action provisions of S. 461, CBO first recognized that because of the incentives found in the bill it expects ''that parties to lawsuits would be encouraged to reach a settlement. Thus, we anticipate that many lawsuits would not result in trial, which can be [time-consuming] and expensive.'' CBO went on and noted that ''some class action lawsuits could be shifted from state to federal court under S. 461 because the bill would ease restrictions for filing such actions in Federal court.'' What is important, however, is their ultimate conclusion: ''On balance, CBO estimates that the savings from eliminating trials for many lawsuits would more than offset any increased costs that might be incurred from trying additional class action lawsuits in federal court.'' (My emphasis). In other words, in the only study done of the class action issue, it is concluded that the Y2K Act's class action provision would not result in the flooding of the federal courts with unneeded and expensive litigation.

A provision of S. 96 that the Kerry Amendment actually strikes is the punitive damages limitation provision. Now both S. 96 and S. 461 contained caps on punitive damage awards. The caps applied to all prevailing parties and limited punitive damages to the greater of three times compensatory damages or $250,000, or the lesser of that amount if a small business was

the defendant. The reason for these caps are clear. Runaway punitive damages have hindered economic growth and productivity nationwide. Businesses are often forced to settle spurious suits when faced with millions in punitive damages. Thus, prices for goods and services are unnecessarily raised with consumers suffering the most. Because of the concentrated time period, this problem will be magnified for Y2K actions.

The bipartisan Dodd-McCain-Hatch-Feinstein amendment modifies the punitive damage provision. In the spirit of compromise, the caps were limited to small business and individuals with a net worth of less than $500,000. There were two reasons for this change. The first is that small businesses and most individuals would be ruined by immense punitive dmamages. The other reason is that punitive damages in this situation do not serve the intended deterrent effect. In fact, insolvency and bankruptcy creates a counterincentive to remediate Y2K glitches. Why would a small business voluntarily notify customers of potential Y2K defects if the business could face ruin for its good citizenship?

But Senator KERRY even opposes this watered down provision. The reason for Senator KERRY's opposition for even this moderate provsion is that even caps for small business would allegedly reduce the deterrent effect of those damages. Surely, however, the prospect of treble damages provides adequate incentives for companies that need monetary threats to make efforts at compliance. The current, unlimited punitive regime simply encourages suits by lawyers who hope to hit the lottery, while driving up the settlement value of insubstantial claims.

Let me turn to the proportionate liability section of S. 96. It is good to see that Senator KERRY has moved closer to our position. Prior drafts of his amendment completely weakened this provision. Senator KERRY's latest attempt in most respects is verbatim the same as the bipartisan amendment.

The system of modified proportionate liability in S. 96 makes sense as a matter of both equity and of litigation management. Based on the already existing proportionate liability provision of the Federal Private Securities Litigation Reform Act of 1995, it ensures that defendants will not be forced to pay for injuries that are not their fault. It discourages specious lawsuits because plaintiffs' lawyers will not be able to take advantage of the archaic joint and several liability doctrine whereby a deep-pocket defendant will inevitably have to pay the entire judgment so long as a jury can be persuaded to find it is even one percent responsible. And the proportionate lability section will avoid coercive settlements prevalent in a joint and several liability scheme.

The Kerry provision essentially adopts the proposal in S. 96, which recognizes that it is unfair to assume that defendants should be forced to pay for damages that are not their fault. But the Kerry draft also eliminates proportionate liability if the defendant fails to inform the plaintiff of a potential Y2K problem before December 31, 1999. This is true even if the defendant business demonstrates that it was innocent, or had no knowledge of the defect. Suppose a retailer, having no reason to believe the manufactured product sold was defective, could not and did not notify the purchaser of the Y2K defect. In that case the retailer would be subject to joint and several liability under Kerry. The result is that deep-pocketed defendants who are subject to strike suits will have to assume that they face limitless liability, and, therefore, will have no choice but to pay a coercive settlement, even if the defendant was innocent of any knowledge of the defect.

The Kerry Amendment duty to mitigate requirement has been so limited that it will not encourage remediation. The amendment provides that plaintiffs cannot recover damages for injuries that they could have reasonably avoided in light of information provided to the plaintiff by the defendant. It does not impose such a limit if the plaintiff obtained the relevant information from third parties or other sources. The provision in the Kerry Amendment is much more narrow than the general common law of the duty to mitigate. If the plaintiff in fact obtained information from any source that would have allowed it to avoid injury, it makes no sense to allow the plaintiff to ignore that information, to suffer the injury, and then to force someone else to pay its damages.

There is another significant problem with the Kerry Amendment. The amendment eliminates all intentional torts—except where the tort involves fraud or misrepresentation about the product—from the scope of S. 96's codification of the Economic Loss Rule, regardless of the relationship between the parties. This exemption would significantly narrow existing law in many states and undermine the purpose of the Rule in cases involving two contracting parties.

Breach of contract, intentional or otherwise, does not generally give rise to a tort claim; it is simply breach of contract. The Economic Loss Rule thus prevents tort remedies—such as lost profits and other economic losses—where the parties were in privity and could have negotiated consequential damages and other economic losses. The rapidly emerging trend, therefore, among the States is to apply the Economic Loss Rule to bar fraud claims where those claims merely restate claims for breach of contract. The Rule does not, however, bar fraud claims arising independent of a contract. Additionally, the Kerry Amendment would significantly override State law and allow recovery of economic loss in cases of intentional torts even where such recovery would be prohibited by State law. This seems to create a new cause of action for recovery of economic loss in cases of intentional torts and is unacceptable. The Kerry Amendment also would apply the Economic Loss Rule to only actual defects and not anticipated failures. Thus many lawsuits based on anticipated failures would not fall under the Economic Loss Rule.

Finally, the Kerry Amendment carve-out for noncommercial suits will permit a huge range of abusive actions. Carving out noncommercial suits—including class actions—will permit a huge range of abusive actions. Abusive class actions on behalf of consumers are one of the greatest dangers in the Y2K area because such suits are easily created and controlled by plaintiffs' lawyers. While the Kerry Amendment does apply the minimum injury certification requirement to individual class actions, it does not apply to the proportionate liability and other substantive provisions in such cases. Besides, why should not consumers get the benefit of the bill's terms, which will speed remediation and negate the need for costly lawsuits, as CBO opined.

It is clear that the Kerry Amendment has serious flaws. I sincerely believe that Senator KERRY and the sponsors of his amendment are well-meaning. Their goals are in harmony with ours. But they are mistaken if they believe that their proposal would solve the Y2K problem. That is why I ask all Senators to support S. 96, as modified by S. 1138, the Dodd-McCain-Hatch-Feinstein amendment.

Mr. LOTT. Mr. President, as the Senate considers S. 96, the Y2K Act, I rise to first praise the bipartisan work of Senator MCCAIN and Senator WYDEN. They have worked tirelessly to construct an effective, fair bill that will address the important issue of liability as it relates to the Year 2000—or Y2K. There are enough challenges for America's industry and governments to ensure that they are Y2K compliant. We all know how vexing computer problems can be.

This bill is constructive, positive legislation. It allows companies in the information technology industry to focus their limited resources on solving Y2K related problems in computer software by preventing frivolous litigation. Litigation which would divert those limited resources away from solving Y2K programming deficiencies.

With only 205 days left until the globe turns the page on the calendar to a new century and a new millennium, the Y2K problem is a crucial matter and must be fixed.

Lawsuits are already being filed regarding the Y2K problem, and Congress must act now to ensure that frivolous suits are prevented. Our legal system allows those who have indeed suffered because of the fault of another party to have their grievances adjudicated in court. This bill protects that process. This bill allows plaintiffs to bring suit

for Y2K related problems if these problems are not addressed. This bill, however, prevents and places limits on opportunistic and unwarranted suits.

Senator MCCAIN and Senator WYDEN have worked closely together to address this relevant matter, and I congratulate them for their efforts. Their approach has gained support from a substantial number of our colleagues—from both sides of the aisle.

I would also like to recognize the efforts of Senator HATCH and the Judiciary Committee. They too have brought additional attention and clarity to the issue of Y2K liability problems. Senator BENNETT and the Special Committee on the Year 2000 Technology Problem have also been invaluable in educating the Senate. Although his task force does not have legislative authority, he has explored all facets of the public policy dilemma. The Special Committee has continued to investigate this matter and provide education on preparations for the new century.

Yes, there were three separate efforts from three different vantage points to ensure that the Senate gets to a solution rapidly. The participating Senators have brought expertise and legitimate concerns from their various roles and responsibilities within the Senate. All of our colleagues will benefit from their collective efforts.

I am delighted that, without further delay, the full Senate can now begin consideration of S. 96—the result of the diligent efforts of many. I am proud to be a cosponsor and urge all Senators to support a solution that ensures America's continued prosperity.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I remind my colleagues of a letter that has already been made a part of the Record from the Year 2000 Coalition, which has more organizations and groups in it probably than I have ever seen—the entire high-tech community—addressed to Senator KERRY:

''We urge you to support S. 96 and to not introduce an amendment to it.''

''[T]he Coalition does not support the amendment . . . that is being circulated in your name.''

Have no doubt about where the high-tech community is on this amendment.

I ask unanimous consent for 2 minutes for the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. I thank my colleague.

Let me just again state to my colleagues, this is a 3-year bill. We are not changing tort law for all time. We are not even changing tort law. This is narrow in scope. It affects just Y2K issues for a limited duration to try to resolve the Y2K issues.

Let me say to my friend from Massachusetts, again, I respect what his intentions may be, but the adoption of the Kerry amendment expands, rather than contracts, the area of law we are trying to deal with here.

My colleague from Oregon has stated it well. You cannot, because you do not like the contract, all of a sudden decide you want to get into torts. I appreciate a plaintiff's lawyer wanting to do that, but we ought to be trying to fix these problems, not litigate these problems. That is what the McCain bill is designed to do.

My fervent hope is my colleagues will understand the fundamental difference and support the underlying legislation and not allow this bill to be destroyed, in effect, by adopting a measure here that would create more litigation, more problems, make it far more difficult for Americans who are going to be afflicted by this problem with the Y2K issue. With all due respect to its authors, I urge the rejection of the amendment and the support of the underlying McCain bill.

The PRESIDING OFFICER (Mr. SMITH of Oregon). All time has expired. The question is on agreeing to the motion to table amendment No. 610. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAPO) and the Senator from Colorado (Mr. CAMPBELL) are necessarily absent.

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—57

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

NAYS—41

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

NOT VOTING—2

| | |
|---|---|
| Campbell | Crapo |

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senator LEAHY now be recognized to offer an amendment with debate limited to 30 minutes equally divided, and following that debate the Senate proceed to vote in relation to the Leahy amendment with no amendments in order prior to the vote.

Before I finish this unanimous consent request, for the benefit of my colleagues, I do not intend to use the full 15 minutes on this side. I think my colleagues can anticipate a time for a pretty rapid vote by the time Senator LEAHY is finished.

Finally, I ask my colleagues who have amendments on the list of 12 amendments to agree to time agreements, so perhaps we could dispense with this bill tomorrow at an early moment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask my time not begin until the Senate is in order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Vermont is recognized.

AMENDMENT NO. 611 TO AMENDMENT NO. 608

(Purpose: To exclude consumers from the Act's restrictions on seeking redress for the harm caused by Y2K computer failures)

Mr. LEAHY. Mr. President, I call up amendment No. 611.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont (Mr. LEAHY) proposes an amendment numbered 611 to amendment No. 608.

Mr. LEAHY. 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:

At the appropriate place, insert the following:

**SEC. . EXCLUSION FOR CONSUMERS.**

(a) CONSUMER ACTIONS.—This Act does not apply to any Y2K action brought by a consumer.

(b) DEFINITIONS.—In this section:

(1) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product for purposes other than resale.

(2) CONSUMER PRODUCT.—The term ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

Mr. LEAHY. Mr. President, this bill as presently drafted would preempt the consumer protection laws of each of the 50 states and restrict the legal rights of consumers who are harmed by Y2K computer failures.

Why is this bill creating new protections for large corporations while taking away existing protections for the ordinary citizen?

We all know that individual consumers do not have the same knowledge or bargaining power in the marketplace as businesses with more resources. Many consumers may not be aware of potential Y2K problems in the products that they buy for personal, family or household purposes.

Consumers just go to the local store downtown or in the neighborhood mall to buy a home computer or the latest software package. They expect their new purchase to work. But what if it does not work because of a Y2K problem?

Then the average consumer should be able to use his or her home state's consumer protection laws to get a refund, replacement part or other justice.

The liability limits in S. 96 would protect companies whose acts or omissions result in harm to consumers' products or services—even if those companies manufactured or sold products that they knew would fail when the date changes to the Year 2000.

Is that fair?

Let me give you a real life example of how an ordinary person might be harmed by this bill. In 1999, Joe Consumer buys a computer program and on the package is the claim: ''This software is guaranteed to serve you well for years to come.'' But in the fine print in the shrink wrap that comes with the software is a disclaimer of all warranties, either express or implied.

Joe Consumer's software package, that he brought in 1999, is not Y2K compliant. He calls and writes the software company to get it fixed but all he gets in response is a form letter telling him to buy the latest upgrade.

Under this bill, Joe Consumer would have to wait 90 days for his day in court and might not have a remedy at all.

Joe Consumer would normally be able to pursue justice based on a failure of the implied warranty of marketability of the software because it was not Y2K compliant. Or he would normally be able to pursue justice under his state consumer protection laws. And he normally would be able to pursue justice with other consumers harmed by this Y2K defective software on a fairer and more efficient class-action basis. But not under S. 96.

This bill says that the written contract prevails, even if it limits or excludes warranties. Enforceable written contracts under this bill would include the fine-print, boiler-plate language that is standard in the packaging of computer hardware or software.

A consumer does not have any power to negotiate this fine print, boiler-plate, shrink-wrap. This shrink wrap is all one sided in favor of the computer manufacturer. In fact, in some cases, computer manufacturers even try to take away the right of a consumer to go to court in the fine print of their shrink wrap. In addition, this bill would override the Uniform Commercial Code and all state laws that protect consumers by making certain warranty disclaimers unenforceable. The consumer protections in the U.C.C. and state law protect individual consumers from having unfair terms imposed on them by manufacturers of products with far greater economic power.

But this bill makes all state consumer protection laws null and void against the fine print terms of any computer manufacturer's shrink wrap. Maybe we should rename this bill, the ''Y2K Shrink Wrap Protection Act.''

Moreover, S. 96 would severely restrict the use of class actions by consumers even when common questions of fact and law predominate in their cases and the class action would be a fair and efficient method to resolving their dispute. The use of class actions in state courts permit consumers to band together to seek justice in ways that an individual could not afford to take on alone. These state laws were enacted to protect the average consumer.

But these basic consumer protections would be eliminated under this bill's Federal peremption provisions.

And no new Federal rights for consumers would replace these lost state consumer protections under this bill. That is not right.

My amendment uses the same consumer exclusion language in last year's Hatch-Leahy Year 2000 Information and Readiness Disclosure Act. My amendment contains the same definition of consumer and consumer product that was in that consensus measure, which passed the full Senate by a unanimous vote and was signed into law about seven months ago. Our bill become law because it was balanced, in sharp contrast to S. 96 as currently drafted.

I would hope the full Senate could agree to this amendment since it uses the same language that we agreed to last year on the Y2K information sharing law.

Last year, when we passed Y2K legislation to encourage remediation efforts, we clearly let stand existing consumer protections under state law. This same policy should apply to the pending legislation, which currently proposes to limit a consumer's legal rights even in cases involving fraud or other intentional misbehavior by product manufacturers or sellers.

In fact, the precedent for using last year's Year 2000 Information and Readiness Disclosure Act as a model for S. 96 have already been set. S. 96 includes an exclusion for governments acting in a regulatory, supervisory or enforcement capacity. The exact language in the bill was lifted from the Y2K information disclosure law of last year. I believe this government exception make sense, particularly for SEC enforcement actions, and improves the underlying bill.

Moreover, section 13(d) of S. 96 also explicitly provides that the protections for sharing information in our Y2K law shall apply to this bill.

If the protections for businesses from last year's Y2K information disclosure law are good enough for this bill, then the exclusion from last year's Y2K law for consumers should also be good enough for this bill. Last year's Y2K information disclosure law was a balanced measure in part because it protected consumers from its provisions. Adding the same consumer carve out by adopting my amendment would give balance to this one-sided bill.

Passing this amendment would improve the chances of S. 96 actually being signed into law by the President, instead of being vetoed as a bill that protects special interests at the expense of the average consumer. My amendment is supported by consumer rights associations including Consumers Union, Public Citizen, Consumers Federation of America, and the United States Public Interest Research Group. I ask unanimous consent that a letter from these consumer advocates in support of the Leahy amendment be printed in the RECORD at the end of my remarks.

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

(See Exhibit 1.)

Mr. LEAHY. Mr. President, allowing consumers access to their home state consumer protection laws is the right thing to do. I urge my colleagues to vote for this amendment.

EXHIBIT 1

CONSUMERS UNION, PUBLIC CITIZEN, CONSUMER FEDERATION OF AMERICA, U.S. PIRG,

*June 8, 1999.*

DEAR SENATOR: As the full Senate prepares to consider S. 96, The McCain-Wyden-Dodd legislation limiting the liability of companies responsible for Y2K computer processing failures, the undersigned consumer groups remain concerned about the negative effects this legislation will have on consumers with legitimate Y2K claims. While we would support legislation to provide incentives to companies to evaluate and address Y2K problems and product defects, we believe that S. 96 will have the opposite consequences.

Insulating companies from Y2K liability will only serve to protect those who have done the least to address their problems and will render consumers far more vulnerable as a result. We ask that you support the Leahy amendment, which would exempt consumer cases from this legislation. Most experts expect Y2K litigation to be brought primarily by businesses against other businesses. These litigants will have contracts with one another that have been drafted to protect their individual interests. Consumers will not have benefit of these protections in the marketplace.

In addition, there is federal precedent for a consumer carve-out in Y2K legislation. The language of the Leahy amendment is the same language that appears in the law passed last year, the Y2K Readiness and disclosure Act. Among the provisions of S. 96 that are most harmful to consumers:

Elimination of Joint and Several Liability. The sweeping change in this longstanding tort concept will likely leave consumers uncompensated for damages if one or more defendants cannot be held liable for the full amount of loss suffered. The two narrow exceptions to this provision will be of little benefit to most plaintiffs, and many could be left without full compensation, even for their economic losses.

Class Actions Removed to Federal Court. Any class action with aggregated damages of $1 million or more could be removed to federal court, where cases are likely to face a large backlog of cases and thus long delays and additional expense. S. 96 also requires notification by return mail to each potential plaintiff in a class action, a provision that may well make bringing these cases financially and practically impossible—leaving class members without a remedy.

Caps on Punitive Damages. S. 96 caps punitive damage at $250,000 or three times compensatory damages, whichever is less, for defendants with a net worth less than $500,000 or businesses with fewer than 50 employees, unless plaintiffs can prove the defendant specifically intended to injure them. Caps on punitive damages send the wrong signals to the most irresponsible companies, acting as a disincentive to fix problems before they occur.

Disclaimer of Implied Warranties. In most states, products are warranted to be fit for the purpose for which they are sold. Under S. 96, warranty disclaimers on the packaging or software—the fine print that consumers rarely read—may keep consumers from recovering for defective products and the losses they cause, unless they are proven to manifestly contradict state law, a difficult standard to meet.

For these reasons, we ask you to support Senator Leahy's consumer protection/consumer carve-out amendment.

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EXAMPLES OF HOW SENATE Y2K LIABILITY BILL IS UNFAIR TO CONSUMERS

The examples below demonstrate the ways in which S. 96 would make it difficult, if not impossible, for consumers with legitimate claims to get full compensation from responsible parties. This legislation will have a direct effect on consumers and will likely result in many consumers being left without a remedy for Y2K problems.

THE CASE OF THE NON-COMPLIANT SOFTWARE

In 1998, Mrs. Betty Barnes purchases a new home computer, paying an extra $500 for special software that will allow her to pay her bills and manage her household finances using the system. One year later, Mrs. Barnes finds that the software is not Y2K compliant and will not work after the Year 2000. She calls the store where she bought the software to get a version of the software that will work. The store tells her a ''patch'' to correct the problem is available but will cost an additional $250. Mrs. Barnes then writes to the software manufacturer asking for a fix for the defective program. The manufacturer writes back within 30 days telling her that she will have to pay $250 for the Y2K compliant version of the program.

Under the bill, Mrs. Barnes must wait an additional 60 days before she can bring any legal action against the software manufacturer. The manufacturer has met its obligation by responding to the letter even though the company did not agree to fix the problem for a reasonable price. Mrs. Barnes has no right to a free fix or a reasonably priced upgrade under S. 96. She must wait 60 days even if the manufacturer has proposed an unfair solution to the problem. Mrs. Barnes has no bargaining power to force the manufacturer to offer a more fair solution.

S. 96 does have an exception to the 60-day waiting period: Mrs. Barnes can sue for injunctive relief. She speaks to a lawyer and finds out this will not help her in her case. Injunctive relief is difficult to obtain; it requires proof of (1) irreparable injury if the problem is not dealt with immediately, (2) a strong likelihood of winning on the merits and (3) no adequate remedy at law. Mrs. Barnes is unlikely to be able to prove irreparable injury. Even if she could, her likelihood of prevailing on the merits is diminished by the federal law that makes it harder for plaintiffs in Y2K cases to win. (She could show that she has no adequate remedy at law because she cannot sue at this stage.)

Mrs. Barnes is forced to wait for two months before she can file suit. During this time, she is unable to use the software for which she paid $500.00—she can't balance her checkbook, she can't pay her insurance or mortgage, she can't do her taxes.

After the 60-day period expires, Mrs. Barnes lawyer files suit against the software manufacturer. under S. 96, she has to plead her case with specificity, even though she knows little at this point about her case except that her software isn't Y2K compliant and she has been barred from conducting any discovery while the 60 day period ran out. The manufacturer moves to dismiss the case, arguing that S. 96 protects them from Mrs. Barnes' suit. The software package has a disclaimer that says, in fine print, ''there are no warranties, express or implied, that apply to the sale of this product.'' Under S. 96, the terms of a contract—including a warranty—prevail over any consumer protection statutes in state law unless the language in the contract is deemed to ''manifest and directly'' contradict state law. The software company argues that the state law that disfavors this kind of disclaimer does not ''manifestly and directly'' contradict state law. Since this is an issue of first impression, each side must present legal arguments on this issue, adding much cost and delay to the suit. If Mrs. Barnes loses, she will have no legal recourse, even if the manufacturer knowingly sold her defective software.

Luckily, Mrs. Barnes survives the motion to dismiss. She and her lawyer now have the chance to conduct discovery. They learn that there are a number of companies involved in manufacturing of her particular software, and they move to add them as defendants. The companies based in the United States claim little or no responsibility for the Y2K failure. They all point to a Japanese software maker as the source of the problem. Mrs. Barnes can't sue the Japanese software maker since it does not do business in the U.S. If the jury finds that the Japanese company is the defendant most at fault, S. 96's limitations on joint and several liability will mean Mrs. Barnes can never recover fully for her damages.

Without evidence of specific intent to injure nor knowing commission of fraud, as required under S. 96, Mrs. Barnes cannot hold all defendants jointly and severally liable. Mrs. Barnes learns that the U.S. manufacturer recklessly placed this software on the market without bothering to check that is was Y2K compliant. But ''reckless conduct'' isn't enough under S. 96 to allow the court to hold the U.S. manufacturer liable for the entire injury, even though the injury could not have occurred without its participation. Since Mrs. Barnes damages are not equal to 10% of her net worth as required under S. 96, she is not eligible to use that provision to bring the case for an ''uncollectible'' share. Mrs. Barnes can get only that percentage the jury says the U.S. manufacturer is responsible for causing.

If the Japanese company is judgment-proof, the U.S. manufacturer could be responsible for up to 50% more of its initial share. If the jury finds the U.S. manufacturer was 20% liable and the Japanese company was 80% liable, and Mrs. Barnes can't collect from the Japanese company, the U.S. manufacturer is responsible for 50% more than its original share, a total of 30%. Mrs. Barnes can never recover the other 70% damages she is owned.

THE CASE OF THE CONSUMER CLASS ACTION

S. 96 provisions on class actions will result in meritorious cases being dismissed, leaving consumers with no practical means for collecting damages.

Assume the same facts as above, but this time Mrs. Barnes learns that a number of other consumers have bought the same software and are having the same problems. Together they file a class action suit in Mrs. Barnes' home state against the manufacturer. They are able to meet the material defect requirement imposed on those filing class actions as well as the heightened pleading standards. The manufacturer, noting that there are plaintiffs from a number of different states, under the rules of S. 96 would be entitled to file a motion to remove the case to federal court. The federal court, required to resolve differences between and among state laws, decides there are not enough common issues of law among the various state laws, and the class action is returned to the state. The class is disbanded there. While individuals are free to bring suit on their own, each case is for such small monetary value, few consumers or lawyers are interested or willing to pursue the case individually. Mrs. Barnes can't find a lawyer to take her case and she is left without a remedy.

THE CASE OF THE CHEMICAL DISASTER

Mrs. Jacqueline Jensen owns a home several streets away from the Acme Chemical Company. Like 85 million other Americans, she lives and works within 5 miles of the one or more of the nation's 66,000 facilities that handle or store high hazard chemicals.

On January 1, 2000 Acme's safety system fails and hazardous chemicals are released into the air and onto the land in the neighborhoods, forcing Mrs. Jensen and others to evacuate their homes. People are allowed back to their homes after 2 days, but Mrs. Jensen's property is contaminated, including her well. Mrs. Jensen retains an attorney and files a tort claim to recover for the damage to her property.

Acme Chemical claims that a Y2K computer failure was partially at fault for the safety system malfunction. Mrs. Jensen did not know Y2K was a defense, so she and her lawyer did not look up the new statute or file a per-litigation notice before filing suit. Under S. 96, Acme treats the complaint as the notice, even though it does not contain all of the required information because Mrs. Jensen and her lawyer initially had no idea this was a Y2K case and there was a new law to follow in addition to the requirements of filing a civil suit under state law.

Under S. 96, even when consumers' homes and surrounding properly is contaminated, they cannot file suit right away, even though they aren't waiting for a computer malfunction to be fixed. The waiting period applies to all cases, even those where it is not relevant. Mrs. Jensen must wait 30 days for Acme to respond to her notice/complaint. In 30 days Acme responds by saying it cannot pay for the cleanup and lost value of Mrs. Jensen's home. Nonetheless, Mrs. Jensen still must wait an additional 60 days to refile her lawsuit. S. 96 only requires defendants to state what steps, if any, they will take within 60 days for the additional waiting period to commence. All discovery is stayed during this period, so Mrs. Jensen and her attorney have no way to gather additional information about the events surrounding the chemical spill.

In two months, Mrs. Jensen refiles her suits against Acme and Safety Systems, Inc., the company that installed its computers. Under S. 96, she must plead her case with particularity in the complaint. While she can state her damages as required, she has difficulty specifying the material defect that caused the accident and specific evidence of the defendants' state of mind since she has still not been able to do discovery in the case. The defendants move to dismiss the complaint for failure to meet the pleading requirements. After briefs back and forth debating what the new law requires, the judge does dismiss the case but without prejudice, allowing Mrs. Jensen an opportunity to file an amended complaint (now her third).

Somehow, Mrs. Jensen finds enough information to survive another motion to dismiss

and finally has her day in court. After hearing the case, the jury finds that both defendants acted recklessly and outrageously for not identifying and fixing the Y2K problems at the plant, and awards Mrs. Jensen $300,000 to compensate her for her property damages and the need to replace her water supply. The jury finds that Acme is 70 percent responsible and Safety Systems 30% liable. The jury also finds by clear and convincing evidence that Acme's conduct is so outrageous as to warrant punitive damages and assesses a one million-dollar punitive damage award. The jury also finds substantial evidence that Safety Systems knew the system it installed might not work and that it should have fixed the Y2K problem, which is enough for them to be assessed punitive damages under state law, but Mrs. Jensen could not make that showing by clear and convincing evidence as required by S. 96.

Under S. 96, a consumer who suffers harm limited in amount of punitive damages she can collect. The total amount of Mrs. Jensen's award from the jury is $1.3 million dollars—$1,210,000 against Acme ($210,000 compensatory and $1,000,000 punitive) and $90,000 against Safety Systems. Acme employes 40 people, so the punitive damages awarded against them is reduced by the judge according to the cap under S. 96 to $250,000. The adjusted award is now $550,000 against Acme and Safety Systems.

Acme cannot pay for all of the damage caused by the accicent to Mrs. Jensen and her neighbors and files for bankruptcy. Safety Systems pays Jensen $90,000, but this is not nearly enough to let her clean up her property and get a new water supply—especially after she pays her legal costs. She tries to collect from Acme, but without success. After 3 months, she applies to the court to require Safety Systems to pay the rest of the compensatory damage award. Under state law, they could be required to pay the full amount, but under S. 96, the maximum they would have to pay is 30% of the uncollectible share but no more than 50% over Safety Systems' own contribution. Under this formula, Mrs. Jensen is able to collect an additional $45,000 from Safety Systems, leaving her with a actual unrecoverable damages to her property—i.e. direct economic loss—of $165,000 exclusive of legal fees and costs.

Although the jury found that Safety Systems acted recklessly, they do not have to pay the full amount of the compensatory award—even if they could afford to do so.

Under her state's law, Mrs. Jensen would have received $1,300,000, that is, full compensation for her losses from the responsible parties. Because of S. 96, Mrs. Jensen will be left with only $135,000, not nearly enough to compensate for her loss and pay her legal fees and costs.

THE CASE OF THE DISCLOSED MEDICAL RECORDS

Mrs. Sally Sargent lives in a small town. Her physician is treating her for HIV. She has been seen at the local hospital during bouts of pneumonia, but more recently has been on drugs that have improved her overall health and enabled her to work. Her biggest fear is that her employer will learn of her HIV status, which will surely mean the loss of her job in a rather straight-laced company and that her children will be ostracized at school. She has been assured by the hospital that all of her records will be kept confidential.

The hospital records department ignored its potential Y2K problem, though they were warned by hospital administrators to check the record system for Y2K bugs. As a result, the hospital's computer records are mistakenly distributed to abroad group of hospital personnel. One of those hospital employees has a child who attends school with Mrs. Sargent's daughter. This mother becomes very agitated, calls the school with the information, and before long the rumor about Mrs. Sargent's medical condition gets around to the whole community. Mrs. Sargent's daughter is ostracized from her classmates, and she herself suffers great emotional distress. When her employer discovers she has HIV, she is fired from her job.

Under S. 96, her emotional distress and mental suffering claim is not exempted from the bill, as are personal injury cases involving physical injuries. Failing to exempt cases brought for emotional distress and mental suffering, if they happen to occur unaccompanied by physical injury, is grossly unfair to individuals who have suffered real harm. In this case, Mrs. Sargent would have to meet all of the procedural hurdles and substantive legal limitations if she tried to sue the hospital for negligent or intentional infliction of emotional distress and her lost wages and related damages.

Mr. MCCAIN. Mr. President, this amendment, for all intents and purposes, will emasculate the bill. It will deny consumers, those least able to pay for attorneys, to hire attorneys to solve any Y2K problems, the average consumer the ability to resolve a problem quickly, within a maximum of 90 days, without litigation.

It also allows more of the Tom Johnson-type lawsuits: No requirement that there be an actual injury, no requirement that there be a real problem. This would negate the attempt by S. 96 to limit frivolous lawsuits.

I yield back the remainder of my time.

Mr. LEAHY. How much time remains?

The PRESIDING OFFICER. The Senator has 6 minutes 20 seconds.

Mr. LEAHY. I understand the distinguished Democratic leader desires to speak, so I will hold the floor for a moment.

Mr. MCCAIN. Does the Senator want an up-or-down vote?

Mr. LEAHY. Please.

So colleagues will understand, in last year's Y2K bill which this Senate passed unanimously, which the President signed into law, we had basic consumer protections and business protections. In this bill, we bring forward business protections but we don't bring forward the consumer protections we passed last year.

Let's be consistent; let's make sure we give consumers at least as much protection as we give businesses. That is what I am asking for and all I am asking for in the Leahy amendment. I also say if it passes, it improves the chance of this actually being signed into law.

I yield to the distinguished Senator from South Dakota.

Mr. DASCHLE. I thank the distinguished Senator from Vermont. I applaud the Senator for his amendment.

12,000TH VOTE FOR SENATOR STEVENS

Mr. DASCHLE. Today, I call the attention of all my colleagues to a very important and historic achievement by one of the Senate's most remarkable Members. With this vote, TED STEVENS will cast his 12,000th vote in his career.

It is certainly fitting that Senator STEVENS represents Alaska in the United States Senate. He has lived in that great state and worked for its residents since before it was a state. In fact, as Solicitor of the Department of the Interior, TED was instrumental in setting the groundwork for Alaska's admission to the Union in 1959.

In 1964, TED was elected to the Alaska House of Representatives. Two years later, his colleagues elected him House Majority Leader, an honor that surprises none of us who have first hand knowledge of TED's legendary tenacity, legislative acumen and dedication to his constituents.

Senator STEVENS brought that determination and skill to the Senate in 1968. I'm sure that every Senator has his or her own anecdote to document TED's dedication and effectiveness as a legislator.

TED once declared that his constituents ''sent me here to stand up for the state of Alaska.'' No one who served with TED over the past thirty years can doubt his commitment to do just that.

In fact, some surely wonder at times if he isn't more of an ambassador than a Senator.

TED has endeavored to ensure that promises made to Alaska under the Statehood Act are kept. He helped pass the Native Claims Act in 1971 and played a pivotal role in bringing the oil pipeline to Alaska in 1973. He joined with Senator Warren Magnuson in coauthoring the 200 mile fishing limit that protects all coastal states from encroachment by foreign fishing fleets and helps sustain America's fisheries.

In the late 1970s, when President Carter made the creation of wilderness areas in Alaska a national priority, TED worked with his characteristic focus and tenacity to ensure that the Alaska Lands Act protected his state's interests as much as possible. After the *Exxon Valdez* accident in 1989, TED managed legislation that not only financed the cleanup of the despoiled coastline, but also required double-hulling on tankers.

Senator STEVENS has worked tirelessly and effectively for Alaska. But his accomplishments are certainly not limited to the 49th state. TED's career documents his far reaching influence on national policy and dedication to the institution of the Senate as well.

TED has been a leader in the defense area for his entire career, as chairman of the Defense Appropriations Subcommittee and now the full Appropriations Committee. And he has developed recognized expertise in science and technology issues through his long and distinguished service on the Commerce Committee as well.

TED has a deep affection for the Senate and has labored to preserve the character, integrity and prerogatives of the institution. He has chaired the Rules Committee and served in the leadership as Majority Whip.

TED STEVENS is recognized for his nononsense style, limitless energy and

ability to get things done—not to mention an impressive collection of neckties.

Everybody in the Senate knows that TED's word is good, and he has earned the high esteem of his colleagues through his hard work and devotion to his job.

Mr. President, it is indeed a pleasure to serve with TED STEVENS, and to count him as a friend. I congratulate TED on his achievement, and thank him for his numerous contributions to his state, his country and the United States Senate.

Mr. KENNEDY. Mr. President, I congratulate my colleague from Alaska, Senator TED STEVENS on reaching his 12,000th vote. He is a remarkable colleague and I admire the outstanding leadership that he has shown on so many issues. Senator STEVENS is a person of great integrity and energy and works tirelessly for his state of Alaska. I have worked closely with him on many occasions and it is with admiration that we celebrate his 12,000th vote.

His accomplishments as Chair of the Appropriations Committee are too numerous to list. Handling the nation's spending is a complex, difficult task, yet, Senator STEVENS handles this responsibility with finesse and great skill.

Senator STEVENS is active on a range of issues that are of great importance nationally and to his home state of Alaska. He is a great advocate for fishing families, a great protector of Native-Americans, and a leader on promoting quality health care and research. His leadership on national defense is also remarkable.

Senator STEVENS holds a special place in his heart for children and his advocacy on behalf of early education will help us achieve the nation's school readiness goals. He was one of the first in the Senate to recognize the importance of new brain research documenting the vital role of early stimulation during the first three years of life, and he is a leading advocate for early education. Working to ensure that every child reaches his or her full potential, Senator STEVENS has introduced legislation that will improve the quality and accessibility of early programs for millions of children under the age of 6. He is committed to making sure that children receive the educational boost they need to start school ready to read and ready to learn. With Senator STEVENS leadership, I know we will make school readiness a reality for every child in this country.

Senator STEVENS also recognizes the importance of the family and the central role that parents play in their children's lives. While others talk about putting families first, Senator STEVENS acts on that commitment by including funds on his appropriations bills for this purpose. Recently, he introduced an amendment to the Juvenile Justice bill that will provide essential funds to strengthen supports for parents.

Put simply, Senator STEVENS is a credit to Alaska, the Senate, and this country. He is a great Senator and a good friend. We are fortunate to be able to celebrate his 12,000th vote with him, and look forward to many more votes in the future from this great Senator from Alaska.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I commend Senator DASCHLE for his comments about Senator STEVENS. He is about to cast his 12,000th vote.

Senator DASCHLE observed the interesting array of TED STEVENS' tie. My favorite one is the Tasmanian devil. When he comes in with that tie on, you know an appropriations bill is fixing to be moved through the Senate. But he has been a great Member of the Senate. He is a great friend. He is a credit to his State of Alaska.

He has had an unbelievable career, including being a Flying Tiger, the 14th Air Force, in World War II. He is a graduate of UCLA and Harvard Law School. He has overcome that. He was a solicitor at the Interior Department under the Eisenhower administration, and he certainly was a powerful advocate for Alaska statehood. He served in the Alaska House of Representatives. He was appointed to the Senate in 1968, and he has been elected five times since.

My greatest experience with the distinguished Senator from Alaska was when he served as the whip of the majority in the Senate, and I was the whip for the minority in the House. Unlike what most people think, where there is this natural difficulty between the House and the Senate, he was never anything but helpful to me personally. He helped the two institutions work together. Because of his leadership, we addressed a number of important problems for the legislative activities and the security of the U.S. Capitol Building.

His wife Catherine and six children are here, a wonderful assemblage of people. Catherine does a great job at keeping Senator STEVENS on the straight and narrow. She is a wonderful lady. We thank her for the sacrifice she makes in allowing Senator STEVENS to be here, sometimes through late nights, to allow him to accumulate these 12,000 votes.

On behalf of the Senate, I extend our appreciation and thanks to Senator STEVENS, a great Senator from Alaska, for what he has done for his State and for our Nation.

(Applause, Senators rising.)

Mr. STEVENS. Thank you very much. I appreciate it.

Mr. President, I am humbled and honored by the statements of our two leaders in the Senate. It is true I have a deep reverence for this body. When I was in the Eisenhower administration, I sat up in the gallery many nights during the period when the Senate was considering Alaska's statehood. I gained the reverence that I have for the body now from those experiences.

It is truly an honor to serve in this body. Some people, I guess, have taken it a little bit for granted. I still pinch myself every once in a while to make sure I am allowed the opportunity to be present in this body, to be a U.S. Senator.

I value the friendships I have had on both sides of the aisle more deeply than I can say.

I am very proud to say for other reasons many members of my family are here in the gallery tonight. Our daughter, Lily, graduates from high school tomorrow. Tonight the National Guard has flown my grandson, John Covich, into Washington to give me an award from the USO and the National Guard. So this is a double celebration for me.

Just having the privilege to still be alive and be part of this body is more than anyone can know after the accident that I had years ago and the feeling I had about life then turned around. It turned around primarily because of the friendship and the helping hand I got from every Member of the Senate who was here then, and I continue to value the friendship of every one of you tonight. Thank you very much.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield the remainder of my time.

Mr. LEAHY. Mr. President, if there is any time remaining, I yield it back. I am pleased to give my friend a chance to cast the 12,000th vote on this amendment. He is one of the best friends I have ever had in the Senate.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to amendment No. 611. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Idaho (Mr. CRAPO) and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The result was announced—yeas 32, nays 65, as follows:

[Rollcall Vote No. 160 Leg.]

YEAS—32

| | | |
|---|---|---|
| Akaka | Graham | Levin |
| Boxer | Harkin | Mikulski |
| Breaux | Hollings | Murray |
| Byrd | Inouye | Reed |
| Cleland | Johnson | Reid |
| Conrad | Kennedy | Rockefeller |
| Daschle | Kerry | Sarbanes |
| Dorgan | Kohl | Schumer |
| Durbin | Landrieu | Torricelli |
| Edwards | Lautenberg | Wellstone |
| Feingold | Leahy | |

NAYS—65

| | | |
|---|---|---|
| Abraham | Ashcroft | Bayh |
| Allard | Baucus | Bennett |

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|---|---|---|
| Bingaman | Gramm | Murkowski |
| Bond | Grams | Nickles |
| Brownback | Grassley | Robb |
| Bryan | Hagel | Roberts |
| Bunning | Hatch | Roth |
| Burns | Helms | Santorum |
| Campbell | Hutchinson | Sessions |
| Chafee | Hutchison | Shelby |
| Cochran | Inhofe | Smith (NH) |
| Collins | Jeffords | Smith (OR) |
| Coverdell | Kerrey | Snowe |
| Craig | Kyl | Specter |
| DeWine | Lieberman | Stevens |
| Dodd | Lincoln | Thomas |
| Domenici | Lott | Thompson |
| Enzi | Lugar | Thurmond |
| Feinstein | Mack | Voinovich |
| Fitzgerald | McCain | Warner |
| Frist | McConnell | Wyden |
| Gorton | Moynihan | |

NOT VOTING—3

| | | |
|---|---|---|
| Biden | Crapo | Gregg |

The amendment (No. 611) was rejected.

Mr. LOTT. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

## GUN SHOW LOOPHOLE

Mr. SCHUMER. Mr. President, this morning's headline says it all: ''House GOP Backs NRA's Gun Show Bill.''

Many of us in the Senate worry that the good work done in this Chamber will be undone in the House. It is hard to believe that the House leadership is deaf to the pleas of the families who want Washington to quit playing patty-cake with the gun lobby and pass a real bill that closes the gun show loophole.

The measure we passed in the Senate was modest—far too modest for many people's taste. But we said, let us limit it so it does not hurt the legitimate gun owner but at the same time will close loopholes that allow kids and criminals to get guns.

Now in the House, because the NRA is actually in the back room, pen in hand, drafting legislation, we fear that that legislation will be a sham. Anything less than an airtight Brady background check at gun shows is a sham. Redefining what a gun show is and making many gun shows exempt from the law, in effect, to not allow the FBI to make background checks in the time they need so that criminals cannot get guns, is all happening right now in the House.

The only thing I can say to my former colleagues in the House, still my friends, is this: You will not get away with it. When some in this Chamber tried to change the rules, to make it seem as if they were doing something, but winking at the NRA, they were thwarted. The same thing will happen in the House.

There has been a sea change in the views of the American people. Do the American people want to repeal the second amendment or confiscate hunting rifles? No way. But do they believe modest measures that will move us along and prevent kids and criminals from getting guns are in order, no matter what the NRA says? You bet.

I urge the House leadership to come clean, to step forward, to pass the same legislation we passed in the Senate on gun shows without any loopholes, and allow the families in Littleton and the American people to breathe one large sigh of relief that we finally have begun to make progress in preventing kids and criminals from getting guns.

I yield the floor and thank my colleagues.

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, June 8, 1999, the Federal debt stood at $5,607,597,460,814.09 (Five trillion, six hundred seven billion, five hundred ninety-seven million, four hundred sixty thousand, eight hundred fourteen dollars and nine cents).

One year ago, June 8, 1998, the federal debt stood at $5,495,352,000,000 (Five trillion, four hundred ninety-five billion, three hundred fifty-two million).

Five years ago, June 8, 1994, the federal debt stood at $4,605,626,000,000 (Four trillion, six hundred five billion, six hundred twenty-six million).

Ten years ago, June 8, 1989, the federal debt stood at $2,787,738,000,000 (Two trillion, seven hundred eighty-seven billion, seven hundred thirty-eight million).

Fifteen years ago, June 8, 1984, the federal debt stood at $1,519,266,000,000 (One trillion, five hundred nineteen billion, two hundred sixty-six million) which reflects a debt increase of more than $4 trillion—$4,088,331,460,814.09 (Four trillion, eighty-eight billion, three hundred thirty-one million, eight hundred fourteen dollars and nine cents) during the past 15 years.

## THE DEPARTMENT OF DEFENSE APPROPRIATIONS BILL FOR FISCAL YEAR 2000

Mr. KERREY. Mr. President, the Department of Defense appropriations bill passed this chamber with my support. It is no small feat that a bill encompassing the size and gravity such as our national security can be addressed and passed through the U.S. Senate within the span of two days, with few amendments and little rancorous debate. The lion's share of the credit for this accomplishment goes to the managers of the bill, the Chairman of the Appropriations Committee, Senator STEVENS, and the Ranking Member, Senator INOUYE. Through their efforts, they have again done the work which is the first priority of our government: the defense of American independence, lives, and security around the world.

When programs have been consistently successful, it is easy to forget that national security and national defense are not a given in the political equation. But, national security doesn't just ''happen.'' We achieve our national security and defense goals because of the men and women honorably serving in our nation's Armed Forces. That security and defense is also achieved because Congress passes laws which authorize Defense programs and appropriate the funds to pay for them. Our contribution to the debate on these bills and our vote on these bills is an essential contribution to our nation's defense. It is our role in government's most solemn responsibility.

Given the importance of this responsibility, then, I am encouraged that in this bill as well as in the Defense Authorization, the Senate has responded to the increased strain on our military caused by today's heightened operation tempo. Kosovo adds another requirement to a long list of regions in which U.S. deployment or U.S. commitment is stretching our military forces and supporting intelligence resources to their limit. I have often argued on this floor for allocating our defense and intelligence resources on the basis of threat priorities, and applying the greatest effort to the most dangerous threat. In the same vein, we should avoid overcommitment to places or situations which do not present a direct threat to American independence, lives, or livelihoods. For example, I think it is a mistake to tie up a significant percentage of our Army and Marine combat power in Yugoslav peacekeeping operations long term, and I hope our European allies will take our places there before very long. But wherever those forces are, they must be ready and fully manned, like the air elements of the Air Force, Navy, and Marines who performed so brilliantly over Yugoslavia these last seven weeks. The Defense Appropriations bill supports them.

I would now like to take a few minutes to highlight some of the vitally important work that is being accomplished within this appropriations bill. These are provisions which illustrate that we are on the right track in providing for our military and for providing security for people back home in Nebraska, across the United States, and indeed, throughout the world.

The backbone of the United States Armed Forces is the men and women who choose to serve their country in our military. From the lowest grade enlisted soldier to the Joint Chiefs of Staff, I salute those who serve out of love for their country. Earlier this year, I was proud to support S. 4, the Soldiers', Sailors', Airmen's, and Marines Bill of Rights Act of 1999, which began to address the problems of pay levels, recruitment, and retention facing our military today. S. 4 was a good beginning, most markedly by increasing base pay by 4.8 percent. The appropriations bill is consistent with that 4.8

percent pay increase outlined in S. 4, and I am pleased to have supported this provision which will directly and immediately better the lives of the personnel of our Armed Forces.

Another aspect of this appropriations bill which I would like to mention regards an important provision relating to nuclear weapons. During consideration of the Department of Defense Authorization bill for fiscal year 2000, I authored an amendment which would have lifted the restriction on strategic nuclear weapons levels, allowing the U.S. to lower the number of warheads below the START I level. It is my belief that my amendment would not only have increased U.S. security, but would have freed up billions of dollars for other high priority items. The Congressional Budget Office recently conducted a study in which it found we could save between $12.7 billion and $20.9 billion over the next ten years by reducing U.S. nuclear delivery systems within the overall limits of START II.

While I would like to thank the 43 of my colleagues who supported my amendment, it unfortunately did not pass. I do not want to return to that debate at this time. However, there is a related program which I have previously supported which also deals with national security and Russian nuclear weapons—the Former Soviet Union Threat Reduction program, otherwise known as Nunn-Lugar. The Nunn-Lugar program provides assistance to states of the former Soviet Union for safeguarding nuclear materials, dismantling missiles and other weapons, and other demilitarization measures. The DoD Appropriations bill funds Nunn-Lugar in the amount of $476 million. Additionally, this bill allocates $25 million of these funds to support the Russian nuclear submarine dismantlement and disposal activities started in FY 1998. This is an important program that in a very concrete and discernable way, increases our security, and I am happy to have supported it.

Along with programs of national concern, there are a number of provisions in this bill that directly allow Nebraska and Nebraskans to continue their vital work in safeguarding U.S. national security.

Offutt Air Force Base, located in Bellevue, Nebraska, is responsible for a number of missions which are particularly noteworthy. Offutt, with over 10,000 military and civilian personnel, is home to the United States Strategic Command, the joint command charged with deterring nuclear attacks on our country. There are many threats out there, but only one of them, Russian nuclear weapons, is capable of ending our national life. STRATCOM's mission may not be in the news that often, but it the most essential of all defense missions, and it is commanded from Nebraska.

Offutt Air Force Base also hosts the U.S. Air Force's premiere reconnaissance and command-and-control unit, the 55th Wing, the largest wing within the Air Force's Air Combat Command. The Fighting 55th's aircraft provide global situational awareness to military leaders and government officials. It is by now commonplace to say that we live in the Information Age. Information has become a precious commodity which often can mean the difference between success and defeat. The missions that Offutt specializes in focus on gathering this kind of critical information. In a variety of ways, Offutt's missions keep us more informed, more aware, and more safe. Here are some specifics on the various programs.

The 55th's workhorse aircraft is the RC–135, also known as Rivet Joint. The RC–135 mission conducts electronic reconnaissance, providing direct, near real-time information and electronic warfare support to theater commanders and combat forces monitoring. Rivet Joint has played an important role in a number of recent military missions, including Kosovo, Bosnia, and Iraq. Information gathered by the RC–135 is made available to theater commanders, the Department of Defense and National Command Authorities. Data is processed, analyzed and stored by Air Combat Command, the Air Intelligence Agency and the National Security Agency. I am pleased that the bill passed yesterday appropriates $220.4 million for the refurbishing and upgrading of these important aircraft. Reengining these aircraft is a particularly important improvement.

The WC–135 fulfills an air sampling mission in support of the Air Force Technical Applications Center at Patrick AFB, Florida, by verifying compliance with the Comprehensive Nuclear Test Ban Treaty. It gathers information on nuclear tests and conducts baseline air sampling. By collecting particles in the air during flight, the WC–135 is able to detect if and when nuclear tests are conducted or if a nuclear bomb is detonated, even from thousands of miles away. Considering the nuclear weapons testing last year of both India and Pakistan, it is clear that the WC–135 has not outlived its usefulness. The WC–135 is the only aircraft throughout the U.S. Air Force conducting this vital mission, and we in Nebraska are fortunate to have it based at home at Offutt Air Force Base.

The OC–135, or Open Skies, is tasked to complete photo reconnaissance flyovers. This mission supports the Defense Threat Reduction Agency by conducting observation flights in accord with the Open Skies Treaty. This treaty will allow the OC–135 to fly over Russian air space to monitor weapons reductions treaties. Although the Open Skies Treaty has not yet been ratified by all parties, the OC–135 has not been dormant. While the Open Skies Treaty awaits ratification, the OC–135 is heavily involved in additional photo reconnaissance projects, including missions such as weather observations of Hurricane Mitch. The Open Skies mission is fully funded through fiscal year 2004.

Additionally, E–4B aircraft also stationed at Offutt provide transport and command and control for the President, the Secretary of Defense, and Secretary of State. Much more than simply a transport aircraft, the E–4B allows senior officials complete access to critical information and communications in a secure fashion, keeping the President and others ''in the loop,'' even while in mid-flight.

Along with Offutt Air Force Base, Nebraska continues to make important contributions to our national security through components of the National Guard and the Reserves. Most recently, these components have played important roles in Kosovo alongside their active component counterparts.

The 155th Wing of the Nebraska Air National Guard has been very active during the Kosovo mission, flying KC–135s—fuel tanker planes—above and around Kosovo. These KC–135s perform the remarkable task of mid-air refueling for a variety of aircraft, including the B–52 Stratofortress and the E6. Indeed, over the last several months, the Nebraska unit led the KC–135 refueling effort, involving hundreds of aircraft, and also was the last volunteer unit engaged in the region before the reserve call-up was instituted. This has all been done, even though the 155th Wing is the smallest of all the Air Guard wings across the country. I applaud their efforts and their successes.

As well, the Nebraska Army National Guard is currently serving in a nine-month deployment in Bosnia as part of the NATO peace-keeping forces. The 24th Medical Company is working alongside Guard units from across the country to transport patients from the field to hospitals. At a time when a robust economy and opportunities in the private sector can pull people away from public service, I salute these men and women who continue to make sacrifices so that we may be safe.

The examples I have given here of the hard work being done by our Armed Forces are not the exception, but the rule. In a time of tight budgets and increased missions, I am proud to say that our Armed Forces are second to none around the globe. Even when we continue to ask more of our military men and women, they always rise to the challenge. We must never forget the risks they take for our sake and the freedoms they forego, and we must provide them the best support, conditions, equipment, and training possible in return. I am proud to have supported passage of the defense appropriations bill yesterday, and I hope and expect that we will continue the strong support of those who are willing to sacrifice all for the cause of your freedom and mine, the men and women of our Armed Forces.

## DSCC AND INVASIONS OF PRIVACY

Mr. BURNS. Mr. President, I rise today to alert my colleagues to what may be a very disturbing precedent. My office recently received a copy of a letter dated May 18 and sent from the Democratic Senatorial Campaign Committee to the Department of Health and Human Services. I want to read the first paragraph:

I am writing to request documents pursuant to the Freedom of Information Act, 5 U.S.C. 552 et seq., involving all correspondence, inquiries and other information requested by or provided to the following United States Senators for the time periods noted.

There are some 10 Republican Senators that are listed here over the last 10 years. I ask unanimous consent that this letter be printed in the RECORD.

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

DEMOCRATIC SENATORIAL
CAMPAIGN COMMITTEE,
*Washington, DC, May 18, 1999.*

HHS Freedom of Information Officer,
*Washington, DC.*

Re: Freedom of Information Act Request.

I am writing to request documents pursuant to the Freedom of Information Act, 5 U.S.C. §552 *et seq.* (''FOIA''), involving all correspondence, inquiries and other information requested by or provided to the following United States Senators for the time periods noted: Spencer Abraham, 1995-present; John Ashcroft, 1995-present; Conrad Burns, 1989-present; Bill Frist, 1995-present; Slade Gorton, 1981–1986, 1989-present; Rod Grams, 1995-present; James Jeffords, 1989-present; John Kyl, 1995-present; Rick Santorum, 1991-present; Olympia Snowe, 1995-present.

I seek all direct correspondence between the Senators or members of their staff and your office, including letters, written material, reports, constituent requests and other relevant material. I am not seeking any secondary material such as phone logs, e-mails, notations of conversations and so on. Since this is a request covering a number of years, I am willing to discuss ways to make this request more manageable to your office. Please contact me at the number above or on my direct line at (202) 485–3109.

In the event any of the documents I have requested are not available for disclosure in their entirety, I request you release any material that may be reasonably separated and released, as provided by Code of Federal Regulations. Furthermore, for any documents, or portions thereof, that are determined to be exempt from disclosure, I request that you exercise your discretion to disclose the materials, absent a finding that sound grounds exist to invoke the exemption, as provided by the Code of Federal Regulations. I also request that you state the specific legal and factual grounds for withholding any documents or portions of documents. Finally, please identify each document that falls within scope of this request but is withheld from release.

If any requested documents are located in, or originated in, another installation or bureau, I request that you refer this request or any relevant portion of this request to the appropriate installation or bureau.

I am willing to pay all reasonable costs incurred in locating and duplicating these materials. Please contact me prior to processing to approve any fees or charges incurred in excess of $125.

To help assess my status for copying and mailing fees, please note that I am a representative of a political organization gathering information for research purposes only, and not for any commercial activity.

I look forward to your response within ten days after the receipt of this request and please do not hesitate to call me with any questions.

Sincerely,

ALEXIS L. SCHULER,
*Research Director.*

Mr. BURNS. Mr. President, in this letter, the DSCC is making a broad request under the Freedom of Information Act regarding any information sent from my office to HHS or received from the Department. But it just doesn't include me. I have already said that. It includes a lot of Senators—10 of them, in fact, all Republicans, all up for reelection this year.

The Freedom of Information Act request covers, ''all correspondence, inquiries and other information requested by or provided to'' my office over the past 10 years in the Senate, including ''all direct correspondence between the Senators or members of their staff and the HHS, including letters, written material, reports, constituent requests [very important] and other relevant materials.'' In other words, they want access to our casework.

I have written to President Clinton demanding that he put an immediate stop to this or any similar action. What we are witnessing here is an unprecedented attempt to corrupt the nonpolitical casework system of Senate offices for political gain. I find these efforts repugnant, and if there are any Americans alive who think politics can't sink any lower, they need to look no further than right here.

Through the letter to the HHS, the Democratic Senatorial Campaign Committee wants more than just to peer into private correspondence of political enemies; it wants to leer into the private lives of those who contact their Senator seeking help with Federal agencies. I have made tens of thousands of contacts on behalf of Montanans who asked me to help them with problems they are having with the Federal Government.

These are problems which, if publicly revealed, could possibly ruin their lives. Many of these people are at the end of their emotional rope. Some of them are at the end of their financial world.

It is beyond belief that the DSCC would consider ruining the lives of ordinary Americans to be all in a day's work in order to defeat this old Senator. This effort would put a permanent chill on the ability of Senators to help constituents in need. It saddens me to think that those who view a Senator's help as their last resort may now believe they have nowhere to turn.

Just today, my office received a letter from a man in Billings, MT, whose wife we helped to receive treatment for breast cancer. As a Federal employee, she was having a hard time receiving the treatment. And she was entitled to it. After she asked for our assistance, we were able to resolve the matter for her and she got the care she needed. When her cancer spread, the Federal bureaucracy told her she couldn't get the care she needed close to home.

Quoting his letter to me:

After becoming totally frustrated with the whole process, we just gave up. But this time we decided to fight the issue again. I turned to the Senator's office again to enlist his help. And again in what seemed to be a flash of light, the situation has been resolved.

Our office again stepped in. We cut the redtape. We helped her receive the additional radiation therapy while staying at her home in Billings.

These are the people who depend on our help—real people whose lives are literally on the line. But the man who sent me the letter specifically asked that his name not be used in order to protect his privacy and, yes, that of his wife.

Is it right that he should be subject to a Freedom of Information request, that some bureaucrat somewhere could decide on a whim to release this personal, sensitive information? It is hard to comprehend that the DSCC would use the time and the resources of the administration for political purposes in such a massive research effort, regardless of who ultimately pays.

This effort is as constitutionally breathtaking as it is politically suspect. All those who value their civil rights should be outraged at this attempt to invade the privacy of countless unwary citizens. If indeed Federal law permits it, it is an absolute shame. It is enough to make me wonder whether Americans should now expect politicians to use any means to achieve their ends—laws, morals, and ethics be damned.

Our President has said he deplores the politics of personal destruction. However, in this case we are not talking about the destruction of one political opponent, but the lives of innocent Americans. And I am sickened by it. I ask the President and all Americans to stand up against this kind of invasion of privacy, all in the name of gaining an electoral advantage.

My political opponents are welcome to engage me anytime, anywhere, on my record, which I am proud to stand on. But when you try to drag the lives of innocent Montanans into your ugly schemes, I will fight with every breath in my body. It is a sad day.

I yield the floor.

## EXTENSION OF NORMAL-TRADE-RELATIONS WITH CHINA

Mr. FEINGOLD. Mr. President, I rise today to support a joint resolution disapproving the extension of normal-trade-relations status to China.

This is the fourth time that I have joined with other Senators to support such a resolution because I believe that trade policy is an effective tool that the United States can and should use

with respect to the policies of the Chinese Government. I am pleased to join Senator SMITH in supporting his resolution.

On June 3, President Clinton announced his intention to extend the normal-trade-relations trading status to China. As I understand it, without actually affecting the practical application of tariff treatment, legislation last year replaced the term ''most-favored-nation'' in seven specific statutes with the new phrase ''normal trade relations.'' Regardless of which phrase you use, I find this policy unacceptable. Although we have expected the President to make such a decision, I can only say that under the current circumstances I am once again disappointed in the President's decision. In fact, I have objected to the President's policy since 1994, when he first de-linked the issue of human rights from our trading policy. The argument made then was that trade privileges and human rights are not interrelated. At the same time, it was said, through ''constructive engagement'' on economic matters, and dialogue on other issues, including human rights, the United States could better influence the behavior of the Chinese Government.

Clearly events of the last few months have shown the fallacy of that assumption.

I have yet to see persuasive evidence that closer economic ties alone are going to transform China's authoritarian system into a democracy. Unless we continue to press the case for improvement in China's human rights record, using the leverage of the Chinese Government's desires to expand its economy and increase trade with us, I do not see how U.S. policy can help conditions in China get much better. De-linking trade and human rights has resulted only in the continued despair of millions of Chinese people, and there is no evidence that NTR or MFN or whatever you want to call it, has significantly influenced Beijing to improve its human rights policies. Basic freedoms—of expression, of religion, of association—are routinely denied. The rule of law, at least as we understand it, does not exist for dissenters in China.

Virtually every review of the behavior of China's Government demonstrates that not only has there been little improvement in the human rights situation in China, but in many cases, it has worsened—particularly in the weeks preceding the tenth anniversary of the Tiananmen Square massacre. In fact, China has resumed its crackdown on dissidents who might have attempted to commemorate the anniversary of the Tiananmen Square massacre. Human rights groups have documented the detention of more than 50 dissidents since May 13, with a number still in custody. These have included two detained for helping to organize a petition calling on the government to overturn its verdict on Tianamen. The detainees include former student leaders at Tiananmen, a member of the fledgling Democracy Party, intellectuals, and journalists. Those not detained have reportedly been under constant surveillance amid calls by China's top prosecutor for a clampdown on ''all criminal activities that endanger state security,'' including such activities as signature gathering and peaceful protest.

More generally, five years after the President's decision to de-link MFN from human rights, the State Department's most recent Human Rights Report on China still describes an abysmal situation. According to the report. ''The Government continued to commit widespread and well-documented human rights abuses. * * * Abuses included instances of extrajudicial killings, torture and mistreatment of prisoners, forced confessions, arbitrary arrest and detention, lengthy incommunicado detention, and denial of due process.'' This list does not even touch on restrictions on freedom of expression, association, and religion or the continuing abusive family planning practices.

In my view, it is impossible to come to any other conclusion except that ''constructive engagement'' has failed to make any change in Beijing's human rights behavior. I would say that the evidence justifies the exact opposite conclusion: human rights have deteriorated and the regime continues to act recklessly in other areas vital to U.S. national interest. We have so few levers that we can use against China. And if China is accepted by the international community as a superpower without regard to the current conditions there, it will believe it can continue to abuse human rights with impunity. The more we ignore the signals and allow trade to dictate our policy, the worse we can expect the human rights situation to become.

This year—1999—is likely to be the most important year since 1989 with respect to our relations with China. We face many thorny issues with China, including the accidental embassy bombing, faltering negotiations regarding accession to the World Trade Organizations and the recent release of the Cox report on Chinese espionage.

But even with all that is going on, the United States and others in the international community yet again failed to pass a resolution regarding China at the United Nations Commission on Human Rights in Geneva earlier this spring, largely because China lobbied hard to prevent it. Despite China's efforts to avert a resolution, the United States must also shoulder some of the blame for the failure to achieve passage—our early equivocation on whether we would sponsor a resolution and our late start in garnering support for it no doubt also contributed to the lack of accomplishment in Geneva. While we would certainly prefer multilateral condemnation of China's human rights practices, the failure to achieve that at the UN Commission on Human Rights proves that it is even more important for the United States to use the levers that we do have to pressure China's leaders. We can not betray the sacrifices made by those who lost their lives in Tiananmen Square by tacitly condoning through our silence the continuing abuses.

We know that putting pressure on the Chinese Government can have some impact. China released dissident Harry Wu from prison when his case threatened to disrupt the First Lady's trip to Beijing for the U.N. Conference on Women, and its similarly released both Wei Jingsheng and Wang Dan around the same time that China was pushing to have the 2000 Olympic Games in Beijing. After losing that bid, and once the spotlight was off, the Chinese government rearrested both Wei and Wang. These examples only affirm my belief that the United States should make it clear that human rights are of real—as opposed to rhetorical—concern to this country.

If moral outrage at blatant abuse of human rights is not reason enough for a tough stance with China—and I believe it is and that the American people do as well—then let us do so on grounds of real political and economic self-interest. We must not forget that we currently have a substantial trade deficit with China. Over the past few years, the U.S. trade deficit with China has surged. It has risen from $6.2 billion in 1989 to nearly $57 billion in 1998. Political considerations aside, a deficit of that size represents a formidable obstacle to ''normal'' trading relations with China at any point in the near future. Other strictly commercial U.S. concerns have included China's failure to provide adequate protection of U.S. intellectual property rights, the broad and pervasive use of trade and investment barriers to restrict imports, illegal textile transshipments to the United States, the use of prison labor for the manufacture of products exported to the United States, as well as questionable economic and political policies toward Hong Kong.

This does not present a picture of a nation with whom we should have normal trade relations. Or, if the Administration accepts these practices as ''normal'', perhaps we need to redefine what normal trade relations are. These are certainly not practices that I wish to accept as normal.

My main objective today is to push for the United States to once again make the link between human rights and trading relations with respect to our policy in China. As I have said before, I believe that trade—embodied by the peculiar exercise of NTR renewal—is one of the most powerful levers we have, and that it was a mistake for the President to de-link this exercise from human rights considerations.

So, for those who care about human rights, about freedom of religion, and about America's moral leadership in the world, I urge support for S.J. Res 27

disapproving the President's decision to renew normal-trade-relations status for China.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 1:09 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1379. An act to amend the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, to make a technical correction relating to international narcotics control assistance.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

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At 5:10 p.m., a message from the House of Representatives, delivered by Mr. Berry, 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. 150. An act to authorize the Secretary of Agriculture to convey National Forest System land for use for educational purposes, and for other purposes.

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At 5:45 p.m., a message from the House of Representatives, delivered by Mr. Berry, 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. 1906. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2000, and for other purposes.

## MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 150. An act to authorize the Secretary of Agriculture to convey National Forest System land for use for educational purposes, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1906. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2000, and for other purposes; to the Committee on Appropriations.

## 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–3575. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Adequacy of State Permit Programs Under RCRA Subtitle D'' (FRL # 6354-7), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3576. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Enhanced Inspection and Maintenance Program Network Effectiveness Demonstration'' (FRL # 6355-2), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3577. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District'' (FRL # 6353-1), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3578. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District'' (FRL # 6356-1), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3579. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Ohio'' (FRL # 6353-2), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3580. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins'' (FRL # 6355-5), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3581. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Regulation of Fuel and Fuel Additives: Modification of Compliance Baseline'' (FRL # 6354-5), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3582. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Service Contracting—Avoiding Improper Personal Services Relationships'' (FRL # 6353-9), received June 2, 1999; to the Committee on Environment and Public Works.

EC–3583. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of two rules entitled ''Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program'' (FRL # 6356–4) and ''Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors'' (FRL # 6058–6), received June 8, 1999; to the Committee on Environment and Public Works.

EC–3584. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable'' (FRL # 6344–4), received June 8, 1999; to the Committee on Environment and Public Works.

EC–3585. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Kresoxim-methyl; Pesticide Tolerances'' (FRL # 6085–4), received June 8, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3586. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of two rules entitled ''Certain Plant Regulators; Cytokinins, Auxins, Gibberellins, Ethylene, and Pelargonic Acid; Exemptions from the Requirements of a Tolerance'' (FRL # 6076–5) and ''Sethoxydim; Pesticide Tolerance'' (FRL # 6080–9), June 8, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3587. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Rescission of Guides for the Watch Industry'' (16 CFR Part 245), received June 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3588. A communication from the Chief, Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Grand Canal, Florida (CGD07–98–048)'' (RIN2115–AE47) (1999–0019), received June 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3589. A communication from the Chief, Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Marblehead, MA to Halifax, Nova Scotia Ocean Race (CGD01–99–062)'' (RIN2115–AA97) (1999–0026), received June 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3590. A communication from the Chief, Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Hospitalized Veterans Cruise, Boston Harbor, MA (CGD01–99–055)'' (RIN2115–AA97)

(1999–0027), received June 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3591. A communication from the Chief, Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; SLR; Independence Day Celebration, Cumberland River Mile 190.0–191.0, Nashville, TN (CGD08–99–036)'' (RIN2115–AE46) (1999–0018), received June 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3592. A communication from the Fisheries Biologist, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule and Request for Comments Sea Turtle Conservation; Shrimp Trawling Requirements'' (RIN0648–AH97), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3593. A communication from the Fisheries Biologist, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Temporary Rule and Request for Comments Sea Turtle Conservation; Shrimp Trawling Requirements'' (RIN0648–AH97), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3594. A communication from the Fisheries Biologist, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Notification of an Exemption and Request for Comments Sea Turtle Conservation; Shrimp Trawling Requirements'' (RIN0648-AH97), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3595. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of VOR Federal Airways; Kahului, HI; Docket No. 97-AWP-35 {6-3/6-3}'' (RIN2120-AA66) (1999-0186), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3596. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC-9 and C-9 [Military) Series Airplanes; Docket No. 98-NM-110 {6-3/6-3}'' (RIN2120-AA64) (1999-0233), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3597. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cesna Aircraft Company Model 402C Airplanes; Request for Comments, Docket No. 99-CE-21 {6-3/6-3}'' (RIN2120-AA64) (1999-0234), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3598. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 Series Airplanes; Docket No. 97-NM-51 {6-3/6-3}'' (RIN2120-AA64) (1999-0235), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3599. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Aircraft Engines CF34 Series Turbofan Engines; Docket No. 98-ANE-19 {5-28/6-3}'' (RIN2120-AA64) (1999-0237), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–3600. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747 Series Airplanes; Docket No. 98-NM-223 {6-3/6-3}'' (RIN2120-AA64) (1999-0236), received June 4, 1999; to the Committee on Commerce, Science, and Transportation.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–172. A petition from citizens of the State of Tennessee relative to the President of the United States; ordered to lie on the table.

POM–173. A resolution adopted by the House of the Legislature of the State of Hawaii relative to the Food Quality Protection Act; to the Committee on Agriculture, Nutrition, and Forestry.

RESOLUTION NO. 56

Whereas, the safe and responsible use of pesticides for agricultural, food safety, structural, public health, environmental, and other purposes has significantly advanced the overall welfare of Hawaii's citizens and the environment; and

Whereas, the 1996 Food Quality Protection Act (FQPA) establishes new safety standards that pesticides must meet to be newly registered or remain on the market; and

Whereas, FQPA requires the U.S. Environmental Protection Agency (EPA) to ensure that all pesticide tolerances meet these new standards by reassessing one-third of the 9,700 current pesticide tolerances by August 1999, and all current tolerances in ten years; and

Whereas, risk determinations based on sound science and reliable real-world data are essential for accurate decisions, and the best way for EPA to obtain this data is to require its development and submission by the registrants through the data call-in process; and

Whereas, risk determination made in the absence of reliable, science-based information is expected to result in the needless loss of pesticides and certain uses of other pesticides; and

Whereas, the needless loss of pesticides and certain pesticide uses will result in fewer pest control options for Hawaii and would be harmful to the economy of Hawaii by jeopardizing agriculture, one of the few industries that has shown great strength during the recent years of the State's flat economy, and fewer pest control options for urban and suburban uses that will result in significant loss of personal property and increased human health concerns; and

Whereas, the needless loss of pesticides will jeopardize the state and county government's ability to protect public health and safety on public property and to protect our natural environmental resources, for example, from aggressive alien species; and

Whereas, the flawed implementation of FQPA is likely to result in significant increases in food costs to consumers, thereby putting the nutritional needs of children, the poor, and the elderly at unnecessary risk; and

Whereas, the Clinton Administration has directed EPA and the U.S. Department of Agriculture (USDA) to jointly work toward implementing FQPA in a manner that assures that children will be adequately protected and that risk determinations related to pesticide tolerances and registrations will be based on accurate, science-based information; and

Whereas, the cost of developing data to quantify real-world risk is prohibitive and minor use data may not be financed by pesticide registrants and the State, and pesticide users may fund studies to support minor uses: Now, therefore, be it

*Resolved by the House of Representatives of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999,* That the U.S. Congress is hereby respectfully requested to direct the Administrator of the EPA to:

(1) initiate rulemaking to ensure that the policies and standards EPA intends to apply in evaluating pesticide tolerances and making realistic risk determinations are based on accurate information, real-world data available through the data call-in process, and sound science, and are subject to adequate public notice and comment before EPA issues final pesticide tolerance determinations;

(2) Provide interested persons the opportunity to produce data needed to evaluate pesticide tolerances so that EPA can avoid making faulty final pesticide tolerance determinations based upon unrealistic default assumptions;

(3) Implement FQPA in a manner that will not adversely disrupt agricultural production nor adversely effect the availability or diversity of the food supply, nor jeopardize the public health or environmental quality through the needless loss of pesticide tolerances for non-agricultural activities;

(4) Delay the August 1999, deadline until 2001 or until EPA, USDA, industry leaders, and manufacturers can provide science-based data as to use, application, and residue of the pesticides under review; and

(5) Implement the registration of new crop protection products for minor and major crops; and be it further

*Resolved,* That pesticide registrants and EPA are requested to support minor use registrations by reserving a meaningful portion of the risks projected from the use of pesticides or a class of pesticides for minor uses; and be it further

*Resolved,* That certified copies of the Resolution be transmitted to the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, members of Hawaii's Congressional Delegation, the Administrator of EPA, the Secretary of the U.S. Department of Agriculture, the Governor of the State of Hawaii, and the President of the American Crop Protection Association.

POM–174. A concurrent resolution adopted by the Legislature of the State of Louisiana relative to post-harvest treatment of oysters and other shellfish; to the Committee on Health, Education, Labor, and Pensions.

HOUSE CONCURRENT RESOLUTION NO. 106

Whereas, American consumers have always enjoyed and depended on the availability of choice in their consumption of various products, and consumption of oysters and other shellfish have always been a special treat for American consumers throughout the country; and

Whereas, emerging technologies have made it possible for consumers of oysters and other shellfish to choose between the traditional raw shellfish product and shellfish

products which have been treated or pasteurized; and

Whereas, because a very small segment of American consumers have health considerations which must be weighed while others have concerns about the change in the condition, taste, texture, and price of treated shellfish, the ability to make a choice between these consideration should be maintained; and

Whereas, America's shellfish industry is heavily populated with small self-employed harvesters and producers for which the added expense of required post-harvest treatment of their product might make the difference between continued operation and a harvester having to find employment in another industry; and

Whereas, America's oyster and shellfish industry has worked diligently to educate consumers with certain health conditions about the risks associated with the consumption of certain types of shellfish, and these education efforts have been highly successful in the reduction of health impacts from the consumption of shellfish: Therefore be it

*Resolved,* That the Louisiana Legislature does hereby memorialize the United States Congress to oppose U.S. Food and Drug Administration rules requiring post-harvested treatment of oysters and other shellfish; and be it further

*Resolved,* That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

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POM–175. A resolution adopted by the Legislature of Guam relative to job-training and unemployment; to the Committee on Energy and Natural Resources.

RESOLUTION NO. 101 (LS)

*Be it resolved by I Liheslaturan Guåhan*:

Whereas, Guam is in the midst of a severe economic recession at the same time that the mainland United States is enjoying unprecedented prosperity, with unemployment officially pegged at fourteen percent (14%), but likely higher; and

Whereas, as a result of the economic crisis in Asia, Guam has seen alarmingly steep declines in tourism arrivals, tourist spending and off-Island investment; and

Whereas, major airlines have reduced the number of flights to and from Guam, resulting in major layoffs in those airlines; and

Whereas, other major businesses on Guam, in all sectors, have also downshzed a considerable number of employees; and

Whereas, numbers of temporary government of Guam employees are likely to lose their positions over the balance of the year; and

Whereas, the downsizing of the military presence on Guam has resulted in the loss of thousands of Federal civil service positions on Guam; and

Whereas, in contrast to the National trend, welfare and food stamp recipients on Guam are increasing; and

Whereas, the continued decline in government of Guam revenues due to the economic recession extremely limits the ability of the government of Guam to help these thousands of people in need; and

Whereas, Guam requires more job-training and job-partnership programs in order to train our displaced workforce in areas where career development in the private sector is likely and to upgrade work skills for displaced employees, for the purpose of developing long-term private sector careers for our underemployed people; and

Whereas, the illegal immigration of more than two thousand (2,000) individuals from China further compounds the problem by straining local resources and further limiting the amount of available jobs as a certain number of illegal aliens may be occupying jobs, especially in the construction industry; and

Whereas, the Compacts of Free Association, which allow for open migration from the Freely Associated States, also have impact in this area during such tough economic times: Now, therefore, be it

*Resolved,* That *I Mina'Bente Sinko Na Liheslaturan Guåhan* (Twenty-Fifth Guam Legislature) does hereby, on behalf of the people of Guam, respectfully request the Congress of the United States of America to authorize *I Liheslaturan Guåhan* (Guam Legislature) to appropriate some or all of the Ten Million Dollars ($10,000,000), currently earmarked to Guam for infrastructure costs due to the impact of the Compacts of Free Association, for use in job training and job development, entrepreneurial and business development programs as shall be enacted by the laws of Guam; and be it further

*Resolved,* That *I Mina'Bente Sinko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, respectfully request the Guam Delegate to the United States House of Representatives to sponsor such amendment to the Department of the Interior Fiscal Year 2000 budget, and fully support this Resolution in the U.S. Congress; and be it further

*Resolved,* That the Speaker certify, and the Legislative Secretary attests to, the adoption hereof and that copies of the same be thereafter transmitted to the Honorable William Jefferson Clinton, President of the United States; to the Honorable Albert Gore, Jr., President of the United States Senate; to the Honorable J. Dennis Hastert, Speaker of the United States House of Representatives; to the Honorable Bruce Babbit, Secretary of the United States Department of the Interior; to the Honorable Robert A. Underwood, Guam Congressional Delegate to the U.S. House of Representatives; and to the Honorable Carl T.C. Gutierrez, *I Maga'lahen Guåhan* (Governor of Guam).

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POM–176. A joint resolution adopted by the Legislature of the State of Colorado relative to the Postal Rate Commission; to the Committee on Governmental Affairs.

SENATE JOINT RESOLUTION 99–027

Whereas, The United States Postal Service, an agency of the federal government, holds a monopoly on first-class mail and certain bulk mail services and generates annual multi-million dollar surpluses from its services; and

Whereas, The United States Postal Service has in recent years expanded its activities beyond its core mission of universal mail service to include many competitive and nonpostal related business products and services, such as consumer goods, telephone calling cards, and cellular towers, in direct competition with Colorado private sector enterprises; and

Whereas, The United States Postal Service has used surplus revenues from universal mail service to expand into these competitive and nonpostal activities with no evidence that these activities benefit the citizens of Colorado by improving regular mail service; and

Whereas, The United States Postal Service enjoys monopoly advantages in the marketplace over private sector enterprises, with its ability to maintain lower prices for competitive products due to the multi-million dollar surpluses generated from first-class postage; and

Whereas, The United States Postal Service enjoys many marketplace advantages not available to private sector enterprises, including exemptions from state and local taxes, parking fees, local zoning ordinances, vehicle use taxes, vehicle licensing fees, and other state and local government regulations, that deprive Colorado state and local governments of needed revenue and fees to offset the effect of the United States Postal Service's operations on highways, law enforcement, and air quality; and

Whereas, The Postal Rate Commission does not have binding authority over the actions or activities of the United States Postal Service related to setting postal rates, entering new business sectors, or using surplus revenues from first-class mail to compete with the private sector: Now, therefore, be it

*Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein*, That we, the members of the Sixty-second General Assembly, hereby urge the United States Congress, particularly the members for Colorado's Congressional delegation, to introduce and pass legislation in the 106th Congress to strengthen the oversight power and the authority of the Postal Rate Commission to include:

(1) Subpoena power to examine all records and financial data of the United States Postal Service in order to make informed decisions on postal rate increases, pricing actions, and product offerings;

(2) Jurisdiction and final approval authority on all domestic and international postal rate adjustments; and

(3) Authority over all competitive and nonpostal business endeavors, including all products and services outside the scope of universal mail service; and be it further

*Resolved,* That copies of this Joint Resolution be sent to each member of the United States Congress.

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POM–177. A joint resolution adopted by the Legislature of the State of Colorado relative to post-census local review; to the Committee on Governmental Affairs.

SENATE JOINT RESOLUTION 99–032

Whereas, The decennial census provides the foundation of our electoral democracy; and

Whereas, The decennial census represents an immense mobilization of resources; and

Whereas, The success of the 2000 census depends upon the cost involvement of local governments before, during, and after the census; and

Whereas, Local governments must have trust in all aspects of the 2000 census, including the final numbers; and

Whereas, The precensus program known as the ''Local Update of Census Addresses,'' or ''LUCA,'' is a good program but inadequate without a final review; and

Whereas, Over 21,000 local governments are currently not participating in the LUCA program; and

Whereas, The Census Bureau involved local governments in a program known as ''Post-Census Local Review'' during the 1990 census; and

Whereas, The Census Bureau has discontinued this valuable program for the 2000 census, to the displeasure of most cities in the United States; and

Whereas, In the 1990 census, 80,000 households that would otherwise have been missed were added to the final count, despite a 15-day time limit, through Post-Census Local Review; and

Whereas, Every household missed contributes to the undercount; and

Whereas, Congress must make every legal effort to have the most accurate census possible; and

Whereas, Congress is considering legislation, known as the ''Local Quality Control

Act,'' H.R. 472, to reinstate the Post-Census Local Review program and give the option to 39,000-plus local governments to check for Census Bureau mistakes before the numbers become final; and

Whereas, The National League of Cities, which represents 17,000 cities, enthusiastically supports Post-Census Local Review and H.R. 472; and

Whereas, The National Association of Towns and Townships, which represents 11,000 mostly rural towns and townships, supports Post-Census Local Review and H.R. 472; and

Whereas, The National Association of Developmental Organizations, whose members represent approximately 77 million Americans, or one-third of the U.S. population, supports Post-Census Local Review and H.R. 472; and

Whereas, The Secretary of Commerce's Census 2000 Advisory Committee recommended that he reinstate Post-Census Local Review for the 2000 census; and

Whereas, Without Post-Census Local Review, local governments will not have a final check before the Census Bureau's count of their cities or towns is reported to the President of the United States: Now, therefore, be it

*Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein,* That the Sixty-Second General Assembly of the State of Colorado hereby declares its support for the immediate passage of Post-Census Local Review legislation, H.R. 472, as an important local government tool to instill trust in the census process and ensure that no households are missed by the Census Bureau in the 2000 census; and be it further

*Resolved,* That copies of this Resolution be transmitted to the Speaker of the U.S. House of Representatives, the Majority Leader of the U.S. Senate, the President and Vice-President of the United States, the U.S. Secretary of Commerce, and to each member of the congressional delegation from the State of Colorado.

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POM–178. A joint resolution adopted by the Legislature of the State of Colorado relative to the Year 2000 Census; to the Committee on Governmental Affairs.

SENATE JOINT RESOLUTION 99–012

Whereas, Article I, section 2, clause 3 of the United States Constitution requires an ''actual enumeration'' of the population every ten years, and Congress oversees all aspects of each decennial enumeration; and

Whereas, The purpose of the decennial census, as set forth in the U.S. Constitution, is to apportion the seats in the U.S. House of Representatives among the several states; and

Whereas, An accurate and legal decennial census is necessary to perform that function properly; and

Whereas, An accurate and legal decennial census is necessary to enable states to comply with federal constitutional mandates governing congressional districts and with federal and state constitutional mandates governing state legislative districts; and

Whereas, In order to ensure an accurate count and to minimize the potential for political manipulation, the actual enumeration mandated by the U.S. Constitution requires a traditional headcount and prohibits statistical estimates of the population; and

Whereas, Title 13, United States Code, section 195 expressly prohibits the use of statistical sampling to enumerate the population for the purpose of reapportioning the U.S. House of Representatives; and

Whereas, After the constitutional requirement to apportion seats in the U.S. House of Representatives among the states has been satisfied, the states must perform the critical task of redrawing the boundary lines for congressional and state legislative districts, which also requires the use of census data; and

Whereas, The United States Supreme Court, in *Department of Commerce et al.* v. *United States House of Representatives et al.*, together with *Clinton, President of the United States, et al.* v. *Glavin et al.*, ruled on January 25, 1999, that the federal Census Act prohibits the Census Bureau's proposed uses of statistical sampling in calculating population for purposes of apportioning seats in the U.S. House of Representatives; and

Whereas, In reaching its findings, the U.S. Supreme Court found that the use of statistical sampling to adjust census numbers would result in voters suffering vote dilution in state and local elections, thus violating the constitutional guarantee of ''one person, one vote''; and

Whereas, The use of statistically adjusted census data would expose the State of Colorado to protracted litigation over congressional and state legislative redistricting plans at great cost to the taxpayers; and

Whereas, Every reasonable and practical effort should be made to obtain the fullest and most accurate population count possible, including appropriate funding for state and local census outreach and education programs, as well as post-census local review: Now, therefore, be it

*Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:*

(1) That the Colorado General Assembly calls on the United States Bureau of the Census to conduct the 2000 decennial census consistent with the U.S. Supreme Court ruling in the *Department of Commerce* and *Glavin* cases, which requires a traditional headcount of the population and bars the use of statistical sampling to create or adjust the count.

(2) That the Colorado General Assembly opposes the use of P.L. 94–171 data for congressional and state legislative redistricting that have been determined in any way through statistical inferences made using random sampling techniques or other statistical methodologies to add or subtract persons from the census counts.

(3) That the Colorado General Assembly demands that it receive P.L. 94–171 data for congressional and state legislative redistricting identical to the census tabulation data used to apportion seats in the U.S. House of Representatives consistent with the *Departmemt of Commerce* and *Glavin* cases, which require a traditional headcount of the population and bar the use of statistical sampling to create or adjust the count.

(4) That the Colorado General Assembly urges Congress, as the branch of the federal government assigned the responsibility for overseeing the decennial enumeration, to take whatever steps are necessary to ensure that the 2000 decennial census is conducted fairly and legally; and be it further

*Resolved,* That a copy of this Resolution be transmitted to the Speaker of the U.S. House of Representatives, the Majority Leader of the U.S. Senate, the President and Vice-President of the United States, and the Director of the Bureau of the Census in the U.S. Department of Commerce.

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POM–179. A joint resolution adopted by the Legislature of the State of Colorado relative to the redesign study relating to the Cherry Creek Dam; to the Committee on Appropriations.

SENATE JOINT RESOLUTION 99–023

Whereas, The terms ''probable maximum flood'' and ''probable maximum precipitation'' as used by the United States Army Corps of Engineers are misleading terminology because they are both improbable events with respect to the Cherry Creek Basin; and

Whereas, The United States Army Corps of Engineers has assumed the Cherry Creek Dam will fail following an extraordinarily improbable chain of events; and

Whereas, The probable maximum precipitation is a theoretical maximum only and has somewhere between a one in one million to a one in one billion chance of occurring in any single year; and

Whereas, The site specific probable maximum precipitation study completed for the United States Army Corps of Engineers by the National Weather Service has erroneously applied meteorological procedures and fails to include documented historical paleo flood evidence; and

Whereas, This error is further compounded by the erroneous assumption that the topographic effects of the Palmer Divide will increase the rainfall in the Cherry Creek Basin; and

Whereas, The probable maximum flood used by the United States Army Corps of Engineers is more than twice the flood estimates prepared by other dam safety officials; and

Whereas, Probable maximum precipitation estimates in the western United States are typically about 3 times the 100-year rainfall event; and

Whereas, The United States Army Corps of Engineers has used 7 times the 100-year rainfall event; and

Whereas, The United States Army Corps of Engineers and the National Weather Service have refused an independent peer review, even though the Federal Energy Regulatory Commission regularly requires such peer reviews as part of its licensing procedures for hydro power facilities at dams, and the Colorado State Engineer has a similar policy for reviews of probable maximum precipitation studies and is currently in phase II of a study funded by Colorado Senate Bills 94–029 and 97–008 to develop an alternative model to predict extreme rainfall amounts for basins above 5,000 feet mean sea level; and

Whereas, Such an independent peer review panel should consist of local experts in the fields of extreme precipitation and flood hydrology that have knowledge of Colorado's unique climatological conditions; and

Whereas, The March 5, 1999, ''peer'' review response submitted by the United States Army Corps of Engineers is simply another in-house review prepared by the National Weather Service, is not an independent analysis, and does not address the full range of issues that are typically addressed in a proper independent peer review; and

Whereas, The proposed construction of upstream dry dams will displace many Coloradans from their homes and businesses and destroy hundreds of acres of active agricultural land and open space; and

Whereas, Any government agency proposal to spend from $50 to $250 million of taxpayer money must be based on data and assumptions that are as accurate as possible; and

Whereas, Because all alternatives being considered by the United States Army Corps of Engineers will have substantial negative impact on homes and families near the dam and upstream of the dam and adversely affect property values, the cost of any real estate that would properly be condemned should be included in determining the cost of any alternatives considered: Now, therefore, be it

*Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:*

That no further funding of the United States Army Corps of Engineers should be

provided for the Cherry Creek Basin Study until the United States Army Corps of Engineers completes on independent peer review of the National Weather Service data in order to determine the appropriate design flood for the Cherry Creek Basin; and be it further

*Resolved,* That copies of this joint resolution be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, each member of Colorado's Congressional delegation, the Governor of the State of Colorado, the Commander of the United States Army Corps of Engineers, and the Colorado Water Conservation Board.

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POM–180. A joint resolution adopted by the Legislature of the State of Colorado relative to national missile defense; to the Committee on Armed Services.

SENATE JOINT RESOLUTION 99–029

Whereas, Colorado is the thirty-eighth state to enter the federal union of the United States of America and is entitled to all the rights, privileges, the obligations that the union affords and requires, including the obligation of the federal government to provide for the common defense; and

Whereas, The federal government has not provided for the common defense of the United States, including Colorado, against attack by long-range ballistic missiles; and

Whereas, The United States currently has no defense against long-range ballistic missiles despite possessing sophisticated military installations, such as the NORAD command center in Cheyenne Mountain; and

Whereas, The people of Colorado recognize the evolution and proliferation of missile delivery systems and weapons of mass destruction, including nuclear, chemical, and biological weapons, in foreign states such as North Korea, Iran, Iraq, Libya, China, and Russia who are sharing ballistic missile and nuclear weapons technology among themselves; and

Whereas, There is a growing threat to the United States and its territories, deployed forces, and allies by aggressors in foreign states and rogue nations that are seeking chemical, biological, and nuclear weapons capability and a means to deliver such capability using long-range ballistic missiles; and

Whereas, On August 31, 1998, without any advance detection by the U.S. intelligence community and to the surprise of the Chairman of the Joint Chiefs of Staff, communist North Korea tested its Taepo Dong 1 Long-Range Ballistic Missile; and

Whereas, With its estimated range of 3,000 to 6,000 miles, this type of three-stage ballistic missile is capable of reaching the United States, and, if used as a fractional orbital bombardment system, the missile has an unlimited range; and

Whereas, In 1996, communist China threatened the United States with ballistic missile attack if it intervened in the dispute between China and Taiwan and, in 1995 and 1996, communist China launched ballistic missiles near Taiwan to threaten that country; and

Whereas, China has conducted at least forty-five nuclear tests, and in 1998, the Central Intelligence Agency reported that thirteen of China's eighteen long-range missiles were targeted at U.S. cities; and

Whereas, In addition to the long-range ballistic missiles it currently possesses, China is also building new long-range ballistic missiles; and

Whereas, In 1993, in response to its economic difficulties and decline in conventional military capability, Russia's leaders issued a national security policy placing greater reliance on nuclear deterrence; and

Whereas, Russia still has over 20,000 nuclear weapons, and the risk of an accident or loss of control over Russian ballistic missile forces could occur with little or no warning to the U.S.; and

Whereas, Russia poses a risk to the United States as a major exporter of ballistic missile technology, enabling countries hostile to the United States to threaten or attack the United States with ballistic missiles; and

Whereas, The congressional chartered Commission to Assess the Ballistic Missile Threat to the United States led by former Secretary of Defense Donald Rumsfeld unanimously recommended that the U.S. analyses, practices, and policies that depend on expectations of extended warning of deployment of ballistic missiles be reviewed and, as appropriate, be revised to reflect the reality of an environment in which there may be little or no warning of development and launch of said missiles; and

Whereas, In March 1999 the United States Congress passed legislation declaring it the policy of the United States to deploy a national missile defense, in recognition of the threats we face: Now, therefore, be it

*Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein,* That the President, Congress, and the government of the United States are hereby strongly urged:

(1) To take all actions necessary to provide for the common defense and protect on an equal basis all people, resources, and states of the United States from the threat of missile attack, regardless of the physical location of each state of the union;

(2) To include all fifty states in every National Intelligence Estimate of missile threat of the United States;

(3) To take all necessary measures to ensure that all fifty states are protected from weapons delivered by long-range ballistics missiles or by means of terrorists;

(4) To make the safety and common defense of all fifty states a priority over any international treaty or obligation;

(5)(a) To deploy a common defense against long-range ballistic missiles capable of providing multiple opportunities to intercept a ballistic missile or intercepting a ballistic missile in its boost phase (its most vulnerable position);

(b) To deploy a defense fully exploiting the advantages of using defenses in space; and

(c) To deploy such a defense using accelerated funding and streamlined acquisition procedures to minimize the time for deployment; and

(6) To hold appropriate Congressional committee hearings that include the testimony of defense experts and administration officials to enable the citizens of the United States to understand the nature and extent of their vulnerability to ballistic missile attack and their level of security against such an attack; and be if further

*Resolved,* That copies of this Resolution be sent to the President of the United States; the Vice-president of the United States; the Speaker of the United States House of Representatives; the chairmen of the Appropriations committees of the United States House of Representatives and the United States Senate; the chairmen of the Armed Services committees of the United States House of Representatives and the United States Senate; and each member of the Colorado Congressional delegation.

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POM–181. A joint resolution adopted by the Legislature of the State of Maine relative to reauthorization of the Northeast Interstate Dairy Compact; to the Committee on the Judiciary.

JOINT RESOLUTION

Whereas, Maine the nearly 500 dairy farms producing milk valued annually at over $100,000,000; and

Whereas, maintaining a sufficient supply of Maine-produced milk and milk products is the best interest of Maine consumers and businesses; and

Whereas, Maine is a member of the Northeast Interstate Dairy compact; and

Whereas, the Northeast Interstate Dairy Compact will terminate at the end of October 1999 unless action is taken by the Congress to reauthorize it; and

Whereas, the Northeast Interstate Dairy Compact's mission is to ensure the continued viability of dairy farming in the Northeast and to ensure consumers of an adequate, local supply of pure and wholesome milk; and

Whereas, the Northeast Interstate Dairy Compact has established a minimum price to be paid to dairy farmers for their milk, which has helped to stabilize their incomes; and

Whereas, in certain months the compact's minimum price has resulted in dairy farmers receiving nearly 10% more for their milk than the farmers would have otherwise received; and

Whereas, actions taken by the compact have directly benefited Maine dairy farmers and consumers: Now, therefore, be it

*Resolved,* That We, your Memorialists, respectfully urge and request that the United States Congress reauthorize the Northeast Interstate Dairy Compact; and be it further

*Resolved,* That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, the president of the Senate and the Speaker of the House of Representatives of the Congress of the United States, each member of the United States Congress who sits as chair on the United States House of Representatives Committee on Agriculture or the United States Senate Committee on Agriculture, Nutrition and Forestry, the United States Secretary of Agriculture and each Member of the Maine Congressional Delegation.

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POM–182. A resolution adopted by the Commission of Knox County, Tennessee relative to the Tennessee Valley Authority; to the Committee on Environment and Public Works.

POM–183. A concurrent resolution adopted by the General Assembly of the State of Missouri relative to tobacco settlement funds; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 14

Whereas, in late November, 1998, Missouri accepted the 206 billion dollar settlement agreement negotiated between 46 states and the tobacco industry;

Whereas, the states' attorneys general crafted the settlement agreement to protect states' interests, consistent with the lawsuits filed on behalf of the states;

Whereas, the settlement agreement reflects difficult policy decisions and years of effort among the states which bore the risk and expense of litigating their claims against a strong tobacco industry;

Whereas, the federal government neither participated in nor assisted with the litigation and negotiation of the states' claims, yet now seeks to seize a substantial portion of the resulting payments due to the states;

Whereas, the federal government bases its claim on federal right to recoupment for medicaid expenses, a claim which was not promoted by the federal government in any litigation prior to the settlement of the states' claims;

Whereas, by the terms of the settlement, Missouri would receive approximately 6.7 billion dollars by 2025, yet faces an estimated potential loss of 3.9 billion dollars of this amount to the federal government;

Whereas, Missouri rightfully should determine the best use of the settlement proceeds achieved through state effort, using state resources and motivated by state concerns: Now, therefore, be it

*Resolved by the members of the Missouri Senate and the Ninetieth General Assembly, the House of Representatives concurring therein,* That the President of the United States and the members of Missouri's Congressional delegation recognize the effort and resources expended by Missouri to promote and protect its interests throughout the litigation and negotiation of claims against the tobacco industry; and be it further

*Resolved,* That the General Assembly of the State of Missouri requests that the President of the United States and the members of Missouri's Congressional delegation protect the proceeds negotiated by Missouri in settlement of its claims by refusing to divert, seize or recoup any portion of the settlement proceeds for federal purposes; and be it further

*Resolved,* That the Secretary of the Senate be instructed to provide properly inscribed copies of this resolution to William Jefferson Clinton, President of the United States, to each member of Missouri's Congressional delegation, the Secretary of the United States Senate and the Clerk of the United States House of Representatives.

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POM–184. A concurrent resolution adopted by the General Assembly of the State of Missouri relative to tobacco settlement funds; to the Committee on Finance.

RESOLUTION

Whereas, on November 23, 1998, a historic accord was reached between 46 states, U.S. territories, commonwealths and the District of Columbia and tobacco industry representatives that called for the distribution of tobacco settlement funds to states over the next twenty-five years; and

Whereas, these funds result from the effort put forth by state attorneys general in which states solely assumed enormous risks and displayed determination to initiate a settlement that will lead to reduced youth smoking and reduced access to tobacco products; and

Whereas, in the fall of 1997, states were notified by the U.S. Department of Health and Human Services of its intention to ''recoup'' the federal match from funds states received through suits brought against tobacco manufacturers; and if such recoupment takes place, the states will lose one-half or more of the tobacco settlement funds; and

Whereas, the federal government played no role in the suits brought against tobacco manufacturers or the subsequent settlement agreement and the November 23rd accord makes no mention of Medicaid or federal recoupment; and

Whereas, the U.S. Department of Health and Human Services has suspended recoupment activities; and

Whereas, we the members of the Ninetieth General Assembly believe that the suspension on the federal government's recoupment of tobacco settlement funds should be converted into an outright prohibition against the federal government recouping any of the tobacco settlement money; and

Whereas, we the members of the Ninetieth General Assembly believe that if the federal government recoups any funds received through suits brought against tobacco manufacturers, such recoupment should be immediately returned to the state; and

Whereas, to prevent the seizure of state tobacco settlement funds when they become available to the states in 2000, an amendment to the Medical statute must be enacted to exempt tobacco settlement funds from recoupment: Now, therefore, be it

*Resolved,* That the members of the Missouri House of Representatives of the Ninetieth General Assembly, First Regular Session, the Senate concurring therein, hereby go on record in support of state retention of all state tobacco settlement funds; and be it further

*Resolved,* That the members of the Missouri House of Representatives of the Ninetieth General Assembly, First Regular Session, the Senate concurring therein, hereby urge the federal government, in the event recoupment occurs, to return upon receipt any tobacco settlement funds recouped from the state; and be it further

*Resolved,* That the members of the Missouri House of Representatives of the Ninetieth General Assembly, First Regular Session, the Senate concurring therein, hereby urge Congress to enact an amendment to the Medicaid statute that would exempt tobacco settlement funds from recoupment; and be it further

*Resolved,* That the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for the President of the United States, the entire Missouri Congressional delegation, the Secretary of the United States Senate and the Clerk of the United States House of Representatives.

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POM–185. A petition from the Georgia State Properties Commission relative to the Georgia-South Carolina boundary; to the Committee on the Judiciary.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment:

S. 880. A bill to amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program (Rept. No. 106–70).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 698. A bill to review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the state of Alaska, and for other purposes (Rept. No. 106–71).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with amendments:

S. 748. A bill to improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes (Rept. No. 106–72).

## EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. CLELAND, for Mr. WARNER, for the Committee on Armed Services:

The following named officer for appointment as the Chief of Staff, United States Army, and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 601 and 3033:

*To be general*

Gen. Eric K. Shinseki, 0000.

By Mr. ROBERTS, for Mr. WARNER, for the Committee on Armed Services:

The following named officer for appointment as Commandant of the Marine Corps, and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 601 and 5043:

*To be general*

Lt. Gen. James L. Jones, Jr., 0000.

(The above nominations were reported with the recommendation that they be confirmed.)

## 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 Ms. COLLINS (for herself, Mr. CLELAND, and Mr. GREGG):

S. 1189. A bill to allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. REED:

S. 1190. A bill to apply the Consumer Product Safety Act to firearms and ammunition; to the Committee on Commerce, Science, and Transportation.

By Mr. DORGAN (for himself, Mr. WELLSTONE, Ms. SNOWE, and Mr. JOHNSON):

S. 1191. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for facilitating the importation into the United States of certain drugs that have been approved by the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself, Mr. REID, Mrs. BOXER, and Mr. BRYAN):

S. 1192. A bill to designate national forest land managed by the Forest Service in the Lake Tahoe Basin as the ''Lake Tahoe National Scenic Forest and Recreation Area'', and to promote environmental restoration around the Lake Tahoe Basin; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG:

S. 1193. A bill to improve the safety of animals transported on aircraft, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HUTCHINSON (for himself, Mr. LOTT, Mr. NICKLES, Mr. COVERDELL, Mr. HELMS, Mr. ASHCROFT, Mr. GRAMM, Mr. KYL, Mr. HAGEL, Mr. INHOFE, Mr. FRIST, Mr. BOND, Mr. THURMOND, Mrs. HUTCHISON, Mr. MCCONNELL, Mr. ENZI, Mr. WARNER, Mr. DEWINE, Mr. SESSIONS, Mr. COCHRAN, Mr. BUNNING, Mr. ROBERTS, Mr. GORTON, Mr. SHELBY, Mr. THOMAS, and Mr. MACK):

S. 1194. A bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER:

S. 1195. A bill to give customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COVERDELL:

S. 1196. A bill to improve the quality, timeliness, and credibility of forensic science

services for criminal justice purposes; to the Committee on the Judiciary.

By Mr. ROTH (for himself, Mr. SMITH of New Hampshire, Mr. LEVIN, and Mr. SCHUMER):

S. 1197. A bill to prohibit the importation of products made with dog or cat fur, to prohibit the sale, manufacture, offer for sale, transportation, and distribution of products made with dog or cat fur in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SHELBY (for himself, Mr. BOND, and Mr. LOTT):

S. 1198. A bill to amend chapter 8 of title 5, United States Code, to provide for a report by the General Accounting Office to Congress on agency regulatory actions, and for other purposes; to the Committee on Governmental Affairs.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SMITH of New Hampshire (for himself, Mr. MCCONNELL, Mrs. FEINSTEIN, and Mr. HELMS):

S. Res. 113. A resolution to amend the Standing Rules of the Senate to require that the Pledge of Allegiance to the Flag of the United States be recited at the commencement of the daily session of the Senate; to the Committee on Rules and Administration.

By Mr. HATCH (for himself, Mrs. BOXER, Mr. BOND, Mr. SCHUMER, Mr. DEWINE, Mr. BIDEN, Mr. WARNER, Mr. DASCHLE, Mr. CRAPO, Mr. HOLLINGS, Mr. BENNETT, Mr. KERRY, Mr. SMITH of Oregon, Mr. LAUTENBERG, Mr. FITZGERALD, Mrs. MURRAY, Ms. SNOWE, Mr. ROBB, Mr. MACK, Mr. TORRICELLI, Mr. ABRAHAM, Mr. WELLSTONE, Mr. BURNS, Mr. CLELAND, Mrs. HUTCHISON, Mr. DODD, Mr. SPECTER, Mr. DURBIN, Mr. CAMPBELL, Mr. EDWARDS, Mr. FRIST, Mr. INOUYE, Mr. GORTON, Mrs. FEINSTEIN, Mr. LOTT, Mr. REID, Mr. ASHCROFT, Mr. GRAHAM, Mr. COCHRAN, Mr. JOHNSON, Mr. JEFFORDS, Mr. KERREY, Mr. CHAFEE, Ms. MIKULSKI, Mr. GRASSLEY, Mr. BAYH, Mr. CRAIG, Mr. REED, Mr. NICKLES, and Mr. KOHL):

S. Res. 114. A resolution designating June 22, 1999, as ''National Pediatric AIDS Awareness Day''; to the Committee on the Judiciary.

By Mr. ABRAHAM:

S. Con. Res. 38. A concurrent resolution expressing the sense of Congress that the Bureau of the Census should include in the 2000 decennial census all citizens of the United States residing abroad; to the Committee on Governmental Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. CLELAND, and Mr. GREGG):

S. 1189. A bill to allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MICROCAP FRAUD PREVENTION ACT OF 1999

Ms. COLLINS. Mr. President, today I am introducing the Microcap Fraud Prevention Act of 1999 which will equip Federal law enforcement authorities with new tools to prosecute the fight against microcap securities fraud that costs unwary investors an estimated $6 billion annually.

While cold-calling families at dinnertime and high-pressure sales remain a favorite tactic of microcap con artists, the Internet is providing a new and inviting frontier for the commission of microcap frauds. I find it particularly disturbing that despite the best efforts of regulatory authorities, microcap scam artists often commit repeat offenses. Similarly, under current law, persons barred from other segments of the financial industry, such as banking or insurance, can easily bring their deceptive practices into our securities markets.

I am very pleased to have the cosponsorship of two of my distinguished colleagues in introducing this important legislation. Senator CLELAND and Senator GREGG are united with me in a commitment to ensure that security regulators have the necessary authority to crack down on securities fraud. Senator CLELAND has a longstanding interest in protecting investors from securities scams. Senator GREGG also has been a leader in this arena in his position as the chairman of the subcommittee with jurisdiction over the SEC's budgets.

In drafting this legislation, I was also pleased to have the invaluable assistance of the Securities and Exchange Commission and the North American Securities Administrators Association which represents State securities regulators. In fact, Richard H. Walker, the SEC's Director of Enforcement, and Peter C. Hildreth, the President of NASAA, have submitted letters endorsing my legislation. I ask unanimous consent that these letters be printed in the RECORD following my statement.

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

(See exhibit 1.)

Ms. COLLINS. Mr. President, the Collins-Cleland-Gregg legislation is the product of hearings of the Permanent Subcommittee on Investigations which I chair. We first started looking at this issue in 1997 and held our first hearing in September of that year. Those hearings revealed that microcap securities fraud is pervasive, so much so that regulators estimated that it cost investors $6 billion in losses annually, according to an article in the Wall Street Journal.

The damage from these microcap scams, however, is not confined to investor losses. They also damage the reputation of legitimate small companies and limit their ability to raise capital through the securities markets. Ironically, the strong performance of the securities markets over the past several years has provided an ideal breeding ground for these microcap scams as more and more Americans invest in stocks. In fact, according to the SEC, in 1980, only 1 in 18 individual Americans participated in the securities markets. Today, 1 in 3 Americans participate in the securities markets. There has been a tremendous growth in more and more American households investing in equities.

In a typical microcap fraud, an unscrupulous broker, often acting through an intermediary, purchases large blocks of shares in a small company with dubious business and financial prospects. The company stock may be nearly worthless, but the brokers repeatedly cold call customers, promise glowing returns and drive up the stock through high-pressure sales tactics. Inevitably, after the manipulators sell their shares at a profit, the artificially inflated price plummets, leaving thousands of unsophisticated investors with worthless stock and heavy losses. The manipulators then count their ill-gotten gains and move on to their next target.

The subcommittee's investigation demonstrated that the rapid growth of the Internet has also provided a new frontier for the commission of microcap securities frauds. At hearings held by the subcommittee last March, expert witnesses testified that while the Internet provides many, many benefits to online investors, such as lower trading costs and a wealth of investment information, the medium is inviting to con men as well.

Specifically, the Internet makes it easier and cheaper for microcap scam artists to contact potential victims and to perpetrate pump-and-dump schemes or related securities frauds. Rather than having to cold call potential victims one at a time, con men with home computers and Internet access can reach millions of potential investors with the click of a mouse. At a very low cost, these cybercrooks can deceive many more victims using professionally designed web sites, online financial newsletters or bulk e-mail. SEC officials testified that the agency now receives hundreds of e-mail complaints per day, an estimated 70 percent of which involve potential Internet securities frauds.

For example, a constituent of mine from Ellsworth, ME, who appeared at the subcommittee's hearings, testified that he lost more than $20,000 in a sophisticated Internet securities scam. My constituent has an engineering degree, and he has been investing for nearly 10 years. This demonstrates the potential risk that Internet fraud poses to even experienced investors. Although the SEC has brought charges against the alleged perpetrators of this scam, it is, unfortunately, very unlikely that my constituent will ever be able to recover his losses.

Whether they use cold calls, the Internet, or both, microcap scam artists rarely strike only once. The subcommittee's investigations have found that when regulators close down one microcap scam, often after very lengthy proceedings, it is very common

for the perpetrators to pop up in connection with yet another securities fraud.

Moreover, individuals who have committed consumer frauds in other financial services industries, such as insurance or banking, frequently move on to work in the securities industry. Our regulatory system must be able to prevent these individuals who have violated the law from migrating freely from one financial sector to another.

I commend the actions of the Securities and Exchange Commission and the State securities regulators in aggressively fighting microcap securities fraud, but they are simply overwhelmed with the magnitude of the problem.

The SEC has established a special unit to monitor the Internet for potential microcap or similar stock securities scams and has initiated 83 enforcement actions against approximately 250 individuals and companies who have allegedly committed Internet securities frauds.

Similarly, in July of 1998, the State securities regulators, represented by NASAA, announced that the State securities regulators had filed 100 enforcement actions in a ''sweep'' against illegal boiler room operations. Approximately 64 of these enforcement actions involved brokers peddling microcap stocks. Despite these commendable efforts, however, the SEC and State regulators face significant challenges just to keep up with the explosive growth of microcap securities fraud, particularly on the Internet.

The legislation that I am introducing today is designed to bolster the SEC's ability to protect investors from ever-increasing microcap frauds while ensuring that legitimate small companies can continue to raise capital through securities offerings. To accomplish these objectives, the bill will streamline the microcap fraud investigative process and provide the SEC with the tools it needs to suspend or ban rogue brokers, particularly those who have a history of committing fraudulent offenses.

Specifically, our legislation will do the following:

First, it will allow the SEC to bring enforcement actions against securities fraud violators on the basis of enforcement actions brought by State securities regulators. Currently, State regulators can rely on SEC-initiated enforcement actions, but the SEC does not have reciprocal authority. Consequently, the SEC must often conduct duplicative investigations before the agency can bring enforcement actions against microcap securities frauds first identified at the State level but which operate on a nationwide basis. With the new authority proposed by our legislation, the SEC and the State regulators will be able to maximize the impact of their limited enforcement resources.

Second, our legislation would permit the SEC to keep out of the securities business unscrupulous individuals from other sectors of the financial services industry. As I stated previously, persons with histories of violations too often roam freely throughout the financial services industry and commit new frauds. The bill would allow the SEC to prevent individuals who have ripped off consumers in insurance or banking scams from similarly defrauding America's small investors.

Third, our legislation will broaden the current penny stock bar to include fraudulent violations in the microcap markets. Under current law, the SEC can suspend or bar individuals who commit serious penny stock frauds involving stocks that cost less than $5. You may be surprised to learn, however, that the law permits such violators to participate in micro-cap securities offerings, because even though the total capitalization of these companies is small, each of their shares costs more than $5. Our bill will close this loophole by allowing the SEC to suspend or bar individuals who have committed serious penny stock fraud from participating in both the penny stock and micro-cap securities markets either as registered brokers or in related positions, such as promoters.

Fourth, our proposal will expand the statutory officer and director bar to include all publicly traded companies. Current law applies only to companies that report to the SEC, leaving the door open for violators to serve as officers or directors of all other companies. Our proposal would extend the bar to include all publicly traded businesses, including ''Pink Sheet'' or Over The Counter (''OTC'') Bulletin Board companies, which are often the vehicles for micro-cap fraud schemes.

Finally, our bill will strengthen the SEC's ability to take enforcement actions against repeat violators. Currently, the SEC must request that the Justice Department initiate criminal contempt proceedings against individuals who violate SEC orders or court injunctions, which can be a very burdensome and timely process. Our legislation would allow the SEC to seek immediate civil penalties for repeat violators without the need to file criminal contempt proceedings.

Our Nation is blessed with the strongest and safest security markets in the world. This is a tribute to both the industry and its regulators. Unfortunately, as our markets bring benefits to more and more Americans, they also attract those who would exploit unsuspecting investors through manipulative practices.

By virtue of their small size and relative obscurity, microcap securities are the most susceptible to manipulation. By giving the SEC the tools it needs to combat this fraud, this legislation will benefit not only individual investors, but also the vast majority of legitimate small businesses who contribute so much to our Nation's growth and prosperity.

I urge my colleagues to join in supporting the Microcap Fraud Prevention Act of 1999.

I ask unanimous consent that a section-by-section analysis of the legislation be printed in the RECORD.

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

(See Exhibit 2.)

Ms. COLLINS. Thank you, Mr. President.

EXHIBIT NO. 1

SECURITIES AND EXCHANGE COMMISSION,
*Washington, DC, May 24, 1999.*

Hon. SUSAN M. COLLINS,
*Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN COLLINS: I commend both you and your Subcommittee for addressing the important issue of fraud in the market for microcap securities. As I said in my March 23, 1999 testimony before your Subcommittee, fighting fraud in this market has been one of the Commission's more significant challenges this decade. The hearings you held help to focus the issues and educate investors, and the principles in the bill you plan to introduce will help leverage the Commission's resources to combat microcap fraud.

As you know, Chairman Levitt testified on microcap fraud before your Subcommittee in September 1997. He noted then that with our resources remaining relatively constant, we must ''rely increasingly on innovative and efficient ways of minimizing fraud and of maximizing the deterrence achievable with the Commission's limited resources.'' In my own view, the concepts underlying ''The Microcap Fraud Prevention Act of 1999'' would be of great assistance to us in this regard. Most importantly, the bill would give us valuable new tools to close off participation in the microcap market by those who would prey on innocent investors.

In recent years, the Commission has made significant inroads in the fight against microcap fraud. I appreciate your efforts to address this serious problem through hearings and legislation that support our enforcement efforts. I believe your bill would significantly advance the cause and help make our markets safer for investors. My staff and I look forward to continuing to work with you and your Subcommittee on this legislation.

Very truly yours,

RICHARD H. WALKER,
*Director,*
*Division of Enforcement.*

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NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION, INC.,
*Washington, DC, May 17, 1999.*

Hon. SUSAN M. COLLINS,
*U.S. Senate,*
*Washington, DC.*

DEAR CHAIRMAN COLLINS: On behalf of the membership of North American Securities Administrators Association, Inc. (''NASAA'')[1], I commend you for recognizing and confronting the problem of fraud in the microcap securities market. At your invitation NASAA testified before you and the members of the Permanent Subcommittee on Investigations, and took part in your fact-finding mission. We appreciate your efforts to protect the investing public from frauds and for introducing legislation to enhance enforcement efforts in this area.

As you know, several years ago, state securities administrators recognized the problem of fraud in the microcap market. Since then the states have led enforcement efforts and filed numerous actions against microcap firms. There are systematic problems in this area, but they can be addressed effectively if state and federal regulators and policymakers work together on meaningful solutions.

NASAA wholeheartedly supports the intent of The Microcap Fraud Prevention Act of 1999. It would be an important step in combating abuses in the microcap market and maintaining continued public confidence in our markets.

I pledge the support of NASAA's membership to continue to work with you to secure passage of this important legislation.

Sincerely,

PETER C. HILDRETH,
*New Hampshire Securities Director,*
*NASAA President.*

EXHIBIT NO. 2

S. 1189, MICROCAP FRAUD PREVENTION ACT OF 1999—SECTION-BY-SECTION SUMMARY

SEC. 1. SHORT TITLE: ''MICROCAP FRAUD PREVENTION ACT OF 1999''

Explanation: The purpose of the bill is to protect investors against fraud in the microcap securities market, and for other purposes.

SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934

This section amends the Securities Exchange Act of 1934 to grant the SEC authority to take actions against registered persons who have violated the law. It allows SEC enforcement actions to be predicated on state enforcement actions and take steps to prevent the entry into the securities industry of individuals who have committed fraud in other sectors of the financial services industry.

Explanation: Currently, state securities laws do not allow state regulators to obtain civil relief having nation-wide effect. Rather, state regulators only have jurisdiction to prohibit defendants from doing business in their state. Wrongdoers are thus free to perpetrate fraud in any other state where they have not been separately barred. This section amends Exchange Act section 15(b)(4)(G) to allow the SEC to bring a follow-up administrative proceeding to suspend or bar regulated persons who either (1) have been barred by a state securities administrator from operating within that state or (2) is subject to a final order for fraudulent, manipulative, or deceitful conduct.

The SEC would not have the authority to follow-up on ex parte temporary restraining orders. Such orders are imposed immediately by state regulators and do not provide alleged violators with a chance to present a defense until after the order has already been entered. The SEC would have the ability to act on these state actions if, after adjudication, the defendant were ultimately found to have committed a violation or reached a settlement agreement.

Currently, the Securities Exchange Act does not permit the SEC to take administrative actions to bar or suspend from the securities industry individuals who have committed serious violations—i.e. fraud—in other financial industries, such as the insurance or banking sectors. This section amends Exchange Act 15(b)(4)(G) to authorize the SEC (1) to take administrative action seeking bars or suspensions against a broker-dealer or associated person based on orders issued by federal regulators of other financial services industries and (2) to allow the SEC to take follow-up actions when a foreign financial regulatory authority has previously found violations in other financial sectors. To ensure parity and close off any remaining loopholes, corresponding changes have also been made to Exchange Act sections 15B(c), 15C(c), and 17A(c) to extend this provision to those who seek to associate with municipal securities dealers, government securities dealers, and transfer agents.

SEC. 3. AMENDMENTS TO THE INVESTMENT ADVISERS ACT OF 1940

This section amends Investment Advisers Act section 203 to allow the SEC to bring a follow-up administrative proceeding to suspend or bar investment advisors who are subject to certain federal, state, or foreign orders. This sections also amends section 203(f) of the act to permit the SEC to bar a person associated with an investment adviser on the basis of a felony conviction.

Explanation: This section makes the same changes to the Investment Adviser Act that Section 2 of the bill makes to the Exchange Act. Both allow SEC enforcement actions to be predicated on certain federal, state, or foreign enforcement actions against individuals found to have committed fraudulent or similar acts in the financial services sector.

SEC. 4. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

This section amends Investment Company Act section 9(b)(4) to allow the SEC to bring a follow-up administrative proceeding to suspend or bar individuals covered by the Investment Company Act who are subject to certain federal, state, or foreign orders.

Explanation: This section makes the same changes to the Investment Company Act that Section 2 of the bill makes to the Exchange Act. Both allow SEC enforcement actions to be predicated on certain federal, state, or foreign enforcement actions against individuals found to have committed fraudulent or similar acts in the financial services sector.

SEC. 5. CONFORMING AMENDMENTS

This section amends various provisions of the Securities Exchange Act of 1934 to authorize the SEC to take administrative actions against individuals—based on the findings of certain federal, state, or foreign enforcement actions—who seek to associate with municipal securities dealers, government securities brokers and dealers, and clearing agencies. The section also amends the Securities Exchange Act of 1934, so that actions by state securities commissions and other regulators can trigger a statutory disqualification. This section will focus statutory disqualifications on serious violations of state law, particularly fraud and similar offenses.

Explanation: This section seeks to prevent individuals who have committed fraud in other financial services sectors from entering the securities industry. The section also expands the definition of violations that trigger automatic statutory bars from the securities industry.

SEC. 6. BROADENING OF PENNY STOCK BAR

This section amends Exchange Act section 15(b)(6) to expand the penny stock bar to cover a broader category of offerings.

Expanation: This section would extend the penny stock bar to all offerings other than those involving securities traded on the NYSE, AMEX, NASDAQ, NMS, or investment company securities. While there is no formal definition of ''micro-cap'' security, this statutory amendment would cover what are generally referred to as ''micro-cap'' securities.

SEC. 7. COURT AUTHORITY TO PROHIBIT OFFERINGS OF NON-COVERED SECURITIES

This section amends Exchange Act section 21(d)(5) to provide federal court judges the authority to impose the remedy outlined in Section 9 of the bill.

Explanation: This section would allow the SEC to obtain all necessary relief more efficiently and expeditiously by requesting, in appropriate cases, a district court to issue a penny stock bar order. This authority would be provided as an alternative to the SEC's current ability to seek such orders only through administrative proceedings.

SEC. 8. BROADENING OF OFFICER AND DIRECTOR BAR

This section amends Exchange Act section 21(d)(2) in order to broaden the scope of the officer and director bar.

Explanation: Current law allows persons barred from serving as an officer or director of companies that report to the SEC to serve as officers or directors of other companies. This section removes the limitation to SEC reporting companies, and instead covers all publicly traded companies—those registered pursuant to Exchange Act section 12, those required to file reports pursuant to Exchange Act section 15(d), and those whose securities are ''quoted in any quotation medium.''

SEC. 9. VIOLATIONS OF COURT ORDERED BARS

This section adds section 21(i) to the Exchange Act to give the SEC a more direct remedy against recidivist violators of prior bar orders.

Explanation: This section makes it a stand-alone violation of the securities laws for a person to engage in conduct that violated a prior order barring him from acting as an officer, director or promoter. It allows the SEC to take direct enforcement action (seeking per-day money penalties, among other remedies) against a recidivist without the need for criminal authorities to bring a contempt proceeding.

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By Mr. DORGAN (for himself, Mr. WELLSTONE, Ms. SNOWE, and Mr. JOHNSON):

S. 1191. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for facilitating the importation into the United States of certain drugs that have been approved by the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

INTERNATIONAL PRESCRIPTION DRUG PARITY ACT

Mr. DORGAN. Mr. President, I rise to introduce a piece of legislation on behalf of myself, Mr. WELLSTONE, Ms. SNOWE, and Mr. JOHNSON. These three Senators, and I hope others as well, have joined me in introducing this bill, the International Prescription Drug Parity Act, today.

This piece of legislation deals with the question of prescription drugs. By consent of the Chair, I would like to show on the floor of the Senate today examples of the issue that is addressed by this piece of legislation.

With your consent, I will show two bottles of the drug Claritin, a medication most people are familiar with. Claritin is a popular anti-allergy drug. These two bottles contain the same pills, produced by the same company, in the same strength, in the same quantity. One difference: a big difference in price. This bottle is purchased in the United States—in North Dakota, to be exact. This bottle of 10

milligram, 100 tablets cost North Dakotans $218, wholesale price. This bottle—same drug, same company, same strength, same quantity—was purchased in Canada. They didn't pay $218 in Canada; they paid $61. Why the difference for the same drug, same dosage, same quantity, same company? In Canada, it costs $61; U.S. consumers pay $218.

Here is another example—and I have a lot of examples. But with the consent of the Chair, I will only use two today.

This is Cipro, a prescription drug to treat infections. Both bottles are made by the same company. We have the same number of pills, 500 milligram, 100 tablets—same drug, same company, same pill. In North Dakota, the wholesale price for this bottle is $399; in Canada, it is $171. The North Dakotan pays—or the U.S. consumer pays because this is true all over our country—$399, or 233 percent more than for the same drug in Canada. The question is, Why? The question is, With a global economy, why would a pharmacist simply not drive up to Canada and buy the same drugs and offer them for a lower price to their customers? The answer to that is, there is a law that restricts the importation of drugs into this country, except by the manufacturers of the drug themselves. That is kind of a sweetheart law, it seems to me. We want to change that.

If the manufacturer that produces these pills has been inspected by the Food and Drug Administration and the same drugs are marketed everywhere, why on Earth, in a global economy, cannot our consumers access a lesser price? Incidentally, this pricing inequity does not just exist with Canada; it is the same with Mexico, Germany, France, Italy, England, Germany—you name it. It is true around the world. We pay a much higher price for most prescription drugs than consumers anywhere else in the world. The United States is the consumer that pays a much higher price for the same pill, in the same bottle, produced by the same manufacturer.

With our bill we say, let's decide that what is good for the goose is good for the gander. If the pharmaceutical companies can access the raw materials which they use to produce their medicine from all around the world and produce a pill and put it in a bottle, it seems to me that the customer here in the United States ought to also benefit from free trade, as long as the drug is FDA approved and comes from a plant that is inspected by the FDA.

The drug industry will say that safety is an issue. It is no issue with respect to my bill. Safety is not an issue here at all. I am saying—and my colleagues are as well—if medicine approved by the FDA and produced in a plant inspected by the FDA is to be marketed around the world, but the American is to pay the highest price—in some cases by multiples of four and five —let us use the global economy to let U.S. pharmacists and prescription drug distributors access that medicine wherever it exists at a lower price, and pass along those savings to American consumers.

Back in 1991, the General Accounting Office studied 121 drugs and found that, on average, prescription drugs in the United States are priced 34 percent higher than the exact same products in Canada. I just did a comparison of the retail prices on both sides of the border of 12 of the most prescribed drugs, and discovered that, on average, U.S. prices exceeded the Canadian prices by 205 percent.

I mentioned before that Claritin costs the American consumer 358 percent more. We American consumers pay 358 percent more than the consumer does north of the border. And incidentally, the Canadian prices have been adjusted to U.S. dollars. Does this make sense? Of course not. Studies show that the same drug that costs $1 in our country costs 71 cents in Germany, 65 cents in the United Kingdom, 57 cents in France, and 51 cents in Italy. All we are saying is that if this global economy is good for companies that produce the drugs, it ought to be good for the consumer.

In 1997, the top 10 pharmaceutical companies had an average profit margin of 28 percent. The Wall Street Journal reported that profit margins in the drug industry are the ''envy of the corporate world.'' The manufacturers produce wonderful medicines, and I am all for it. But I want them at an affordable price for the American consumer. I am flat sick and tired of the American consumer being the consumer of last resort who pays a much higher price than anybody else in the world for the same drug, in the same bottle, produced by the same company. It doesn't make sense.

Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator has consumed 7 minutes.

Mr. DORGAN. Let me go for another minute, and then I will yield to my colleague from Minnesota, who will have 7 minutes remaining on the 15 minutes.

As I have indicated, Senator JOHNSON from South Dakota and Senator SNOWE from Maine are also cosponsors. We expect other cosponsors to join us. Frankly, the reason we have introduced this legislation is that there is an unfair pricing practice that exists with respect to prescription drugs in this country. It is fundamentally unfair for a pharmaceutical manufacturer to say that we will produce a drug, and, by the way, when we decide to sell it we will sell it all around the world, but we will choose to sell it to the American consumer at a much higher price than any other customer in the world.

That is unfair to the American consumer.

What prevents the local corner pharmacist from going elsewhere to buy these prescription drugs in France or in Canada or elsewhere? A law that says you can't import a drug into this country unless it is imported by the manufacturer. What a ridiculous piece of legislation that was passed over a decade ago.

If this global economy works, let's make it work for the consumers and not just for the big companies.

Our legislation only pertains to this circumstance: If the drug has been approved by the FDA and the facility where that drug is bought are inspected by the FDA, then those drugs have a right to come into this country not just by the manufacturer but by local pharmacists and distributors who want to access that drug at a less expensive price in other parts of the world and pass along the savings to American consumers. That makes good sense to me.

I have a lot more to say, but I will say it at a later time. I yield my remaining time to my colleague, Senator WELLSTONE from Minnesota, who is joined by Senator JOHNSON of South Dakota and Senator SNOWE of Maine as cosponsors of this legislation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me first of all say to my colleague from North Dakota that I am really pleased to join him in this effort, along with Senator SNOWE and Senator JOHNSON.

The International Prescription Drug Parity Act makes prescription drugs more affordable for millions of Americans by applying the principles of free trade and competition.

I want to give special thanks to a wonderful grassroots citizen organization from Minnesota called the Minnesota Senior Federation. If we had organizations such as this all around the country, we would have such effective citizen politics, and I guarantee we would be passing legislation that would make an enormous positive difference in the lives of the people in our country.

This legislation provides relief from price gouging of American consumers by our own pharmaceutical industry. Those who really pay the price are those who are chronically ill. Many of those who are clinically ill are the elderly. It is not uncommon anywhere in our country to run across an elderly couple or single individual who is paying up to 30, 40, or 50 percent of their monthly budget just for prescription drug costs.

In my State of Minnesota, only 35 percent of senior citizens have any prescription drug cost coverage at all.

This legislation is very simple. I say to Senator DORGAN that what I liked the best about this legislation, and the reason I think it will command widespread support, is its eloquent simplicity.

We are just saying that if you have drugs which are FDA approved and manufactured in our country, and now they are in Canada, for example, and cost half of what they cost senior citizens to pay for that drug in our own country, it shouldn't just be the pharmaceutical companies that can bring

those drugs back in. You ought to enable pharmacists or distributors to go to Canada and purchase these drugs which have been FDA approved, and then bring them back to our country and sell these drugs at a discount rate for our citizens in our country.

This is the best of competition. This is the best of what we mean by free trade.

I want to be clear. This legislation will amend the Food, Drug and Cosmetic Act. The FDA Commissioner was in Minnesota 2 weeks ago and senior citizens were pressing her on this question. She was cautious. But what she was saying was that we would need some legislation; we would need some change to be able to do what Senator DORGAN is talking about. We would amend this piece of legislation to allow American pharmacists and distributors to import prescription drugs into the United States as long as these drugs meet strict FDA standards. That is it. The FDA isn't directly involved, but the FDA is critically involved in the sense that these drugs have to meet all the FDA standards.

This piece of legislation is simple. It is straightforward. It is very proconsumer, very pro-senior citizen, very procompetition, very pro-free trade. As I think about the gatherings that I go to in my State—I bet this applies to New Jersey, I see Senator TORRICELLI here, and Senator REED of Rhode Island—anywhere in the country. You can't go to a community meeting, and you can't go in into a cafe and meet with people without having people talk about the price of prescription drugs. It is just prohibitively expensive. This piece of legislation will make an enormous difference.

It could be that there is some opposition to this piece of legislation. I can see some vested economic interests who may figure out reasons to be opposed to it, but I will say that this piece of legislation would go a long way in dealing with the problem of price gouging right now and making sure that these prescription drugs that can be so important to the health of senior citizens, the people in the disabilities community and other citizens as well that they will be able to purchase these drugs, and they will be able to afford these drugs, which can make an enormous difference in improving the quality of their health.

I introduce this legislation, along with Senator DORGAN, and we are joined by Senator JOHNSON and Senator SNOWE. I believe we will have strong bipartisan support for this bill.

Mr. President, how much time do we have left?

The PRESIDING OFFICER. The Senators have a total of 9 minutes 54 seconds.

Mr. DORGAN. Mr. President, if I might just make a comment to the Senator from Minnesota, all of us have the experience of going around our States and talking to especially senior citizens, who take a substantial amount of prescription drugs—many of them wonderful, lifesaving drugs but at a substantial cost. Many of them have no health insurance coverage for these costs.

Let me say at the outset, lest anyone think I don't appreciate what goes on, that the research done at the Federal level and the research done by the pharmaceutical companies have produced lifesaving, remarkable medicines. I commend all of those folks for that, including these companies. I am only debating the price issue here.

I ran into a woman one day. She was in her eighties. She had heart disease, diabetes, and was living on somewhere around $400 a month of total income. She said to me: Mr. Senator, I can't afford to take the drugs the doctor says I must take for my heart difficulties and for my diabetes. What I do is buy the drugs, and then I cut the pills in half and take half of the dose so it lasts twice as long. It is the only way. Even then I can hardly afford to pay for food.

That is what the problem is here. The problem is that these pharmaceutical drugs are overpriced relative to what every other consumer in the rest of the world is paying for them. I am talking of other consumers in France, in Germany, Italy, England, Canada, and Mexico—you name it. That doesn't make any sense to me. Why should our senior citizens—all consumers for that matter—be paying 300-percent more for the same drug in virtually the same bottle produced by the same company inspected by the FDA than a consumer 20 miles north in Canada is paying?

I just came from a meeting near the border of North Dakota and Canada. I was talking to people, again, about that disparity. The Senator from Minnesota has exactly the same situation.

The pharmacists at the corner drugstore are saying: Why can't I go up there and buy some of these medications? I know that it is the same pill which comes from the same plant.

The reason is the law prevents him from bringing it back, and we want to change that.

Mr. WELLSTONE. Mr. President, I say to my colleagues, when we talk about citizens becoming frustrated and sometimes angry, either two things are going on.

First of all, you can find people to talk to everywhere, especially senior citizens who are paying 30, 40, or 50 percent of their monthly budget just for these costs. They cut the pill in half and take only half of what they need, or they cut down on food. It is drugs versus food, or versus something else. They should not be faced with those choices.

But what adds insult to injury is to then know that the same drug manufactured quite often in the same place with the same FDA approval purchased in Canada costs half the price.

We are simply saying let our pharmacists and let our distributors in our country be able to purchase those prescription drugs in Canada and bring them back and sell them at a discount to our consumers. That is what this legislation says.

If you want to talk about a piece of legislation that speaks to the interests and circumstances of people's lives, I think this legislation will make an enormous difference.

I am prepared to fight very hard to make sure that we pass this legislation.

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By Mrs. FEINSTEIN (for herself, Mr. REID, Mrs. BOXER, and Mr. BRYAN):

S. 1192. A bill to designate national forest land managed by the Forest Service in the Lake Tahoe Basin as the ''Lake Tahoe National Scenic Forest and Recreation Area,'' and to promote environmental restoration around the Lake Tahoe Basin; to the Committee on Energy and Natural Resources.

THE LAKE TAHOE RESTORATION ACT

Mrs. FEINSTEIN. Mr. President, I want to begin by thanking Senator HARRY REID who has worked so hard with me on the Lake Tahoe Restoration Act. I would also like to thank my friends and colleagues Senator BARBARA BOXER and Senator DICK BRYAN for cosponsoring this important legislation.

This legislation really comes directly out of the Tahoe Summit. I am one that spent her childhood at lake Tahoe, but I had not been back for a number of years. When I went there for the Tahoe Summit in 1997 with the President, I saw things I had never seen before at Lake Tahoe.

I saw the penetration of MTBE in the water. I saw the gasoline spread over the water surface. I saw that in fact 30 percent of the South Lake Tahoe water supply has been eliminated by MTBE. I saw 25 percent of the magnificent forest that surrounds the lake dead or dying. I saw land erosion problems on a major level that were bringing all kinds of sediment into the lake and which had effectively cut its clarity by thirty feet since the last time I had visited. And then I learned that the experts believe that in ten years the clouding of the amazing crystal water clarity would be impossible to reverse and in thirty years it would be lost forever.

For me, that was a call to action, and today I am proud to introduce the Lake Tahoe Restoration Act. This legislation will designate federal lands in the Lake Tahoe Basin as a National Scenic Forest and Recreation area and will authorize $300 million of Federal monies on a matching basis over ten years for environmental restoration projects to preserve the region's water quality and forest health.

Lake Tahoe is the crown jewel of the Sierra Nevada and its clear, blue water is simply remarkable. Some people may not know that Lake Tahoe contributes $1.6 billion dollars every year

to the economy from tourism alone. However, one in every seven trees in the forest surrounding Emerald Bay is either dead or dying. Insect infestations and drought have killed over 25 percent of the trees in the forests surrounding Lake Tahoe, creating a severe risk of wildfire.

The Tahoe Regional Planning Agency estimates that restoring the lake and its surrounding forests will cost $900 million dollars over the next ten years. This is not a cursory evaluation but a careful evaluation made by this agency over several years.

Local governments and businesses in Lake Tahoe have agreed to raise $300 million locally in the next ten years for this effort. The Tahoe Transportation and Water Quality Coalition, a coalition of 18 businesses and environmental groups, including Placer County, El Dorado County, the City of South Lake Tahoe, Douglass County in Nevada and Washoe County in Nevada have all agreed. This is an extraordinary commitment for a region with only 50,000 year round residents.

The Governors of California and Nevada have pledged to provide another $300 million, but only if the Federal government will step up and provide $300 million of its own because we must remember that 77 percent of the forest is owned by the Federal Government.

President Clinton took an important first step in 1997 when he held an environmental summit at Lake Tahoe and promised $50 million over two years for restoration activities around the lake. These commitments included: $4.5 million to reduce fire risk at the lake; $3.5 million for public transportation; $4 million for acquisition of environmentally sensitive land; $1.3 million dollars to decommission old, unused logging roads that are a major source of sediment into Lake Tahoe; $7.5 million to replace an aging waste water pipeline that threatens to leak sewage into the lake; and $3 million for scientific research.

Unfortunately, the President's commitments lasted for only two years, so important areas like land acquisition and road decommissioning were not funded at the levels the President tried to accomplish. So what is needed is a more sustained, long-term effort, and one that will meet the federal government's $300 million dollar responsibility to save the environment at Lake Tahoe.

The Lake Tahoe Restoration Act will build upon the President's commitment to Lake Tahoe and authorize full funding for a new environmental restoration program at the lake.

The bill designates U.S. Forest Service lands in the Lake Tahoe basin as the Lake Tahoe National Scenic Forest and Recreation Area. This designation, which is unique to Lake Tahoe, is strongly supported by local business, environmental, and community leaders. The designation will recognize Lake Tahoe as a priceless scenic and recreational resource.

The legislation explicitly says that nothing in the bill gives the U.S. Forest Service regulatory authority over private or non-federal land. The bill also requires the Forest Service to develop an annual priority list of environmental restoration projects and authorizes $200 million over ten years to the forest service to implement these projects on federal lands. The list must include projects that will improve water quality, forest health, soil conservation, air quality, and fish and wildlife habitat around the lake.

In developing the environmental restoration priority list, the Forest Service must rely on the best available science, and consider projects that local governments, businesses, and environmental groups have targeted as top priorities. The Forest Service also must consult with local community leaders.

The bill requires the Forest Service to give special attention on its priority list to four key activities: acquisition of environmentally sensitive land from willing sellers, erosion and sediment control, fire risk reduction, and traffic and parking management, including promotion of public transportation.

The Lake Tahoe Restoration Act also requires that $100 million of the $300 million over ten years be in payments to local governments for erosion control activities on non-federal lands. These payments will help local governments conduct soil conservation and erosion mitigation projects, restore wetlands and stream environmental zones, and plant native vegetation to filter out sediment and debris.

I have been working on the Lake Tahoe Restoration Act for over a year, in conjunction with Senator REID and over a dozen community groups at Lake Tahoe. The Lake Tahoe Transportation and Water Quality Coalition, a local consensus group of 18 businesses and environmental groups, has worked extremely hard on this bill, and I am grateful for their input and support.

Thanks in large part to their work, the bill has strong, bi-partisan support from nearly every major group in the Tahoe Basin. The bill is supported by the League to Save Lake Tahoe, the South Lake Tahoe Chamber of Commerce, and the Lake Tahoe Gaming Alliance, to name just a few. Major environmental groups also support the bill, including the Sierra Club, Wilderness Society, and California League of Conservation Voters.

The bottom line is that time is running out for Lake Tahoe. We have ten years to do something major or the water quality deterioration is irreversible.

We have a limited period of time, or the 25 percent of the dead and dying trees and the combustible masses that it produced are sure to catch fire, and a major forest fire will result.

Mr. President, this crown jewel deserves the attention, and the fact that the federal government owns 77 percent of that troubled area makes the responsibility all so clear.

I am hopeful that the United States Senate will move quickly to consider the Lake Tahoe Restoration Act. I urge my colleagues in the Senate to join me in preserving this national treasure for generations to come.

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By Mr. LAUTENBERG:

S. 1193. A bill to improve the safety of animals transported on aircraft, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE SAFE AIR TRAVEL FOR ANIMALS ACT

Mr. LAUTENBERG. Mr. President, I have a piece of legislation which I rise to introduce. This legislation is designed to protect a segment of our population that can't protect itself. I am talking about pets—dogs, cats, and others that travel by air. I want to put this into perspective. Over 70 million households in America have pets—70 million. So it affects a significant portion of our population. Pets become family members and they become a source of significant affection and attachment. In some cases, they are the vision for those who are sightless. They establish precious relationships.

Over the last 5 years, there have been over 2,500 documented instances of dogs and cats experiencing severe injury in air travel, and 108 cats and dogs have died just as a result of exposure to excessive temperatures.

Pets aren't baggage. They are part of a family, in many instances, and they ought to be treated that way when they accompany their masters when they fly. Over 500,000 pets a year are transported by air across this country. News reports have detailed stories of pets being left out on hot days, sitting on tarmacs while flights were delayed, or stuffed into cargo holds with little or no airflow, causing them to injure themselves in the desperation to escape this entrapment and very difficult environment.

Some pets have actually had heavy baggage placed directly on top of their carriers. It is unacceptable. We can and must prevent these inhumane practices.

So today I am introducing The Safe Air Travel for Animals Act. This bill responds to the tragic stories we have heard involving the death or injury of many beloved pets while traveling by airplane.

The legislation has three goals. First, it ensures that airlines are held accountable for mistreatment of our pets, to ensure that animals are not treated like a set of golf clubs or other baggage. This legislation will put airlines on a tight leash.

Second, the bill provides consumers with the right to know if an airline has a record of mistreatment or accidents with pets.

Third, the bill addresses the problems of the aircraft themselves, making sure that the cargo hold is as safe as it possibly can be for animal travel.

Airlines need to be held accountable for the harm they permit to happen to

our pets. Right now, airlines are only liable to owners for up to $1,250 for losing, injuring, or killing a pet.

That is no different from what they would be liable for if they lost your suitcase. Under my bill, that limit for liability will be double.

Now, anyone who owns a pet knows how expensive veterinary bills can be. If an animal is injured or dies as a result of flying, my bill would require the airlines to pay for the costs of veterinary care.

Mr. President, my bill also provides consumers with the right to know about the conditions they face when they transport their animals by plane. My bill requires airlines to immediately report any incidents involving loss, injury or death of animals.

Most importantly, the bill puts this information into the hands of the flying public. Pet owners should know which airlines are doing a good job, and which need to do better. Just as consumers favor airlines with solid, ontime records, they will also favor the airlines that have a good safety record with our pets. And, an airline that does a good job will want this information in the hands of consumers.

Finally, the bill addresses the problem of the aircraft themselves. The airline industry is undergoing a retrofitting process, as required by the FAA, of all ''class D'' cargo holds, to prevent fires.

These are special holds that have the facility to turn off the oxygen in the event of smoke or fire. But that also means that that is an execution for the pets that are in those holds.

I believe that the industry should use this opportunity to see what improvements can be made to allow for better oxygen flow and temperature control to protect our pets.

Mr. President, we must do more to prevent unnecessary deaths caused by lack of oxygen flow or exposure to heat.

With this bill, travelers will feel more secure about using air travel to transport their pets.

I hope that my colleagues will join me in support of this legislation.

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By Mr. COVERDELL:

S. 1196. A bill to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes; to the Committee on the Judiciary.

THE NATIONAL FORENSIC SCIENCE IMPROVEMENT ACT

Mr. COVERDELL. Mr. President, today I introduce the National Forensic Science Improvement Act, a bill designed to address the growing backlog in our nation's crime labs. Across the country, state and local crime labs, Medical Examiners' and Coroners' offices face alarming shortages in forensic science resources. While other areas of our criminal justice system such as the courts and prison systems have benefitted from federal assistance, the highly technical and expensive forensic sciences have received little attention. Mr. President, my bill will help correct this problem.

There are 600 qualified state and local crime laboratories in the United States which deliver 90% of the total forensic science services in this country. In a 1996 national survey of 299 crime labs it was found that 8 out of 10 labs have experienced a growth in the caseload which exceeds the growth in budget and/or staff. Mr. President, I need go no further to demonstrate that this is a national problem. Without the swift processing of evidence our criminal justice system cannot operate as it is intended. I believe it is time to take a step to address specifically the problems our crime labs face.

The National Forensic Science Improvement Act has been endorsed by organizations such as the National Governors Association, the National Association of Attorneys General, the Association of State Criminal Investigative Agencies and the International Association of Chiefs of Police who see it as a flexible approach to a problem that indeed has far-ranging consequences. Mr. President, it is my belief that Congress must work to ensure justice in this country is neither delayed nor denied. Right now across the country backlogs in crime labs are denying the swift administration of justice and with this bill we have a ready solution.

In crafting this bill I have worked closely with the Georgia Bureau of Investigation which is suffering heavily under a growing caseload. At its headquarters in Decatur, GA the GBI has a number of cataloging systems that are not yet computerized. Further, they lack the funding to create computer networks that would connect not only their forensic equipment with internal computers, but would also allow them to share information with crime labs across the country. While the Governor has taken steps to provide the GBI with more funding for forensic sciences, it remains clear that federal assistance is needed.

Last year the Senate passed the Crime Identification Technology Act. This important measure, which I supported, was a good step towards improving the technology employed by law enforcement across the country. I believe my bill is the next logical step in this body's effort to improve the manner in which justice is administered in this country.

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By Mr. ROTH (for himself, Mr. SMITH of New Hampshire, Mr. LEVIN, and Mr. SCHUMER):

S. 1197. A bill to prohibit the importation of products made with dog or cat fur, to prohibit the sale, manufacture, offer for sale, transportation, and distribution of products made with dog or cat fur in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

DOG AND CAT PROTECTION ACT OF 1999

Mr. ROTH. Mr. President, I rise today to introduce legislation that runs to the heart of who we are and what we hold dear and meaningful in our lives.

There is a special relationship between men, women, children, and their family pets—particularly their dogs and cats.

I have been profoundly affected in my life because of the animals that transcended emotional boundaries to become true and meaningful friends—even a part of the family. I can name every dog I've owned since I was a boy.

I can tell you their qualities, their peculiarities, their preferences and dislikes. Even now, my wife Jane and I—our children and grandchildren—are surrounded by the most loyal St. Bernards in the world. They—as all the pets we've had—speak volumes about strong and lasting friendship.

You can understand, given this background, that I am outraged to learn that there are clothing articles imported into America that are made from the fur of these precious animals.

I'm outraged to learn that dog and cat fur is being used in a wide variety of products, including fur coats and jackets.

I'm outraged to learn from the Humane Society of the United States that more than two million dogs and cats are killed annually as part of the fur trade, and that many retailers in the U.S. who sell these items are doing so unaware of their content.

To respond to this growing problem, I'm introducing legislation today, the Dog and Cat Protection Act of 1999, to prohibit the domestic sale, manufacture, transportation, and distribution of products made with cat or dog fur.

My legislation requires all fur products to be labelled, closing a loophole in the current law, and it will ban deceptive or misleading labelling of these products so consumers and retailers can buy with confidence, knowing that they are not supporting this tragic process.

With this legislation, our message will be clear: No matter where in the world this merchandise is made, there will be no legitimate market for it here—not in the United States.

This is important legislation. It will provide uniformity of regulations and prevent conflicts between states. It will give the Justice Department the ability to enforce the law and prosecute those who may try to get around it.

And the U.S. Customs Service would be able to function as the first line of defense. I appreciate the work being done by the Humane Society of the United States and many other important organizations to heighten our awareness of these kinds of issues.

And I look forward to working with my colleagues to see this legislation enacted into law. Thank you, 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. 1197

*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 ''Dog and Cat Protection Act of 1999''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress makes the following findings:

(1) An estimated 2,000,000 dogs and cats are slaughtered and sold annually as part of the international fur trade. Internationally, dog and cat fur is used in a wide variety of products, including fur coats and jackets, fur-trimmed garments, hats, gloves, decorative accessories, stuffed animals, and other toys.

(2) As demonstrated by forensic tests, dog and cat fur products are being imported into the United States, in some cases with deceptive labeling to conceal the use of dog or cat fur.

(3) Dog and cat fur, when dyed, is not easily distinguishable to persons who are not experts from other furs such as fox, rabbit, coyote, wolf, and mink. Dog and cat fur is generally less expensive than other types of fur and may be used as a substitute for more expensive types of furs.

(4) Foreign fur producers use dogs and cats bred for their fur, and also use strays and stolen pets.

(5) The methods of housing, transporting, and slaughtering dogs and cats for fur production are generally unregulated and inhumane.

(b) PURPOSES.—The purposes of this Act are—

(1) to prohibit the sale, manufacture, offer for sale, transportation, and distribution in the United States of dog and cat fur products;

(2) to require accurate labeling of fur species so that consumers in the United States can make informed choices; and

(3) to prohibit the trade in, both imports and exports of, dog and cat fur products, to ensure that the United States market does not encourage the slaughter of dogs or cats for their fur, and to ensure that the purposes of this Act are not undermined.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) DOG FUR.—The term ''dog fur'' means the pelt or skin of any animal of the species *canis familiaris*.

(2) CAT FUR.—The term ''cat fur'' means the pelt or skin of any animal of the species *felis catus*.

(3) UNITED STATES.—The term ''United States'' means the customs territory of the United States, as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(4) COMMERCE.—The term ''commerce'' means transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

(5) DOG OR CAT FUR PRODUCT.—The term ''dog or cat fur product'' means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(6) PERSON.—The term ''person'' includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity.

(7) INTERESTED PARTY.—The term ''interested party'' means any person having a contractual, financial, humane, or other interest.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(9) DULY AUTHORIZED OFFICER.—The term ''duly authorized officer'' means any United States Customs officer, any agent of the Federal Bureau of Investigation, or any agent or other person authorized by law or designated by the Secretary to enforce the provisions of this Act.

**SEC. 4. PROHIBITIONS.**

(a) PROHIBITION ON MANUFACTURE, SALE, AND OTHER ACTIVITIES.—No person in the United States or subject to the jurisdiction of the United States may introduce into commerce, manufacture for introduction into commerce, sell, trade, or advertise in commerce, offer to sell, or transport or distribute in commerce, any dog or cat fur product.

(b) IMPORTS AND EXPORTS.—No dog or cat fur product may be imported into, or exported from, the United States.

**SEC. 5. LABELING.**

Section 2(d) of the Fur Products Labeling Act (15 U.S.C. 69(d)) is amended by striking ''; except that such term shall not include such articles as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein''.

**SEC. 6. ENFORCEMENT.**

(a) IN GENERAL.—The Secretary, either independently or in cooperation with the States, political subdivisions thereof, and interested parties, is authorized to carry out operations and measures to eradicate and prevent the activities prohibited by section 4.

(b) INSPECTIONS.—A duly authorized officer may, upon his own initiative or upon the request of any interested party, detain for inspection and inspect any product, package, crate, or other container, including its contents, and all accompanying documents to determine compliance with this Act.

(c) SEIZURES AND ARRESTS.—If a duly authorized officer has reasonable cause to believe that there has been a violation of this Act or any regulation issued under this Act, such officer may search and seize, with or without a warrant, the item suspected of being the subject of the violation, and may arrest the owner of the item. An item so seized shall be held by any person authorized by the Secretary pending disposition of civil or criminal proceedings.

(d) BURDEN OF PROOF.—The burden of proof shall lie with the owner to establish that the item seized is not a dog or cat fur product subject to forfeiture and civil penalty under section 7.

(e) ACTION BY U.S. ATTORNEY.—Upon presentation by a duly authorized officer or any interested party of credible evidence that a violation of this Act or any regulation issued under this Act has occurred, the United States Attorney with jurisdiction over the suspected violation shall investigate the matter and shall take appropriate action under this Act.

(f) CITIZEN SUITS.—Any person may commence a civil suit to compel the Secretary to implement and enforce this Act, or to enjoin any person from taking action in violation of any provision of this Act or any regulation issued under this Act.

(g) REWARD.—The Secretary may pay a reward to any person who furnishes information which leads to an arrest, criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this Act or any regulation issued under this Act.

(h) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall issue final regulations, after notice and opportunity for public comment, to implement this Act within 180 days after the date of enactment of this Act.

(2) FEES.—The Secretary may charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act, including expenses for—

(A) processing applications;

(B) reasonable inspections; and

(C) the transfer, handling, or storage of evidentiary items seized and forfeited under this Act.

All fees collected pursuant to this paragraph shall be deposited in the Treasury in an account specifically designated for enforcement of this Act and available only for that purpose.

**SEC. 7. PENALTIES.**

(a) CIVIL PENALTY.—Any person who violates any provision of this Act or any regulation issued under this Act may be assessed a civil penalty of not more than $25,000 for each violation.

(b) CRIMINAL PENALTY.—Any person who knowingly violates any provision of this Act or any regulation issued under this Act shall, upon conviction for each violation, be imprisoned for not more than 1 year, fined in accordance with title 18, United States Code, or both.

(c) FORFEITURE.—Any dog or cat fur product that is the subject of a violation of this Act or any regulation issued under this Act shall be subject to seizure and forfeiture to the same extent as any merchandise imported in violation of the customs laws.

(d) INJUNCTION.—Any person who violates any provision of this Act or any regulation issued under this Act may be enjoined from further sales of any fur products.

(e) APPLICABILITY.—The penalties in this section apply to violations occurring on or after the date of enactment of this Act.

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By Mr. SHELBY (for himself, Mr. BOND, and Mr. LOTT):

S. 1198. A bill to amend chapter 8 of title 5, United States Code, to provide for a report by the General Accounting Office to Congress on agency regulatory actions, and for other purposes; to the Committee on Governmental Affairs.

CONGRESSIONAL ACCOUNTABILITY FOR REGULATORY INFORMATION ACT OF 1999

Mr. SHELBY. 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. 1198

*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 ''Congressional Accountability for Regulatory Information Act of 1999''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) many Federal regulations have improved the quality of life of the American public, however, uncontrolled increases in regulatory costs and lost opportunities for better regulation cannot be continued;

(2) the legislative branch has a responsibility to ensure that laws passed by Congress are properly implemented by the executive branch; and

(3) in order for the legislative branch to fulfill its responsibilities to ensure that laws passed by Congress are implemented in an efficient, effective, and fair manner, the Congress requires accurate and reliable information on which to base decisions.

**SEC. 3. REPORTS ON REGULATORY ACTIONS BY THE GENERAL ACCOUNTING OFFICE.**

(a) IN GENERAL.—Section 801(a)(2) of title 5, United States Code, is amended by striking

subparagraph (B) and inserting the following:

''(B)(i) After an agency publishes a regulatory action, a committee of either House of Congress with legislative or oversight jurisdiction relating to the action may request the Comptroller General to review the action under clause (ii).

''(ii) Of requests made under clause (i), the Comptroller General shall provide a report on each regulatory action selected under clause (iv) to the committee which requested the report (and the committee of jurisdiction in the other House of Congress) not later than 180 calendar days after the committee request is received. The report shall include an independent analysis of the regulatory action by the Comptroller General using any relevant data or analyses available to or generated by the General Accounting Office.

''(iii) The independent analysis of the regulatory action by the Comptroller General under clause (ii) shall include—

''(I) an analysis by the Comptroller General of the potential benefits of the regulatory action, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits;

''(II) an analysis by the Comptroller General of the potential costs of the regulatory action, including any adverse effects that cannot be quantified in monetary terms and the identification of those likely to bear the costs;

''(III) an analysis by the Comptroller General of any alternative regulatory approaches, which have been identified, that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits, and, if applicable, a brief explanation of any statutory reasons why such alternatives could not be adopted;

''(IV) an analysis of the extent to which the regulatory action would affect State or local governments; and

''(V) a summary of how the results of the Comptroller General's analysis differ, if at all, from the results of the analyses of the agency in promulgating the regulatory action.

''(iv) In consultation with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, the Comptroller General shall develop procedures for determining the priority and number of those requests for review under clause (i) that will be reported under clause (ii).

''(C) Federal agencies shall cooperate with the Comptroller General by promptly providing the Comptroller General with such records and information as the Comptroller General determines necessary to carry out this section.''.

(b) DEFINITIONS.—Section 804 of title 5, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (5), respectively;

(2) by inserting after paragraph (1) the following:

''(2) The term 'independent analysis' means a substantive review of the agency's underlying assessments and assumptions used in developing the regulatory action and any additional analysis the Comptroller General determines to be necessary.''; and

(3) by inserting after paragraph (3) (as redesignated by paragraph (1) of this subsection) the following:

''(4) The term 'regulatory action' means—

''(A) notice of proposed rule making;

''(B) final rule making, including interim final rule making; or

''(C) a rule.''.

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the General Accounting Office to carry out chapter 8 of title 5, United States Code, $5,200,000 for each of fiscal years 2000 through 2003.

**SEC. 5. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

## ADDITIONAL COSPONSORS

S. 335

At the request of Ms. COLLINS, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 335, a bill to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

S. 343

At the request of Mr. BOND, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 343, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 424

At the request of Mr. COVERDELL, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 424, a bill to preserve and protect the free choice of individuals and employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 446

At the request of Mrs. BOXER, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 446, a bill to provide for the permanent protection of the resources of the United States in the year 2000 and beyond.

S. 512

At the request of Mr. GORTON, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 512, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 514

At the request of Mr. COCHRAN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 514, a bill to improve the National Writing Project.

S. 566

At the request of Mr. LUGAR, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 566, a bill to amend the Agricultural Trade Act of 1978 to exempt agricultural commodities, livestock, and value-added products from unilateral economic sanctions, to prepare for future bilateral and multilateral trade negotiations affecting United States agriculture, and for other purposes.

S. 676

At the request of Mr. CAMPBELL, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 676, a bill to locate and secure the return of Zachary Baumel, a citizen of the United States, and other Israeli soldiers missing in action.

S. 680

At the request of Mr. HATCH, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 680, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 737

At the request of Mr. CHAFEE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 737, a bill to amend title XIX of the Social Security Act to provide States with options for providing family planning services and supplies to women eligible for medical assistance under the medicaid program.

S. 820

At the request of Mr. MACK, his name was added as a cosponsor of S. 820, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 914

At the request of Mr. SMITH, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 914, a bill to amend the Federal Water Pollution Control Act to require that discharges from combined storm and sanitary sewers conform to the Combined Sewer Overflow Control Policy of the Environmental Protection Agency, and for other purposes.

S. 918

At the request of Mr. KERRY, the names of the Senator from Utah (Mr. HATCH) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 918, a bill to authorize the Small Business Administration to provide financial and business development assistance to military reservists' small business, and for other purposes.

S. 1034

At the request of Mr. AKAKA, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1034, a bill to amend title XVIII of the Social Security Act to increase the amount of payment under the medicare program for pap smear laboratory tests.

S. 1070

At the request of Mr. BOND, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 1070, a bill to require the Secretary of Labor to wait for completion of a National Academy of Sciences study before promulgating a standard, regulation or guideline on ergonomics.

S. 1074

At the request of Mr. TORRICELLI, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from

Nevada (Mr. BRYAN) were added as cosponsors of S. 1074, a bill to amend the Social Security Act to waive the 24-month waiting period for medicare coverage of individuals with amyotrophic lateral sclerosis (ALS), and to provide medicare coverage of drugs and biologicals used for the treatment of ALS or for the alleviation of symptoms relating to ALS.

S. 1130

At the request of Mr. MCCAIN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1130, a bill to amend title 49, United States Code, with respect to liability of motor vehicle rental or leasing companies for the negligent operation of rented or leased motor vehicles.

SENATE JOINT RESOLUTION 27

At the request of Mr. SMITH, the names of the Senator from North Carolina (Mr. HELMS) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of Senate Joint Resolution 27, A joint resolution disapproving the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of the People's Republic of China.

SENATE JOINT RESOLUTION 28

At the request of Mr. SMITH, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of Senate Joint Resolution 28, a joint resolution disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam.

SENATE CONCURRENT RESOLUTION 9

At the request of Ms. SNOWE, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution calling for a United States effort to end restrictions on the freedoms and human rights of the enclaved people in the occupied area of Cyprus.

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. DODD, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of Senate Concurrent Resolution 22, a concurrent resolution expressing the sense of the Congress with respect to promoting coverage of individuals under long-term care insurance.

SENATE RESOLUTION 59

At the request of Mr. LAUTENBERG, the names of the Senator from Virginia (Mr. ROBB), the Senator from Nebraska (Mr. HAGEL), the Senator from Alaska (Mr. STEVENS), and the Senator from Minnesota (Mr. GRAMS) were added as cosponsors of Senate Resolution 59, a resolution designating both July 2, 1999, and July 2, 2000, as ''National Literacy Day.''

SENATE RESOLUTION 81

At the request of Mr. CRAPO, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of Senate Resolution 81, a resolution designating the year of 1999 as ''The Year of Safe Drinking Water'' and commemorating the 25th anniversary of the enactment of the Safe Drinking Water Act.

SENATE RESOLUTION 92

At the request of Mrs. BOXER, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of Senate Resolution 92, a resolution expressing the sense of the Senate that funding for prostate cancer research should be increased substantially.

SENATE RESOLUTION 96

At the request of Mrs. MURRAY, her name was added as a cosponsor of Senate Resolution 96, a resolution expressing the sense of the Senate regarding a peaceful process of self-determination in East Timor, and for other purposes.

## SENATE RESOLUTION 113—TO AMEND THE STANDING RULES OF THE SENATE TO REQUIRE THAT THE PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES BE RECITED AT THE COMMENCEMENT OF THE DAILY SESSION OF THE SENATE

Mr. SMITH of New Hampshire (for himself, Mr. MCCONNELL, Mrs. FEINSTEIN, and Mr. HELMS) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 113

Whereas the Flag of the United States of America is our Nation's most revered and preeminent symbol;

Whereas the Flag of the United States of America is recognized and respected throughout the world as a symbol of democracy, freedom, and human rights;

Whereas, in the words of the Chief Justice of the United States, the Flag of the United States of America ''in times of national crisis, inspires and motivates the average citizen to make personal sacrifices in order to achieve societal goals of overriding importance . . . and serves as a reminder of the paramount importance of pursuing the ideals that characterize our society'';

Whereas the House of Representatives of the United States has opened each of its daily sessions with the Pledge of Allegiance to the Flag of the United States of America since 1988; and

Whereas opening each of the daily sessions of the Senate of the United States with the Pledge of Allegiance to the Flag of the United States would demonstrate reverence for the Flag and serve as a daily reminder to all Senators of the ideals that it represents: Now, therefore, be it

*Resolved,* That paragraph 1(a) of rule IV of the Standing Rules of the Senate is amended by inserting after ''prayer by the Chaplain'' the following: ''and after the Presiding Officer leads the Senate in reciting the Pledge of Allegiance to the Flag of the United States''.

Mr. SMITH of New Hampshire. Mr. President, the resolution that I am submitting today provides that immediately following the prayer such as we just heard this morning by Chaplain Ogilvie, at the beginning of each daily session of the Senate, the Presiding Officer of the Senate would lead the Senate in the Pledge of Allegiance to the flag of the United States.

I am pleased and honored that the chairman of the Rules Committee, Senator MCCONNELL, as well as Senator FEINSTEIN, Senator HELMS, an Senator LOTT, have joined me as original cosponsors of this resolution.

The flag of the United States is our most revered and preeminent symbol, and the flag is recognized and respected throughout the world as a symbol of democracy, freedom, and human rights. As you know, the House of Representatives has such a flag salute in the morning at the beginning of each day. I think it is appropriate that the Senate follow suit. It is probably long overdue.

The Chief Justice of the United States, William Rehnquist, has written that the flag of the United States of America ''in times of national crisis, inspires and motivates the average citizen to make personal sacrifices in order to achieve societal goals of overriding importance . . . and serves as a reminder of the paramount importance of pursuing the ideals that characterize our society.''

Many Americans, including my father, have given their lives to protect freedom and democracy as symbolized by this flag. Our family was presented with a flag at the burial, as so many other families of veterans have also experienced. It means a great deal, and I think it is appropriate that we salute the flag every morning to start our business.

Since 1988, as I said, the House of Representatives has demonstrated its reverence and respect for the flag, and all of the ideals for which it stands, by opening its morning session with the Pledge of Allegiance.

I wish to give credit to a constituent of mine. I would like to take credit for the idea—perhaps I should have thought of it—but it came from Rebecca Stewart of Enfield, NH, who recently contacted my office and suggested that the Senate should do what the House does—open each session with the Pledge of Allegiance. I thought that was a great idea and contacted several members of the Senate Rules Committee to get a sense of the level of support on that committee for the idea, and I was pleased and delighted by the response from Rules.

The result then is the resolution I am submitting today. I might also in conclusion point out that Monday, June 14, is Flag Day. It would be a great tribute if we could get this resolution to the floor and pass it sometime on or before Monday, June 14. We do have time this week to do that. It is my hope we can move this legislation out of Rules quickly and bring it to the floor. I understand Senator MCCONNELL will be in the Chamber to speak on this matter very shortly.

Mr. President, I trust that the Senate will see fit to promptly adopt this resolution. I hope that it will receive the unanimous support of my colleagues in the Senate.

Mr. MCCONNELL. Mr. President, the senior Senator from New Hampshire, Mr. BOB SMITH, introduced a rules

change which I, as chairman of the Rules Committee, am happy to cosponsor. I commend our colleague, Senator BOB SMITH, for an excellent and outstanding idea.

Since 1892, Americans have expressed their reverence for the flag of this Nation and all it represents by reciting the Pledge of Allegiance. The Pledge was first recited at the 1892 World's Fair to commemorate the 400th anniversary of the discovery of America. Since that time, hundreds and thousands of civic organizations and schoolchildren have taken time before turning to their work to recite these moving words:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

Mr. President, I can remember as a schoolchild in Athens, Alabama, standing at my desk, placing my hand over my heart, fixing my eyes upon the flag, and reciting these eloquent words. I suspect many of our colleagues here in the Senate had the same experience in school as they were growing up.

Even at that early age, pledging allegiance to the flag encouraged me to think about the history and ideals of this Nation. It was an important ritual for schoolchildren then. It should be an important ritual for the Senate now.

Presently, we begin each day's business here in the Senate with a prayer. This solemn act reminds us of certain principles and values that we as a people hold dear. Similarly, daily recitation of the pledge would serve as an inspirational start to each legislative day.

The pledge is a time for reflecting on the inspiring history and ideals of liberty and freedom that the Stars and Stripes represents. Setting aside this time each day will serve to remind Americans of the venerated place the flag holds in our country and our culture.

Mr. President, among my most prized possessions is the American flag which honored, as he was laid to rest, my father's service to our Nation. That flag rests proudly on the marble mantel in my Senate office.

A clinical assessment of that flag would conclude that it is some mixture of cotton fabric, dyed red, white, and blue. But for me, it harkens back to the selfless patriotism of a father who fought for his Nation during World War II, a father who instilled in his son an awe and abiding respect for this great Nation we are all so fortunate to call home.

Old Glory has been a beacon of hope for over 200 years, a touchstone for patriotic Americans, and a source of comfort and pride for individuals at home and abroad. In the words of Senator Charles Sumner, ''In a foreign land, the flag is companionship, and country itself, with all its endearments.''

The flag is, without question, a powerful symbol the world over. For nearly every American, it is the most powerful patriotic inspiration.

It is my distinct honor today to cosponsor this resolution as chairman of the Senate Rules Committee. I also want to commend my good friend from New Hampshire, Senator BOB SMITH, for an excellent idea and for his leadership on this issue. The Senate should promptly pass this resolution to begin every day in the Senate Chamber with the pledge of allegiance to our flag and to the Republic for which it stands, the Republic to which we have dedicated ourselves as Senators.

## SENATE CONCURRENT RESOLUTION 38—EXPRESSING THE SENSE OF CONGRESS THAT THE BUREAU OF THE CENSUS SHOULD INCLUDE IN THE 2000 DECENNIAL CENSUS ALL CITIZENS OF THE UNITED STATES RESIDING ABROAD

Mr. ABRAHAM submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 38

*Resolved by the Senate (the House of Representatives concurring),*

**SECTION 1. SENSE OF CONGRESS THAT THE BUREAU OF THE CENSUS SHOULD INCLUDE IN THE 2000 DECENNIAL CENSUS ALL CITIZENS OF THE UNITED STATES RESIDING ABROAD.**

(a) FINDINGS.—Congress finds the following:

(1) The Bureau of the Census has announced its intention to exclude more than 3,000,000 citizens of the United States living and working overseas from the 2000 decennial census because such citizens are not affiliated with the Federal Government.

(2) The Bureau of the Census has stated its desire to make the 2000 decennial census ''the most accurate ever''.

(3) Exports by the United States of goods, services, and expertise play a vital role in strengthening the economy of the United States—

(A) by creating jobs based in the United States; and

(B) by extending the influence of the United States around the globe.

(4) Citizens of the United States living and working overseas strengthen the economy of the United States—

(A) by purchasing and selling United States exports; and

(B) by creating business opportunities for United States companies and workers.

(5) Citizens of the United States living and working overseas play a key role in advancing the interests of the United States around the world as highly visible economic, political, and cultural ambassadors.

(6) In 1990, as a result of widespread bipartisan support in Congress, the Bureau of the Census enumerated all United States Government officials and other citizens of the United States affiliated with the Federal Government living and working overseas for the apportionment of representatives among the several States and for other purposes.

(7) In the 2000 decennial census, the Bureau of the Census again intends to so enumerate all such officials and other citizens of the United States.

(8) The Overseas Citizens Voting Rights Act of 1975 gave citizens of the United States residing abroad the right to vote by absentee ballot in any Federal election in the State in which the citizen was last domiciled over 2 decades ago.

(9) Citizens of the United States who live and work overseas, but who are not affiliated with the Federal Government, vote in elections and pay taxes.

(10) Organizations that represent individuals and companies overseas, including both Republicans Abroad and Democrats Abroad, support the inclusion of all citizens of the United States residing abroad in the 2000 decennial census.

(11) The Internet facilitates easy maintenance of close contact with all citizens of the United States throughout the world.

(12) All citizens of the United States living and working overseas should be included in the 2000 decennial census.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Bureau of the Census should enumerate all citizens of the United States residing overseas in the 2000 decennial census; and

(2) legislation authorizing and appropriating the funds necessary to carry out such an enumeration should be enacted.

## SENATE RESOLUTION NO. 114—DESIGNATING JUNE 22, 1999, AS ''NATIONAL PEDIATRIC AIDS AWARENESS DAY''

Mr. HATCH (for himself, Mrs. BOXER, Mr. BOND, Mr. SCHUMER, Mr. DEWINE, Mr. BIDEN, Mr. WARNER, Mr. DASCHLE, Mr. CRAPO, Mr. HOLLINGS, Mr. BENNETT, Mr. KERRY, Mr. SMITH of Oregon, Mr. LAUTENBERG, Mr. FITZGERALD, Mrs. MURRAY, Ms. SNOWE, Mr. ROBB, Mr. MACK, Mr. TORRICELLI, Mr. ABRAHAM, Mr. WELLSTONE, Mr. BURNS, Mr. CLELAND, Mrs. HUTCHISON, Mr. DODD, Mr. SPECTER, Mr. DURBIN, Mr. CAMPBELL, Mr. EDWARDS, Mr. FRIST, Mr. INOUYE, Mr. GORTON, Mrs. FEINSTEIN, Mr. LOTT, Mr. REID, Mr. ASHCROFT, Mr. GRAHAM, Mr. COCHRAN, Mr. JOHNSON, Mr. JEFFORDS, Mr. KERREY, Mr. CHAFEE, Ms. MIKULSKI, Mr. GRASSLEY, Mr. BAYH, Mr. CRAIG, Mr. REED, Mr. NICKLES, and Mr. KOHL) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 114

Whereas acquired immune deficiency syndrome (referred to in this resolution as ''AIDS'') is the 7th leading cause of death for children in the United States;

Whereas approximately 15,000 children in the United States are currently infected with human immunodeficiency virus (referred to in this resolution as ''HIV''), the virus that causes AIDS;

Whereas the number of children who have died from AIDS worldwide since the AIDS epidemic began has reached 2,700,000;

Whereas it is estimated that an additional 40,000,000 children will die from AIDS by the year 2020;

Whereas perinatal transmission of HIV from mother to child accounts for 91 percent of pediatric HIV cases;

Whereas studies have demonstrated that the maternal transmission of HIV to an infant decreased from 30 percent to less than 8 percent after therapeutic intervention was employed;

Whereas effective drug treatments have decreased the percentage of deaths from AIDS in the United States by 47 percent in both 1998 and 1999;

Whereas the number of children of color infected with HIV is disproportionate to the national statistics with respect to all children;

Whereas The Elizabeth Glaser Pediatric AIDS Foundation has been devoted over the past decade to the education, research, prevention, and elimination of acquired immune deficiency syndrome (AIDS); and

Whereas the people of the United States should resolve to do everything possible to control and eliminate this epidemic that threatens our future generations: Now, therefore, be it

*Resolved*, That the Senate—

(1) in recognition of all of the individuals who have devoted their time and energy toward combatting the spread and costly effects of acquired immune deficiency syndrome (AIDS) epidemic, designates June 22, 1999, as ''National Pediatric AIDS Awareness Day''; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

Mr. HATCH. Mr. President, I rise to submit a Senate Resolution recognizing June 22, 1999, as ''National Pediatrics AIDS Awareness Day.'' I am sponsoring this resolution today with my colleague Senator BOXER from California and 52 of our other colleagues of the Senate.

Senator BOXER and I are cochairs for the 10th anniversary of the Elizabeth Glaser Pediatric AIDS Foundation, which promises to be a wonderful event. But, more importantly, through the generosity of many individuals and organizations, substantial funds will be raised to further the research necessary to defeat this disease which threatens so many lives—including children.

Infection of children with the human immunodeficiency virus (HIV) is very different than infection in adults. Infected children get sick faster; their immune systems may deteriorate more quickly; treatment protocols are very different; and they often involve more complications. Almost all children with HIV infection have acquired the virus from their mothers. In the late 1980s and early 1990s, before preventive treatments were available, an estimated 1,000–2,000 babies were born with HIV infection each year in the United States.

Today, because of scientific and medical breakthroughs in pharmaceutical therapies, the mother-to-infant transmission rate has dropped from 43% in 1992 to 8% in 1997. The investment in prevention alone has resulted in avoiding an estimated 656 HIV infections and saves $105.6 million in medical care costs. Thus we are indeed seeing results from the time, energy, and resources being expended to fight this dreaded disease. My hat is off to those front line researchers and clinicians who have devoted themselves to this task.

While significant advances have been made in decreasing pediatric HIV infection, we must continue to work tirelessly to develop an HIV vaccine that will enable the safe and effective immunization of children and adults. We must better understand why HIV/AIDS disproportionately affects children of color and find cures to eradicate this epidemic. For our children living with HIV, we must provide them with the best possible therapeutic and social support to ensure their long, high quality life. I urge all senators to join me on June 22 at the National Building Museum to celebrate the successes which have been achieved in fighting HIV and AIDS among our youth and to renew our pledge to fight this disease until it disappears from the face of this earth.

Mrs. BOXER. Mr. President, I am very honored to rise today with my good friend, Senator HATCH, to submit a resolution designating June 22 as National Pediatric AIDS Awareness Day.

I am proud that we have the cosponsorship of 52 of our colleagues, which demonstrates a broad interest in the issue of children and AIDS.

Incredibly, AIDS is the seventh leading cause of death for children in the United States. We have lost 2.7 million precious children to this epidemic—a staggering and sobering statistic.

Our resolution recognizes and commemorates the children, families, and countless others in the health and education communities who have dedicated their substantial time and efforts to prevention and eradication of AIDS.

It also recognizes the 10th anniversary of the Elizabeth Glaser Pediatric AIDS Foundation, an outstanding charitable organization which has devoted years of effort to the education, research, and prevention of HIV transmission and disease.

I hope the Senate will act quickly on this resolution to recognize the devastating effects of this terrible disease on millions of American children and their families, and to honor the contributions of thousands of others who are working to end the epidemic.

## AMENDMENTS SUBMITTED

### Y2K ACT

### MCCAIN (AND OTHERS) AMENDMENT NO. 608

Mr. MCCAIN (for himself, Mr. DODD, Mr. WYDEN, Mr. HATCH, Mrs. FEINSTEIN, Mr. GORTON, Mr. BENNETT, Mr. LOTT, Mr. ABRAHAM, Mr. FRIST, Mr. BURNS, Mr. SANTORUM, Mr. SMITH of Oregon, and Mr. LIEBERMAN) proposed an amendment to the bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of that year's date; as follows:

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF SECTIONS.**

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

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



**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

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

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

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for

many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

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

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

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

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

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted from a Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

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

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

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

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

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

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

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

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

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

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

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

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

**SEC. 4. APPLICATION OF ACT.**

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after January 1, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

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

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) APPLICATION WITH YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT.—Nothing in this Act supersedes any provision of the Year 2000 Information and Readiness Disclosure Act.

**SEC. 5. PUNITIVE DAMAGES LIMITATIONS.**

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

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

(B) $250,000.

(2) DEFENDANT DESCRIBED.—A defendant described in this paragraph is a defendant—

(A) who—

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

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

(B) that is an unincorporated business, a partnership, corporation, association, or organization with fewer than 50 full-time employees.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

**SEC. 6. PROPORTIONATE LIABILITY.**

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

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Norwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge arising out of the action. The order shall bar all future claims for contribution arising out to the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTIONS.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.— Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

**SEC. 7. PRE-LITIGATION NOTICE.**

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about—

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

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

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

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

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

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSABILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

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

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

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff, the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it

will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the plaintiff. If any defendant elects to treat the complaint as such a notice—

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

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

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

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

**SEC. 8. PLEADING REQUIREMENTS.**

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedures.

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

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the compliant a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

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

**SEC. 9. DUTY TO MITIGATE.**

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

**SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.**

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

**SEC. 11. DAMAGES LIMITATION BY CONTRACT.**

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

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

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

**SEC. 12. DAMAGES IN TORT CLAIMS.**

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

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

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

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

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

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

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

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c) whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal and State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

**SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.**

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect before January 1, 1999.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves, by the standard of evidence under applicable State law in effect before January 1, 1999, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do not include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

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

contract for such a failure is governed by the terms of the contract.

(d) PROTECTIONS OF THE YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT APPLY.—The protections for the exchanges of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) shall apply to this Act.

**SEC. 14. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATE JUDGES FOR Y2K ACTIONS.**

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate judge to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

**SEC. 15. Y2K ACTIONS AS CLASS ACTIONS.**

(a) MATERIAL DEFECT REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

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

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

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

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

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

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

(iii) the claims asserted will be governed primarily by the law of that State; or

(B) the primary defendants are States, State officials, or other government entities against whom the United States District Court may be foreclosed from ordering relief.

(d) EFFECT ON RULES OF CIVIL PROCEDURE.—Except as otherwise provided in this section, nothing in this section supersedes any rule of Federal or State civil procedure applicable to class actions.

Amend the title so as to read: An Act to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of the year's date through fostering an incentive for businesses to continue fixing and testing their systems, to communicate with other businesses, resolve year-2000 business disputes without litigation, and to settle year 2000 lawsuits that may disrupt significant sectors of the American economy.

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## ALLARD AMENDMENT NO. 609

Mr. ALLARD proposed an amendment to amendment No. 608 proposed by Mr. MCCAIN to the bill, S. 96, supra; as follows:

At the end of the amendment, add the following:

**SEC. . APPLICABILITY OF STATE LAW.**

Nothing in this Act shall be construed to affect the applicability of any State law that provides greater limits on damages and liabilities than are provided in this Act.

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## KERRY (AND OTHERS) AMENDMENT NO. 610

Mr. KERRY (for himself, Mr. ROBB, Mr. DASCHLE, Mr. REID, Mr. BREAUX, Mr. AKAKA, and Ms. MIKULSKI) proposed an amendment to amendment No. 608 proposed by Mr. MCCAIN to the bill, S. 986, supra; as follows:

Strike all after the word ''**SECTION**'' and insert the following:

**1. SHORT TITLE; TABLE OF SECTIONS.**

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

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



**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

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

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

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

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

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

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

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

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and

to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted from a Y2K failure, or a claim or defense is related to a Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

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

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

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

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

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

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

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

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

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

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

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

**SEC. 4. APPLICATION OF ACT.**

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) APPLICATION OF ACT LIMITED.—Except as otherwise indicated, this Act applies only to claims for commercial loss between incorporated or unincorporated businesses, associations, organizations, and enterprises, including any sole proprietorship, corporation, company (including any joint stock company), association, partnership, trust, or governmental entity.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) SECURITIES ACTIONS EXCLUDED.—This Act does not apply to a securities claim brought under the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)).

**SEC. 5. PROPORTIONATE LIABILITY.**

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

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs concerning the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR INTENTIONAL TORT OR FAILURE TO REMEDIATE.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several—

(A) if the trier of fact specifically determines that the defendant committed an intentional tort; or

(B) unless the defendant demonstrates by a preponderance of the evidence both that the defendant—

(i) identified the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2K failure alleged to have caused the plaintiff's harm; and

(ii) provided information calculated to reach persons likely to experience Y2K failures of that device or system concerning reasonable steps to avert or mitigate the potential Y2K failure.

(2) INTENTIONAL TORT.—For purposes of paragraph (1) of this subsection, reckless conduct by the defendant does not constitute commission of an intentional tort by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant determined under paragraph (1) of this subsection to be jointly and severally liable.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that over defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE AND GENERAL RIGHT OF CONTRIBUTION.—With the exception of contribution in the case of an uncollectible share, nothing in this section

shall be construed to preempt or modify any State law or rule governing discharge of defendants who enter into settlements or the right of any jointly and severally liable defendant to seek contribution from any other person.

(f) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

**SEC. 6. PRE-LITIGATION NOTICE.**

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a verifiable written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

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

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

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

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

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

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSABILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

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

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

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

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the plaintiff. If any defendant elects to treat the complaint as such a notice—

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

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

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

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

**SEC. 7. PLEADING REQUIREMENTS.**

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

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

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

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

**SEC. 8. DUTY TO MITIGATE.**

In addition to any duty to mitigate imposed by State law, if the defendant has made available to purchasers or users, as appropriate, of the defendant's product or services information concerning means of remedying or avoiding the Y2K failure alleged to have caused plaintiff's damages, damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any such information, whether made available by the defendant or others, of which the plaintiff was, or reasonably should have been, aware.

**SEC. 9. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.**

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commerical impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

**SEC. 10. DAMAGES LIMITATION BY CONTRACT.**

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

(1) by the express terms of the contract, unless enforcement of the term in question would manifestly and directly contravene applicable State law on January 1, 1999, directly addressing that term; or

(2) by operation of State law at the time the contract was effective or by operation of Federal law.

**SEC. 11. DAMAGES IN TORT CLAIMS.**

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss involving a defective device or system or service unless—

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

(2) such losses result directly from damage to property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure), and such damages are permitted under applicable Federal or State law; or

(3) the defendant committed an intentional tort, except where the tort involves misrepresentation or fraud regarding the attributes or capabilities of the product that forms the basis for the underlying claim.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

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

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

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c) whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

(e) DEVICE OR SYSTEM.—For purposes of subsection (a), a ''device or system'' means any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions.

**SEC. 12. STATE OF MIND; CONTROL.**

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect before January 1, 1999.

(b) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

(c) PROTECTIONS OF THE YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT.—Nothing in this Act shall alter or affect any of the obligations, protections, or duties established by the Year 2000 Information and Readiness Disclosure Act.

**SEC. 13. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.**

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

**SEC. 14. Y2K ACTIONS AS CLASS ACTIONS.**

(A) MINIMUM INJURY REQUIREMENT.—A Y2K class action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

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

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

(b) NATURE AND AMOUNT OF DAMAGES.—In any Y2K class action in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K class action, there shall be filed with the complaint a statement of specific information regarding the manifestations of the materials defects and the facts supporting a conclusion that the defects are material as to a majority of the members of the class.

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

(e) APPLICATION TO INDIVIDUALS AND NON-COMMERCIAL LOSS.—The provisions of this section shall apply to claims brought by individuals, to claims by entities described in section 4(c) and to claims for non-commecial as well as commercial loss; but shall not apply to claims for wrongful death or personal injury.

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## LEAHY AMENDMENT NO. 611

Mr. LEAHY proposed an amendment to amendment No. 608 proposed by Mr. MCCAIN to the bill, S. 96, supra; as follows:

At the appropriate place, insert the following:

**SEC. ___. EXCLUSION FOR CONSUMERS.**

(a) CONSUMER ACTIONS.—This Act does not apply to any Y2K action brought by a consumer.

(b) DEFINITIONS.—In this section:

(1) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product for purposes other than resale.

(2) CONSUMER PRODUCT.—The term ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

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## MURKOWSKI AMENDMENT NO. 612

Mr. BENNETT (for Mr. MURKOWSKI) proposed an amendment to amendment No. 608 proposed by Mr. MCCAIN to the bill, S. 96, supra; as follows:

Section 7(c) of the bill is amended by adding at the end the following:

(5) PRIORITY.—A prospective defendant receiving more than 1 notice under this section shall give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

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## MURKOWSKI AMENDMENT NO. 613

(Ordered to lie on the table.)

Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

At the end of section 5(b)(3), strike ''plaintiff.'' and insert the following: ''plaintiff or that the defendant sold the product or service that is the subject of the Y2K action after the date of enactment of this Act knowing that the product or service will have a Y2K failure, without a signed waiver from the plaintiff.''

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## GREGG AMENDMENT NO. 614

(Ordered to lie on the table.)

Mr. GREGG submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

At the appropriate place, insert the following:

**SEC. ___. SUSPENSION OF PENALTIES FOR CERTAIN YEAR 2000 FAILURES BY SMALL BUSINESS CONCERNS.**

(a) DEFINITIONS.—In this section—

(1) the term ''agency'' means any executive agency, as defined in section 105 of title 5, United States Code, that has the authority to impose civil penalties on small business concerns;

(2) the term ''first-time violation'' means any first-time violation within the last 3 years, directly resulting from a Y2K failure, of a Federal rule or regulation; and

(3) the term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (25 U.S.C. 632).

(b) ESTABLISHMENT OF LIAISONS.—Not later than 30 days after the date of enactment of this section, each agency shall establish 1 point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations.

(c) GENERAL RULE.—Subject to subsections (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) STANDARDS FOR WAIVER.—In order to receive a waiver of civil money penalties from an agency for a first-time violation, a small business concern shall demonstrate that—

(1) the small business concern previously made a good faith effort to effectively remediate Y2K problems;

(2) a first-time violation occurred as a result of the Y2K system failure of the small business concern or other entity, which affects the small business concern's ability to comply with federal regulation;

(3) the first-time violation was unavoidable in the face of a Y2K system failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in the harm of life or property;

(4) upon identification of a first-time violation the small business concern wishing to receive a waiver began immediate actions to remediate the violation; and

(5) the small business concern submitted notice to the appropriate agency within a reasonable time not to exceed 7 business days from the time that the small business concern became aware that a first-time violation had occurred.

(e) EXCEPTIONS.—An agency may impose civil penalties authorized under Federal law on a small business concern for a first-time violation if the small business concern fails to correct the violation not later than 6 months after initial notification to the agency.

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## INHOFE AMENDMENT NO. 615

(Ordered to lie on the table.)

Mr. INHOFE submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

On page ____, between lines ____ and ____, insert the following:

(____) APPLICATION TO ACTIONS BROUGHT BY A GOVERNMENTAL ENTITY.—

(1) IN GENERAL.—To the extent provided in this subsection, this Act shall apply to an action brought by a governmental entity described in section 3(1)(C).

(2) DEFINITIONS.—In this subsection:

(A) DEFENDANT.—

(i) IN GENERAL.—The term ''defendant'' includes a State or local government.

(ii) 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.

(iii) LOCAL GOVERNMENT.—The term ''local government'' means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K UPSET.—The term ''Y2K upset''—

(i) means an exceptional incident involving temporary noncompliance with applicable federally enforceable measurement or reporting requirements because of factors related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable requirements that provide for the safety and soundness of the banking or monetary system, including the protection of depositors;

(III) noncompliance to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance; or

(V) lack of preparedness for Y2K.

(3) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET.—A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a good faith effort to effectively remediate Y2K problems;

(B) a Y2K upset occurred as a result of a Y2K system failure or other Y2K emergency;

(C) noncompliance with the applicable federally enforceable measurement or reporting requirement was unavoidable in the face of a Y2K emergency or was intended to prevent the disruption of critical functions or services that could result in the harm of life or property;

(D) upon identification of noncompliance the defendant invoking the defense began immediate actions to remediate any violation of federally enforceable measurement or reporting requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that it became aware of the upset.

(4) GRANT OF A Y2K UPSET DEFENSE.—Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to any action brought as a result of noncompliance with federally enforceable measurement or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

(5) LENGTH OF Y2K UPSET.—The maximum allowable length of the Y2K upset shall be not more than 30 days beginning on the date of the upset unless granted specific relief by the appropriate regulatory authority.

(6) VIOLATION OF A Y2K UPSET.—Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to penalties provided in section 1001 of title 18, United States Code.

(7) EXPIRATION OF DEFENSE.—The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

## SESSIONS AMENDMENTS NOS. 616–617

(Ordered to lie on the table.)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 96, supra; as follows:

AMENDMENT NO. 616

At an appropriate place in section 15, add the following section:

**SEC. . ADMISSIBLE EVIDENCE.**

A defendant in any Y2K action shall be entitled to introduce into evidence communications between the defendant and its federal and state regulator and the results of any regulatory review conducted with respect to the defendant's efforts to prevent a Y2K failure from occurring.

AMENDMENT NO. 617

At an appropriate place at the end of section 5 add the following:

**SUBSECTION . RATIONAL RELATIONSHIP.**

In any action covered by this Act, punitive damages shall not be awarded unless the amount of the punitive award is rationally related to the totality of the defendant's wrongdoing.

## BOXER AMENDMENT NO. 618

(Ordered to lie on the table.)

Mrs. BOXER submitted an amendment intended to be proposed by her to the bill, S. 618, supra; as follows:

In section 7(e) insert at the end the following:

(5) SPECIAL RULE.—

(A) IN GENERAL.—With respect to a defendant that is a manufacturer of a device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data that experienced a Y2K failure, the defendant shall, during the remediation period provided in this subsection—

(i) make available to the plaintiff a repair or replacement, if available, at the actual cost to the manufacturer, for a device or other product that was first introduced for sale after January 1, 1990 and before January 1, 1995; and

(ii) make available at no charge to the plaintiff a repair or replacement, if available, for a device or other product that was first introduced for sale after December 31, 1994.

(B) DAMAGES.—If a defendant fails to comply with this paragraph, the court shall consider that failure in the award of any damages, including economic loss and punitive damages.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, June 9, 1999, to conduct a hearing on ''Financial Privacy.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science and Transportation be authorized to meet on Wednesday, June 9, 1999, at 9:30 a.m. on S. 837—Auto Choice Reform Act of 1999.

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

COMMITTEE ON FINANCE

Mr. MCCAIN. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Wednesday, June 9, 1999, beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 9, 1999, at 10 a.m. to hold a hearing.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 9, 1999, at 3 p.m. to hold a hearing.

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

COMMITTEE ON GOVERNMENT AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be permitted to meet on Wednesday, June 9, 1999, at 10 a.m. for a hearing on oversight of national security methods and processes relating to the Wen-Ho Lee espionage investigation.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, June 9, 1999, at 9:30 a.m. to conduct an oversight hearing on internet gaming. The hearing will be held in room 485, Russell Senate Building.

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

COMMITTEE ON SMALL BUSINESS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized

to meet during the session of the Senate for a markup on ''S. 918, Military Reservists Small Business Relief Act of 1999.'' The markup will be held on Wednesday, June 9, 1999, beginning at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. McCAIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 9, 1999, at 2 p.m. to hold a hearing on intelligence matters.

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

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. McCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to conduct a second hearing on project delivery and streamlining of the Transportation Equity Act for the 21st Century, Wednesday, June 9, 9:30 a.m., hearing room SD–406.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. McCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, June 9, for purposes of conducting a Water & Power Subcommittee hearing which is scheduled to begin at 2 p.m. The purpose of this oversight hearing is to continue the oversight conducted by the subcommittee at the April 6, 1999, Hood River, on the process to determine the future of the four lower Snake River dams and conduct oversight on the Northwest Power Planning Council's Framework Process.

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

## ADDITIONAL STATEMENTS

### MAXINE WHITNEY

• Mr. LAUTENBERG. Mr. President, the mark of a truly great person may be identified by their generosity, and generosity is the reason I rise today. I would like to honor Mrs. Maxine Whitney, a long-time Fairbanks, AK resident, businesswoman and philanthropist, for her multi-million dollar contribution of Native Alaskan artwork to the Prince William Sound Community College in Valdez, AK.

For the past 50 years in Alaska, Mrs. Whitney and her husband, Jesse, have traveled extensively in rural Alaska to gain a deeper understanding and appreciation of Native people and cultures. During their travels, Maxine amassed what is reportedly the world's largest private collection of Native Alaskan art and artifacts.

Maxine's hobby of collecting Native Alaskan art soon became a much larger commitment when she purchased a small private museum in Fairbanks to house her treasures. For nearly 20 years, Maxine's Eskimo Museum showcased Native Alaskan history and the important contribution Native culture has had on the formation of Alaskan society. Mrs. Whitney maintained the museum from 1969 until the late 1980s.

Maxine's dedication to the arts is apparent from her recent donation of her extensive collection of Native Alaska art to Prince William Sound Community College, part of the University of Alaska education system. The collection, known as the Jesse & Maxine Whitney Collection, is the nucleus of the college's Alaska Cultural Center. This multi-million dollar donation will provide a means for all visitors to the center to learn about past and present Native Alaskan cultures as well as the history of Alaska.

Mrs. Whitney's dedication to keeping the Native Alaskan history alive should be celebrated. Her generous gift will enhance the knowledge and appreciation of Native cultures. It is people like Maxine Whitney, a patron of the arts and education, who enrich our lives with their gracious gifts.

In donating the Whitney Collection, Maxine has provided a world-renowned educational gem for all who visit the collection . . . she has provided a unique legacy for all Alaskans, and for all Americans. Thank you Maxine Whitney.•

### THE HOTEL DOHERTY 75TH ANNIVERSARY

• Mr. ABRAHAM. Mr. President, I rise today to acknowledge and congratulate the Doherty family as they celebrate the 75th Anniversary of the Hotel Doherty on June 5, in Clare, Michigan.

The Hotel Doherty was established in 1924 by the late Michigan State Senator A.J. Doherty, Clare's mayor at the time. The Doherty was built to replace the Caulkins House in 1920, with local people donating the money to purchase the land.

The Hotel Doherty is one of the last historic landmark hotels in Michigan. What makes it even more unique is that it has remained as a single-family owned and operated business during all 75 years.

Clare's downtown business district has remained vibrant with the help of the Hotel Doherty. The Doherty is an excellent example of how small businesses are the backbone of Michigan's economy. I commend the Doherty family on their 75 years of business and I wish them all the best for future generations.•

### JUNE DAIRY MONTH

• Mr. FEINGOLD. Mr. President, June is a very special month for this nation's dairy industry. It is the month farmers and consumers join together to commemorate the contributions and history of our great dairy industry by celebrating National Dairy Month.

Even before the 1937 inception of National Dairy Month, Wisconsin led the nation in milk and cheese production. Even today, Wisconsin leads the nation in cheese volume, processing nearly 90 percent of the more than 22 billion pounds of milk produced into cheese. More than 350 varieties of cheese are produced in the state, including, Cheddar, American, Muenster, Brick, Blue and Italian, not to mention the famous Limburger cheese variety, which is only produced in Wisconsin. Also, Wisconsin buttermakers produce nearly 25 percent of the America's butter supply.

National Dairy Month is the American consumer's oldest and largest celebration of dairy products and the people who have made the industry the success it is today. During June, Wisconsinities will hold nearly 100 dairy celebrations across our state, including dairy breakfasts, ice cream socials, cooking demonstrations, festivals and other events. These events all highlight the quality, variety and great taste of Wisconsin dairy products and honor the producers who make it all possible.

June Dairy Month is a time to celebrate America's dairy industry and Wisconsin dairy's proud tradition and heritage of quality. It provides Wisconsin's dairy farmers a special time to reflect on their accomplishments and those of their ancestors, and to look forward to continued success in the future.

Wisconsin was nicknamed America's Dairyland in the 1930s, but it became a leader in the industry soon after the first dairy cow came to Wisconsin in the 1800's. Dairy history and the state's history have been intertwined from the beginning. Why, before Wisconsin was even declared a state, Wisconsin's first cheese ''factory'' established when one clever Wisconsinite combined milk from her cows with milk from her neighbor's cows and made it into cheese.

Other Wisconsin dairy firsts include: the development of Colby cheese in 1874, the creation of brick cheese in 1875, the first dairy school in America—established in 1891 at the University of Wisconsin at Madison, the first statewide dairy show in the U.S. in 1928, and the creation of the world-record holding 40,060 pound, Grade-A Cheddar cheese in 1988. And Wisconsin also can claim one of the best-tasting inventions in the history of dairy industry: the creation of the first ice cream sundae in 1881.

Also unique to Wisconsin's dairy industry is the crowing of ''Alice in Dairyland.'' This lucky young woman serves as the state's dairy ambassador all over the country, and often in other parts of the world. Last year's Alice, Jennifer Hasler of Monroe, represented

Wisconsin well as she promoted Wisconsin's agriculture in California, Arizona, Minnesota and even Japan. She generated millions of dollars in unpaid advertising for hard working Wisconsin farmers. I congratulate her on her achievements and her hard work and wish the new Alice good luck in her year serving Wisconsin agriculture.

I am proud to honor this great American tradition—proud to honor the dairy producers not only in Wisconsin, but also those across this great nation.●

## GIRL SCOUT TROOP 327 CELEBRATES 25 YEARS OF SERVICE

● Mr. ABRAHAM. Mr. President, I rise to recognize the 54 participants of Girl Scout Troop 327 from Wayne County, Michigan, as they celebrate 25 years of continuous service at the Mackinac Island Scout Camp.

Based in Grosse Pointe, the Troop recruits girls from Livonia, Dearborn, and the entire east side of Detroit. This combined group from the Michigan Metro Girl Scout Council will be traveling to Mackinac Island on Thursday, June 24, 1999 to celebrate their 25th Anniversary of service to the Island.

While on the Island, the Girl Scouts will continue their commitment to be better citizens through community service and goodwill deeds. In cooperation with the Mackinac Island State Park Commission, they plan to greet visitors in various public buildings, give directions to tourists, paint dilapidated park benches, and clean up heavily traveled park trails. The beauty of the Island will undoubtedly be preserved because of the Girl Scouts' service and dedication.

Past experiences have enabled Troop 327 to gain a wealth of information about the world around them. As members of Governor Engler's Honor Guard, the girls have been responsible for raising 26 United States flags over the country's National Cemeteries, Post Cemetery, and another at the Governor's summer residence. Through their experiences, the Girl Scouts have become more mature while gaining valuable life and human relations skills.

Earning the ''Gold Award'' and ''Silver Award'' for their active participation in community service, members of the Troop continue to exemplify their self-professed national motto: ''Girl Scouting: where girls grow strong.''

As individuals, communities and businesses strive to make positive impacts on the world, our younger community sets an example for every generation to follow. I urge my colleagues to join me in praising these girls for their continued efforts. The service provided by Girl Scout Troop 327 has left a mark on their lives, and in future weeks their service will positively affect those who visit Mackinac Island from around the world.●

## EXPRESSING RESPECT AND GRATITUDE TO THE ARMED FORCES OF THE UNITED STATES

Mr. WARNER. Mr. President, with a deep sense of humility, I believe the Senate should close its proceedings today by paying our profound and deepest respect to the men and women of the Armed Forces of the United States of America and their comrades in arms from 18 other nations, NATO, for having taken an enormous risk in performing with a degree of excellence that by any standard can be judged by all who understand military operations as in keeping with the finest traditions of our military and the military of other nations of the world.

Their actions to bring about what appears to be a cessation of hostilities, certainly in the air, at this time receives our profound gratitude and our prayers for their safety.

I, moments ago, spoke with the Secretary of Defense to pass on to our old colleague from the Senate a ''well done.'' I had the opportunity, as did many here in the Senate, to work with him on a regular basis throughout this crisis period in Kosovo, and I commend him for maintaining a very strong hand on this situation, particularly at times when it became very difficult.

We have discussed the command from the Chairman of the Joint Chiefs, chiefs of services, down through the CINCs, to the privates, whether they be in the air, on the sea, on the land. Again, they performed their job with great professional skill and dedication. It was not an easy job, because there was a good deal of uncertainty, and that uncertainty still remains as to exactly how this mission was carried out and whether it could have been done differently. But nevertheless, some 3,000-plus sorties were flown by the men and women in the aircraft of eight nations, supported by ground personnel at bases throughout that region, 17 bases alone in Italy.

I had the privilege last week, as a matter of fact a week ago today I was in Albania with General Jackson, who will be heading the ARRC force and who broke the news of the agreement between the military side with the representatives from Yugoslavia, General Clark and Admiral Ellis. I wish to say to these commanders that, again, it was their leadership which instilled a sense of confidence and conviction in their subordinates that this job had to be done, that we had to stay the course, and the professionalism we have witnessed now in the air operation.

I was asked momentarily, does this represent a victory or how would you characterize it? I simply said to the press early today, and to my colleagues I say now, it is far too early to try to make those judgments. The Senate Armed Services Committee, which I am privileged to chair, will hold a series of hearings on what went right and what went wrong and what, most particularly, will be the strategy of our forces for the future if faced with another situation of the seriousness and the complexity of this one in Kosovo.

I visited this region last September. As I stood there in Albania and Macedonia and observed the terrain, which is identical in many ways to that in Kosovo, I thought back to the refugees at that time huddling in the hills. I said on the floor of the Senate there would be a need then, as there is now, for a ground military force to stabilize the situation, stabilize it so while the ground forces of NATO will go in, eventually other nongovernmental organizations from all over the world will come to help these people who were tragically driven from their homes and villages by a very brutal military force under the direction of President Milosevic, a man who has conducted himself with complete disregard of all international law and human rights.

Again, I return to the troops. While the air operation, hopefully, will be secured, if not already, within hours, we have remaining before us the challenge on the ground, and the ground forces will now take up their professional responsibilities. May the hand of God rest upon their shoulders, because they will be faced with land mines and booby traps, all types of uncertainty. They will have to perform tasks not unlike those of a mayor of a village, to the extremes of how to deal with this hidden weaponry and a tragic situation of returning people to a devastated homeland.

The KLA will present challenges. In some instances, they fought with great courage. But now they must reconcile themselves to the fact that this international force, indeed NATO and the United Nations, must resolve the situation in a peaceable manner.

So while victory cannot be pronounced now, not until the ground forces go in and perform their challenging tasks, I say clearly that NATO has taken another major, significant step in the international community toward reaching its five basic goals. Those goals have been stated on this floor and in the press many times.

I salute all. In my discussions with Secretary Cohen, we made reference to the President. The President is Commander in Chief. The words that Secretary Cohen used—and I have a great respect for Bill Cohen, having served with him here some 18 years in the Senate—were that the President was steady. He stayed steady at every turn in these events, stayed focused and gave it his attention. In every way, I think the comments of the Secretary of Defense were very respectful. Clearly, in the minds of all of us, we have to credit the President with holding together the 19 nations.

It was essential that that coalition under the NATO charter remain together throughout this first phase—that is, the air phase—and now they must remain together throughout an equally difficult and challenging phase, that of securing the ground.

As I said, when I was there one week ago with General Jackson, General Clark, Admiral Ellis, and other military commanders, it is clear that the magnitude of the uncertainty relating to the landmines and booby traps, and indeed the problems associated with moving the Serb forces out, pose a challenge that, in many respects, has never been faced by a U.S. military force. But I have confidence in those commanders and in the men and women who will boldly undertake this task.

So I wish to just pay my humble respects, and I will follow this operation very clearly, in terms of our duties in the Senate and on the Armed Services Committee and, most assuredly, in our prayers for their safety and for the safety of those Kosovars who were driven from their homes and now have hope to once again return.

## NOMINATIONS OF GENERAL SHINSEKI AND GENERAL JONES

Mr. WARNER. Mr. President, the Armed Services Committee met yesterday under the advise and consent role with respect to General Shinseki to be Chief of Staff of the United States Army, and General Jones to become Commandant of the Marine Corps. I want to say with the deepest personal reverence that in my 21 years in the Senate, I cannot recall ever being moved as strongly by the remarks of a fellow Senator as I was yesterday when the senior Senator from Hawaii, Mr. INOUYE, addressed the Armed Services Committee and introduced General Shinseki.

While I would like to read these remarks, it is better that they just be printed in the RECORD. I urge all Senators to examine these remarks. They are extraordinary. They come from the heart of a Senator who has served his country with the greatest distinction, and his praise for a fellow Hawaiian who came up under circumstances not unlike his, although removed by a generation or so.

I ask unanimous consent to have the remarks of Senator INOUYE printed in the RECORD.

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

STATEMENT OF HONORABLE DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you very much, Mr. Chairman, for this opportunity to say a few words in behalf of our President's nominee for the 34th Chief of Staff of the United States Army. General Shinseki began his military career as a commissioned officer 34 years ago, almost exactly, on June 9, 1965. He received his commission as a Second Lieutenant after receiving a baccalaureate degree from the United States Military Academy at West Point.

After a few weeks of preparation, he was sent to Vietnam. On his first tour of duty there he distinguished himself, and he received his first purple heart. He was sent back to the States to be hospitalized, and a few years later he was back in Vietnam. On his second tour of duty there as a captain he once again distinguished himself, but he was wounded very seriously, losing part of his foot.

Notwithstanding that, he applied for a waiver and requested that he be given the opportunity to continue his service to our Nation. This was granted, and he continued his illustrious career, and in 1997 became a four-star General. As Chairman Warner indicated, in March of 1994 he was made Commanding General of the First Cavalry Division.

In July 1997 he became Commander-in-Chief of the United States Army in Europe, and Commander-in-Chief of the Seventh Army. He was also Commander of the Stabilization Force on Bosnia.

As indicated by Chairman Warner, there is no question that General Shinseki is eminently qualified for this, and if I may at this juncture be a bit more personal, this is a special day for many of us in the United States. In February of 1942, the United States Selective Service System, because of the hysteria of that time, that all Japanese, citizens or otherwise, be designated 4C. 4C, as you know Mr. Chairman, is the designation of an enemy alien.

It was a day of shame for many of us, although it was not deserved, and we petitioned the Government to permit us to demonstrate ourselves and a year later President Roosevelt declared that Americanism is a matter of mind and heart. Americanism is not, and has never been, a matter of racial color, and authorized the formation of a special Japanese-American combat unit, and the rest is history.

But what I wish to point out is that this young man sitting to my right was born in November of 1942. At the time of his birth he was an enemy alien, and today, to the great glory of the United States, I have the privilege of presenting him as the 34th Chief of Staff, Army nominee. This, Mr. Chairman, can happen only in the United States. I cannot think of any other place where something of this nature can happen.

He is the grandson of a Japanese laborer from Hiroshima who arrived in Hawaii in the late 1800's, about 1888, raised his children, and raised his grandson to love America, and I believe he succeeded eminently.

Mr. Chairman, on this day the shame that has been on our shoulders all these years has been clearly washed away by this one action, and for that I am very grateful to this Nation. I am grateful to the President, and I believe that we have before us one of the great illustrious warriors of our Nation. And I hope that this committee will vote to approve his nomination as the 34th Chief of Staff of the U.S. Army.

It is my pleasure, Mr. Chairman, to present to the Committee, General Shinseki.

Mr. WARNER. Mr. President, this afternoon, the Senate Armed Services Committee reported out favorably the nominations of General Shinseki and General Jones, and I anticipate tomorrow the Senate will move on those nominations.

As chairman, I designated Senator ROBERTS, a former U.S. Marine, to place the nomination by the committee, as approved, of General Jones to the Senate; and Senator CLELAND of Georgia, an Army veteran of great distinction and an officer who served in Vietnam, will place before the Senate the nomination of General Shinseki.

Once again, I close by saluting the Secretary of Defense, the men and women of the Armed Forces of the United States, and our allies for their courage and perception in meeting the challenges proposed in Kosovo. I wish them well in the future.

## APPOINTMENT

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic Leader, pursuant to Public Law 96–114, as amended, the appointment of George Gould of Virginia to the Congressional Award Board.

## ORDERS FOR THURSDAY, JUNE 10, 1999

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, June 10. I further ask that on Thursday, immediately following the prayer, the Journal of the proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of S. 96, the Y2K liability legislation.

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

## PROGRAM

Mr. WARNER. Mr. President, for the information of all Senators, tomorrow, the Senate will immediately resume consideration of the Y2K legislation. The Senate hopes to complete action on that legislation tomorrow afternoon. Following the debate on S. 96, the Senate may begin consideration of the State Department authorization bill, any appropriations bills available, or any legislative or executive items on the calendar. Therefore, Senators can expect votes throughout tomorrow's session of the Senate.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. WARNER. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:35 p.m., adjourned until Thursday, June 10, 1999, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate June 9, 1999:

DEPARTMENT OF STATE

JOHN E. LANGE, OF WISCONSIN, 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 BOTSWANA.

DELANO EUGENE LEWIS, SR., OF NEW MEXICO, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SOUTH AFRICA.

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED

STATES NAVY UNDER TITLE 10, U.S.C., SECTIONS 531 AND 5582:

*To be lieutenant commander*

SHEILA A.R. ROBBINS, 0000

*To be lieutenant*

VINCE W. BAKER, 0000
ROBIN L. BARNES, 0000
GERALD A. COOK, 0000
KENNETH A. FAULKNER, SR., 0000
JORGE I. MADERAL, 0000
PAMELLA A. MYERS, 0000
LEE A.C. NEWTON, 0000
BRIAN V. ROSA, 0000
JAMES D. SANTAMOUR, 0000
KATHERINE A. SCHNEIRLA, 0000
WILLIAM B. STEVENS, 0000
MICHAEL R. TASKER, 0000

*To be lieutenant (junior grade)*

MICHAEL D. APRICENO, 0000
JOHN F. BAEHR, 0000
GREGORY D. BUCHANAN, 0000
DAVID D. CARNAL, 0000
ROBERT M. COHEN, 0000
MICHAEL A. DAVIS, JR., 0000
KRISTIAN M. DORAN, 0000
GEORGE C. ESTRADA, 0000
DARREN R. HALE, 0000
JOSHUA R. HALL, 0000
MOONI JAFAR, 0000
PATRICK M. KELLY, 0000
MANUEK X. LUGO, 0000
JESSE L. MAGGITT, 0000
RALPH J. MAINES, 0000
CECIL L. MCQUAIN, 0000
BERNARD T. MEEHAN II, 0000
JOAQUIN J. MOLINA, 0000
DAVID M. REED II, 0000
JOHN F. WEBB, 0000
CAROLYN M. WISNER, 0000
CHERYL WOEHR, 0000
ALEXANDER Y. WOLDEMARIAM, 0000

*To be ensign*

ROBERT M. ALLEYNE, 0000
GREGORY BALLENGER, 0000
MATTHEW L. BETIT, 0000
ANDREW F. BRACKENRIDGE, 0000
KEVIN F. BRAVOFERRER, 0000
LEBRON BUTTS II, 0000
CHRIS D. CASTLEBERRY, 0000
MARK A. CUTLER, 0000
MICHAEL W. DAVIDSON, 0000
JEFFREY P. DAVIS, 0000
DAMON C. DEQUENNE, 0000
RICHARD J. DIXON, JR., 0000
MARTIN L. EDMONDS, 0000
ASHTON F. FEEHAN, 0000
DAVID P. FRIEDLER, 0000
JONATHAN GRAY, 0000
MICHAEL S. GUILFORD, 0000
MICHAEL D. HALTOM, JR., 0000
ALEXANDER F. HARPER, 0000
RAIICHON A. HILTS, 0000
NICHOLAS H. HONG, 0000
ANDREW G. KREMER, 0000
ELLEN Y. KWAME, 0000
ANDREW J. LEWIS, 0000
MIGUEL A. LEYVA, 0000
CHRISTIAN M. MAHLER, 0000
WILLIAM J. MARTZ, 0000
DAVID B. MCKELVY, 0000
SEAN A. MENTUS, 0000
TROY C. MORSE, 0000
JAMES H. MURPHY, 0000
VICTOR D. OLIVER, 0000
LEE A. PARKER, 0000
RICHARD A. PHILLIPS, 0000
RICHARD C. PLEASANTS, 0000
JEREMY C. POWELL, 0000
LYNN J. PRIMEAUX, 0000
MICHAEL R. RODMAN, 0000
LIAM M. SARACINO, 0000
BRIAN S. SCHLICHTING, 0000
SALEEM K. TAFISH, 0000
DAVID A. TONINI, 0000
GEORGE B. TOSH, 0000
TAWNYA R. TSCHACHE, 0000
JEFFREY W. UTLEY, 0000
DANIEL E. WILBURN, 0000