MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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.)

REPORT ON SERBIA AND MONTENEGRO—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE ADJOURNMENT OF THE SENATE—PM 104

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate on December 27, 1995, received a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 1511 of the National Defense Authorization Act for Fiscal Year 1994 (hereinafter the ''Act''), requires that the sanctions imposed on Serbia and Montenegro, as described in that section, shall remain in effect until changed by law. Section 1511(e) of the Act authorizes the President to waive or modify the application of such sanctions upon certification to the Congress that the President has determined that the waiver or modification is necessary to achieve a negotiated settlement of the conflict in Bosnia-Herzegovina that is acceptable to the parties.

In accordance with this provision, I have issued the attached Presidential Determination stating that the suspension of the sanctions described in section 1511(a)(1–5) and (7–8) and in conformity with the provisions of United Nations Security Council Resolutions 1021 and 1022 is necessary to achieve a negotiated settlement of the conflict. As described in the attached Memorandum of Justification, this sanctions relief was an essential factor motivating Serbia and Montenegro's acceptance of the General Framework Agreement for Peace in Bosnia and Herzegovina initialed in Dayton, Ohio, on November 21, 1995 (hereinafter the ''Peace Agreement'').

I have directed the Secretaries of the Treasury and Transportation to suspend immediately the application of these sanctions on Serbia and Montenegro and have authorized the Secretary of State to suspend the arms embargo at appropriate stages consistent with United Nations Security Council Resolution 1021. The first stage would be 91 days after the United Nations Secretary General reports to the United Nations Security Council that all parties have formally signed the Peace Agreement.

The measures taken to suspend these sanctions may be revoked if the Implementation Force (IFOR) commander or High Representative determines that Serbia and Montenegro or the Bosnian Serbs are not meeting their obligations under the Peace Agreement.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 27, 1995.*

REPORT ON PROGRESS CONCERNING EMIGRATION LAWS AND POLICIES OF THE RUSSIAN FEDERATION—MESSAGE FROM THE PRESIDENT—PM 105

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance.

To the Congress of the United States:

On September 21, 1994, I determined and reported to the Congress that the Russian Federation is in full compliance with the freedom of emigration criteria of sections 402 and 409 of the Trade Act of 1974. This action allowed for the continuation of most-favored-nation (MFN) status for Russia and certain other activities without the requirement of an annual waiver.

As required by law, I am submitting an updated report to the Congress concerning the emigration laws and policies of the Russian Federation. You will find that the report indicates continued Russian compliance with the United States and international standards in the area of emigration.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 29, 1995.*

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate, on December 27, 1995, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 4. An act to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

H.R. 394. An act to amend title 4 of the United States Code to limit State taxation of certain pension income.

H.R. 1878. An act to extend for 4 years the period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton Area Health Plan.

H.R. 2627. An act to require the Secretary of the Treasury to mint coins in commemoration of the sesquicentennial of the founding of the Smithsonian Institution.

The enrolled bills were signed subsequently by the Acting President pro tempore (Mr. KEMPTHORNE).

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–1749. A communication from the Lieutenant General of the Defense Security Assistance Agency, transmitting, pursuant to law, the annual on the operation of the Special Defense Acquisition Fund for fiscal year 1995.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. D'AMATO, and Mr. LEAHY):

S. 1511. A bill to impose sanctions on Burma; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LUGAR (for himself and Mr. COATS):

S. 1512. A bill to amend title 23, United States Code, to improve safety at public railway-highway crossings, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 1513. A bill to amend the Trademark Act of 1946 to make certain revisions relating to the protection of famous marks; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEAHY (for Mr. DASCHLE):

S. Res. 206. A resolution making minority party appointments for the Committee on Veterans' Affairs; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. D'AMATO, and Mr. LEAHY):

S. 1511. A bill to impose sanctions on Burma; to the Committee on Banking, Housing, and Urban Affairs.

THE BURMA FREEDOM AND DEMOCRACY ACT OF 1995

Mr. MCCONNELL. Mr. President, I rise today with Senators MOYNIHAN, D'AMATO, and LEAHY to introduce the Burma Freedom And Democracy Act of 1995.

Early in December, prospects for democracy in Burma took a turn for the

worse. In a remarkable act of courage, Aung San Suu Kyi and her colleagues in the National League for Democracy decided not to participate in the National Convention orchestrated by the State Law and Order Restoration Council. In announcing her decision she said, ''A country which is drawing up a constitution that will decide the future of the state should have the confidence of the people.'' This is a standard that SLORC cannot meet.

Burma is not one step closer to democracy today than it was in the immediate aftermath of the crackdown in 1988. Indeed, in Aung San Suu Kyi's own words, ''I have been released, that is all.''

In fact, the situation continues to deteriorate. A recent report filed by the U.N. Special Rapporteur on Burma, Dr. Yokota, is a fresh, sharp reminder of the level of despair and the brutality suffered by the people of Burma at the hands of SLORC.

In lengthy remarks on December 8, I reviewed for my colleagues in detail the Yokota report. Let me take a moment to briefly review its most recent conclusions.

Virtually no improvements have occurred since the spring report of the Special Rapporteur. Dr. Yokota reported that the National Convention ''is not heading towards restoration of democracy'' and criticized SLORC for not affording him the opportunity to meet with convention participants free from SLORC supervision.

But, those criticisms were mild compared to his determinations with regard to human rights and the quality of life for the average Burmese citizen.

A complex array of security laws are used to harass, intimidate, and afford SLORC soldiers sweeping powers of arrest and detention. He charged the military with carrying out arbitrary killings, rape, torture, forced porterage, forced labor, forced relocations, and confiscation of private property. He substantiated many refugee claims that this pattern of abuse continues most frequently ''in border areas where the Army is engaged military operations or where regional development projects are taking place.'' He added, ''many of the victims of such atrocious acts belong to ethnic national populations, especially women, peasants, daily wage earners and other peaceful civilians who do not have enough money to avoid mistreatment by bribing.''

If anyone had any doubts about the ruthless nature of the SLORC regime, I encourage them to take a few minutes to read this report.

SLORC has now turned its attention to the rising influence of Suu Kyi and her supporters. SLORC has cynically used the fact of her release to attempt to demonstrate they are relaxing their grip on power. Unfortunately, it is a sadistic charade.

Although Suu Kyi has repeatedly called for a dialog to reconcile the nation, SLORC has rejected every attempt to include her or the NLD in a credible political process. Last week Suu Kyi was personally attacked in the official newspapers as a ''traitor'' who should be ''annihilated.'' When the NLD announced they would not participate in the National Convention, senior officials woke up to find their homes surrounded by soldiers and their movements shadowed by military thugs.

In response to this assault on democracy and democratic activities, members of the business community have made two arguments. First, the allegations are exaggerations of the conditions. And, second, trade, investment, and economic improvements will yield political progress just as it has in China and Vietnam.

Mr. President, I urge the business community to read Dr. Yokota's recent report and then consider an important difference in Burma. In 1990 elections were held and the nation spoke with a strong voice. Suu Kyi's National League for Democracy swept the elections only to find the results brutally rejected by SLORC. We cannot pretend those elections did not occur. We cannot turn our back on the legitimate Government of Burma. We should not trade democracy for dollars in the pockets of a few companies interested in investing in Burma.

Suu Kyi has been absolutely clear. She will welcome foreign investment in her country just as soon as it makes real progress toward democracy.

The United States must take the lead in supporting not only her courage but her objective which is nothing short of Burma's liberty. It is clear U.N. Ambassador Albright understands the importance of our role and the responsibilities of United States leadership in securing democracy for Burma. In responding to the U.N. Rapporteur's report and the subsequent General Assembly resolution she spelled out the alternatives for SLORC: They must—there must be prompt and meaningful progress in political reforms including a transition to an elected Government or Burma will face further international isolation.

Mr. President, I agree with the Ambassador's conclusions. However, it is a position that the administration has expressed for more than a year. My definition of prompt differs from the administration's timetable. SLORC has had ample time and opportunity to demonstrate their intent to in effect return to the barracks and leave the governing of the country to democratically elected civilians. Burma waited for decades to vote for the National League for Democracy. They have waited for the past five years to benefit from the results of that election. Burma has waited for its freedom long enough.

In past statements of Burma I have devoted a good deal of my remarks to why a country so far away should matter to anyone here in the United States. It is not just a matter of upholding the principles of democracy and free markets—principles that define our history and national conscience. But, for many, those are ideals that are difficult to transplant—it is difficult to see why we should apply sanctions to further that cause.

The reason it is in our direct interest to secure democracy in Burma relates to the surge in narcotics trafficking afflicting every community in this Nation. Burma is the source of more than 60 percent of the heroin coming into the United States. As the Assistant Secretary of State for Asian Affairs has testified, until there is a democratically elected government in Rangoon, committed to a similar set of values, we will not see the active cooperation necessary to bring a real halt to this problem. We may see episodic efforts designed—like Suu Kyi's release—to influence our perceptions of SLORC's intentions. But, we will not see a serious effort to eradicate opium production unless we can work with a government dedicated to our common agenda.

The credibility of a counternarcotics program directly relates to the credibility of the government.

Let me conclude by thanking Senators MOYNIHAN, LEAHY, and D'AMATO for joining me in this legislation. I appreciate my colleague on the Subcommittee on Foreign Operations joining me in this important effort. I understand the Parliamentarian has decided that this will be referred to the Banking Committee, so I am grateful for the cosponsorship of the chairman, Senator D'AMATO.

But, I want to take a moment to single out Senator MOYNIHAN and his long standing commitment to Suu Kyi's safe return to public life. When we were members of the Senate Foreign Relations Committee in 1992 Senator MOYNIHAN and I worked together to establish conditions which must be met prior to our dispatching a U.S. Ambassador to Burma. Then as now, he has been articulate champion for a noble cause.

● Mr. MOYNIHAN. Mr. President, the Senator from Kentucky and I join together to propose a modest measure in response to a continued pattern of egregious abuses of power by the Burmese military junta, the State Law and Order Restoration Council [SLORC]. The members of SLORC have worked to thwart democracy at every turn. They continue to be implicated in drug trafficking, and they continue to abuse the people of Burma in a manner that can only be characterized as inhuman.

This bill makes clear our intention that such a regime will no longer enjoy investments from the United States. Investments which so often supported—knowingly or unknowingly—its totalitarian and abusive rule. The bill also codifies our intention to withhold our support for loans to Burma from international financial institutions, to prevent direct assistance to the SLORC, and to exclude the members of SLORC from the United States.

In 1988 the Burmese people took to the streets of Rangoon, to demand democracy for their country. Sadly, government forces turned peaceful protests into violent tragedy. In September of that year, thousands of unarmed demonstrators were killed by government troops.

Since then, the SLORC has earned its reputation as one of the worst violators of human rights in the world. The Department of State and numerous human rights organizations document this. The SLORC maintains power through violence and intimidation. In effect, the military junta has waged war against its own people. But the will of the Burmese people cannot be squelched. As they continue their fight for democracy, support from the international community remains steadfast.

The SLORC came to power through violence, but it must have cynically imagined that a rigged election would be the answer to its untenable political situation, and one was scheduled for May 1990. The National League for Democracy [NLD] party, led by Aung San Suu Kyi, won that election while she was under house arrest. Yet the SLORC has never allowed the elected leaders of Burma to take office. Instead it has forced these leaders to flee their country to escape arrest and death.

The U.S. Senate has spoken often in support of those brave Burmese democracy leaders. We have withheld aid and weapons to the military regime, and have provided some—albeit modest amounts—of assistance to the Burmese refugees who have fled the ruthless SLORC. Pro-democracy demonstrators were particularly vulnerable, yet having fled the country they found themselves denied political asylum by Western governments. In 1989, Senator KENNEDY and I rose in support of the demonstrators and won passage of an amendment to the Immigration Act of 1990 requiring the Secretary of State and the Attorney General to define clearly the immigration policy of the United States toward Burmese pro-democracy demonstrators. Congress acted again on the Customs and Trade Act of 1990 to adopt a provision I introduced requiring the President to impose appropriate economic sanctions on Burma. The Bush administration utilized this provision to sanction Burmese textiles. Unfortunately, these powers have never been exercised by the current administration.

The Senate continued to press for stronger actions. On March 12, 1992, the Foreign Relations Committee unanimously voted to adopt a report which Senator MCCONNELL and I submitted detailing specific actions that should be taken before the nomination of a United States Ambassador to Burma would be considered by the Senate.

Last year, the State Department authorization act for 1994–1995 contained a provision I introduced placing Burma on the list of international outlaw states such as Libya, North Korea, and Iraq. Let us be clear: The U.S. Congress considers the SLORC regime to be one of the very worst in the world. The Senate also unanimously adopted S. 234 on July 15, 1994, calling for the release of Aung San Suu Kyi and for increased international pressure on the SLORC to achieve the transfer of power to the winners of the 1990 Democratic election.

After 6 years of unjust detention by the Burmese military, Nobel Peace Prize Laureate Aung San Suu Kyi was released on July 10, 1995. While this was cause for celebration and great relief for those of us who have long called for her release, one cannot fail to stress that there is also great outrage that she was incarcerated in the first instance.

The struggle in Burma is not over. The SLORC continues to wage war against its own people. Illegal heroin continues to be produced with the junta's complicity. And the SLORC continues to thwart the transfer to democracy in Burma. The New York Times writes appropriately in an editorial:

> The end of Ms. Aung San Suu Kyi's detention must be followed by other steps toward democracy before Myanmar is deemed eligible for loans from multilateral institutions or closer ties with the United States. It is too soon to welcome Yangon back into the democratic community.

Too soon indeed.●

By Mr. LUGAR (for himself and Mr. COATS):

S. 1512. A bill to amend title 23, United States Code, to improve safety at public railway-highway crossings, and for other purposes; to the Committee on Environment and Public Works.

THE HIGHWAY RAIL GRADE CROSSING SAFETY FORMULA ENHANCEMENT ACT OF 1995

● Mr. LUGAR. Mr. President, today I am introducing the Highway Rail Grade Crossing Safety Formula Enhancement Act. This important legislation will provide a more effective method of targeting available Federal funds to enhance safety at our Nation's most dangerous highway rail grade crossings.

In America today, several hundred people are killed and thousands more injured every year as a result of vehicle-train collisions at highway rail grade crossings. A significant number of these accidents occur in rail-intensive States such as Indiana, Illinois, Ohio, California, and Texas. One quarter of the Nation's 168,000 public highway rail grade crossings are located in these five States. They accounted for 38 percent of deaths and 32 percent of injuries caused by vehicle-train collisions nationwide during 1991–93.

My home State of Indiana ranks sixth in the Nation for number of total grade crossings with 6,788, third in the Nation for grade crossing accidents with 263, and fifth for fatalities with 27. Last year, I traveled across northern Indiana aboard a QSX–500 locomotive and witnessed what engineers see every day—motorists darting across the railroad tracks before an oncoming train. From this experience, and from my work to improve safety at highway-rail grade crossings, I learned that engineering solutions, along with education and awareness about grade crossing safety are key strategies that can effectively prevent grade crossing accidents.

Responding to this disturbing national trend, I began working with Transportation Secretary Federico Peña and with the Indiana Department of Transportation to address this serious safety problem. We worked to find solutions that would help Indiana and other States make better use of available funds to target the Nation's most dangerous rail crossings.

The Federal Government has played an important role in helping States reduce accidents and fatalities at public rail-highway intersections since passage of the Highway Safety Act by Congress in 1973. This act created the Rail-Highway Crossing Program—also known as the section 130 program. Since the program's inception, more than 28,000 improvement projects have been undertaken—from installation of warning gates, lights, and bells, to pavement improvements and grade separation construction projects.

During the 103d Congress, I introduced grade crossing safety legislation to restore States' discretion over millions of Federal highway dollars lost as a result of noncompliance with the Federal motorcycle helmet law. Indiana and other States affected by this law were prohibited from using a portion of their highway construction dollars to improve safety at highway rail grade crossings. While the Senate did not approve this legislation during the 103d Congress, I am pleased the Congress repealed the helmet law penalty this year as part of the National Highway System Designation legislation. Repeal of this Federal sanction allows States greater flexibility to use their Federal highway dollars for improvements at rail crossings, and for other transportation priorities.

In March, 1994, Senator COATS and I asked the General Accounting Office to conduct a survey of rail safety programs in Indiana and other rail intensive States experiencing a high number of accidents at highway-rail grade crossings. Released this summer, the report—''Railroad Safety: Status of Efforts to Improve Railroad Crossing Safety''—evaluated the best uses of limited Federal funds for rail crossing safety, reviewed policy changes that help State and local governments address rail safety issues, and recommended strategies to encourage interagency and intergovernmental cooperation.

The report found that in addition to States' efforts to reduce accidents and fatalities through emphasis on education programs and engineering solutions, changes to the funding formulas to apportion highway funds among States would target Federal funds to areas of greatest risk.

Under the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA], the section 130 program was continued as part of the Surface Transportation Program [STP]. Under ISTEA, 10 percent of a State's apportioned STP funds are allocated to States for highway rail crossing improvement and hazard elimination projects.

The GAO reported that key indicators of risk factors used to assess rail grade crossing safety in a State are not considered during the apportionment process. The GAO outlined the Federal Highway Administration's ongoing efforts to review options for STP formula changes that will adjust the current flat percentage allocation from a State's apportioned amount to account for these risk factors. Applying these factors to the funding formula creates a more targeted and focused process that maximizes the effectiveness of Federal funds.

The risk factors criteria considered includes a State's share of the national total for number of public crossings, number of public crossings with passive warning devices, total number of accidents and total number of fatalities occurring as a result of vehicle-train collisions at highways rail grade crossings.

For example, while Indiana received 3.4 percent of section 130 funds in fiscal year 1995, the Hoosier State experienced 6.1 percent of the Nation's accidents and 5.9 percent of the fatalities as a result of vehicle-train collisions from 1991–93. In addition, Indiana has 4 percent of the Nation's public rail crossings: 6,788.

Preliminary estimates of STP apportionments under this legislation indicate Indiana's share of section 130 funds could increase by 33 percent, from the fiscal year 1995 level of $4.9 million to $6.6 million. Overall, about 24 States would receive an increase in section 130 funds for grade crossing improvements.

The GAO cited similar statistical comparisons for Illinois, Ohio, and Texas.

While the Indiana Department of transportation [INDOT] spent more than $10 million last year on improvements to highway rail grade crossings, a one-third increase in section 130 funds would allow INDOT and other State departments of transportation additional flexibility and resources to improve safety at dangerous rail crossings.

The Formula Enhancement Act addresses the allocation problem by adjusting the funding formula for the STP to include a 5-percent apportionment of funds to States for the section 130 program based on a 3-year average of these risk factors. The FHWA has been helpful in preparing this legislation, and I want to express my appreciation to them for their assistance.

This legislation will help improve the way the Federal Government targets existing resources to enhance safety on our Nation's highways and along our rail corridors. This legislation does not call for new Federal spending, but rather for a more equitable and effective distribution of existing highway funds to States to enhance safety at dangerous highway rail grade crossings.

I am introducing this measure today anticipating congressional consideration next year of a reauthorization bill to succeed the ISTEA which expires after fiscal year 1997. With the many changes occurring in the 104th Congress, it is unclear what direction the next highway authorization bill will take or what the Federal role will be in maintaining the national transportation infrastructure. I wanted to share with my colleagues my interest in ensuring that highway rail grade crossing safety will be a part of these deliberations. I am hopeful highway rail grade crossing safety improvement efforts will continue in rail intensive States and in other States where accidents and fatalities continue to occur a result of vehicle-train collisions.

I am hopeful this legislation will reinforce the importance of highway rail grade crossing safety issues as the Congress moves forward with the national discussion of U.S. transportation policy for the 21st century. I believe continued emphasis on finding new and better ways to maximize existing resources that enhance safety at highway rail grade crossings will contribute to the overall effort in Congress and in the States to prevent accidents, save lives and sustain a balanced and effective transportation network for the Nation.●

● Mr. COATS. Mr. President, the bill which Senator LUGAR and I are introducing today will help correct a critical deficiency and help prevent senseless, tragic accidents at rail grade crossings.

Indiana is one State which suffers from high numbers of accidents and deaths at railroad crossings. Rail transportation is important in Indiana, playing a key role in the State's agriculture and manufacturing economy. Much of the rail activity goes through northwest Indiana which accounts for 75 percent of the State's rail crossing accidents. In 1994, Indiana ranked third in the Nation with 263 rail crossing accidents, resulting in the deaths of 27 people; 6.1 percent of all rail crossing accidents in America took place in Indiana and 5.9 percent of the fatalities occurred there.

As Senator LUGAR and I became aware that Indiana had a critical problem with rail accidents, we asked the General Accounting Office [GAO] to examine the safety conditions in States with a high concentration of rail crossings. When the GAO report was completed in August 1995, it revealed that although Indiana had a large number of rail crossings—6,700, the sixth largest number of all States—the State received only 3.4 percent of the Federal funding available specifically targeted to prevent such tragedies.

The section 130 program was established in 1973 to help States reduce accidents, injuries, and fatalities at public railroad crossings. In the first 10 years of the program, accidents declined by 61 percent and deaths were reduced by 34 percent. Since 1985, however, there has been little progress made toward further reducing these numbers.

The problem becomes apparent when you realize that many of the States with the highest concentration of crossings, number of accidents, and fatalities receive less money than States which do not have as great a need. Thus, the GAO concluded that the Federal Government should examine funding formulas and consider using risk factors in determining how to distribute section 130 highway dollars to States for rail safety purposes.

The current formula funding—based on 10 percent of a State's surface transportation program [STP] funding—does not take into account such essential criteria as a State's total number of crossings, amount of train traffic, as well as the number of accidents and fatalities. I believe it is critical that these elements—risk factors—be considered in determining how much money a State should receive for rail safety.

The formula enhancement bill corrects this flaw in the current funding formula. Based on the GAO report and working with the Federal Highway Administration, we have crafted legislation which changes the formula in way to ensure that States with the greatest risk receive more funding. This bill does not increase Federal spending in any way. Rather it ensures that current spending on rail safety under section 130 is done more effectively. Specifically, it sets aside 5 percent of the total apportionment for surface transportation program funding and directs it to the States based on the total number of accidents, total number of fatalities, number of public railway highway crossings, and number of passive warning devices.

Under this new formula, Indiana—which received $4.9 million in 1995—could receive $6.6 million. Overall, 24 States would benefit from increased funding to help reduce rail crossing accidents.

It is our goal to work with the Committee on Environment and Public Works to help ensure that this formula change is considered as part of Intermodal Surface Transportation Efficiency Act reauthorization when it occurs either next year or in 1997.

Money alone will not solve all the problems related to rail crossing accidents. I support greater education programs such as Operation Lifesaver. Continued cooperation among all levels of government: local, State, and Federal is essential to stop these sort of tragedies. However, we should also ensure that a Federal program which was designed to help States with safety issues at rail crossings is targeted in a

way which ensures the most effective use of these resources.

It is time for us to direct this program where it has the best hope of making an impact and thus reduce the senseless accidents and tragic deaths at rail crossings.●

By Mr. HATCH:

S. 1513. A bill to amend the Trademark Act of 1946 to make certain revisions relating to the protection of famous marks; to the Committee on the Judiciary.

THE FEDERAL TRADEMARK DILUTION ACT

Mr. HATCH. Mr. President, I am very pleased to introduce today the Federal Trademark Dilution Act of 1995.

Mr. President, this bill is designed to protect famous trademarks from subsequent uses that blur the distinctiveness of the mark or tarnish or disparage it, even in the absence of a likelihood of confusion. Thus, for example, the use of DuPont shoes, Buick aspirin, and Kodak pianos would be actionable under this bill.

The concept of dilution dates as far back as 1927, when the Harvard Law Review published an article by Frank I. Schecter in which it was argued that coined or unique trademarks should be protected from the ''gradual whittling away of dispersion of the identity and hold upon the public mind'' of the mark by its use on noncompeting goods. Today, 25 States have laws that prohibit trademark dilution.

A Federal dilution statute is necessary, Mr. President, because famous marks ordinarily are used on a nationwide basis and dilution protection is only available on a patchwork system of protection. Further, some courts are reluctant to grant nationwide injunctions for violation of State law where half of the States have no dilution law. Protection for famous marks should not depend on whether the forum where suit is filed has a dilution statute. This simply encourages forum-shopping and increases the amount of litigation.

Moreover, Mr. President, the GATT agreement includes a provision designed to provide dilution protection to famous marks. Thus, enactment of this bill will be consistent with the terms of the agreement, as well as the Paris Convention, of which the United States is also a member. Passage of a Federal dilution statute, Mr. President, would also assist the executive branch in its bilateral and multilateral negotiations with other countries to secure greater protection for the famous marks owned by U.S. companies. Foreign countries are reluctant to change their laws to protect famous U.S. marks if the United States does not afford special protection for such marks.

Mr. President, as many Members will recall, a Federal dilution statute was proposed as part of the comprehensive trademark reform package that was enacted into law in November 1988, and took effect 1 year later. The comprehensive bill initially passed by the Senate included the dilution provision. However, the dilution proposal was deleted from the bill prior to final congressional passage. The current proposal, I believe, eliminates any concerns previously voiced in congressional hearings regarding the former Federal dilution provision.

Mr. President, the bill I am introducing today is the product of years of consideration and the study by Congress and various experts in this field, including the International Trademark Association, formerly the United States Trademark Association. It would amend section 43 of the Trademark Act to add a new subsection (c) to provide protection against another's commercial use of a famous mark which results in the dilution of such mark. The bill defines the term ''dilution'' to mean ''the lessening of the capacity of registrant's mark to identify and distinguish goods and services regardless of the presence or absence of (a) competition between the parties, or (b) likelihood of confusion, mistake, or deception.''

The proposal adequately addresses legitimate first amendment concerns espoused by the broadcasting industry and the media. The bill will not prohibit or threaten noncommercial expression, such as parody, satire, editorial and other forms of expression that are not a part of a commercial transaction. The bill includes specific language exempting from liability the ''fair use'' of a mark in the context of comparative commercial advertising or promotion.

The legislation sets forth a number of specific criteria in determining whether a mark has acquired the level of distinctiveness to be considered famous. These criteria include: First, the degree of inherent or acquired distinctiveness of the mark; second, the duration and extent of the use of the mark; and third, the geographical extent of the trading area in which the mark is used.

With respect to remedies, the bill limits the relief a court could award to an injunction unless the wrongdoer willfully intended to trade on the registrant's reputation or to cause dilution, in which case other remedies under the Trademark Act become available. The ownership of a valid Federal registration would act as a complete bar to a dilution action brought under State law.

Mr. President, the Judiciary Committee, which I chair, looks forward to working with all interested parties to secure enactment of a Federal dilution statute that adequately meets the needs of trademark owners and is consistent with the public interest.

I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 1513

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 ''Federal Trademark Dilution Act of 1995''.

SEC. 2. REFERENCE TO THE TRADEMARK ACT OF 1946.

For purposes of this Act, the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 and following), shall be referred to as the ''Trademark Act of 1946''.

SEC. 3. REMEDIES FOR DILUTION OF FAMOUS MARKS.

(A) REMEDIES.—Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended by adding at the end the following new subsection:

''(c)(1) The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark becomes famous and causes dilution of the distinctive quality of the famous mark, and to obtain such other relief as is provided in this subsection. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to—

''(A) the degree of inherent or acquired distinctiveness of the mark;

''(B) the duration and extent of use of the mark in connection with the goods or services with which the mark is used;

''(C) the duration and extent of advertising and publicity of the mark;

''(D) the geographical extent of the trading area in which the mark is used;

''(E) the channels of trade for the goods or services with which the mark is used;

''(F) the degree of recognition of the mark in the trading areas and channels of trade of the mark's owner and the person against whom the injunction is sought;

''(G) the nature and extent of use of the same or similar marks by third parties; and

''(H) the existence of a registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

''(2) In an action brought under this subsection, the owner of a famous mark shall be entitled only to injunctive relief unless the person against whom the injunction is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner of a famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36, subject to the discretion of the court and the principles of equity.

''(3) The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register shall be a complete bar to an action against that person, with respect to that mark, that is brought by another person under the common law or statute of a State and that seeks to prevent dilution of the distinctiveness of a mark, label, or form of advertisement.

''(4) The following shall not be actionable under this section:

''(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.

''(B) Noncommercial use of a mark.

''(C) All forms of news reporting and news commentary.''.

(b) CONFORMING AMENDMENT.—The heading for title VIII of the Trademark Act of 1946 is amended by striking ''AND FALSE DESCRIPTIONS'' and inserting ''FALSE DESCRIPTIONS, AND DILUTION''.

SEC. 4. DEFINITION.

Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting after the paragraph defining when a mark shall be deemed to be ''abandoned'' the following:

''The term 'dilution' means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of—

''(1) competition between the owner of the famous mark and other parties, or

''(2) likelihood of confusion, mistake, or deception.''.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL TRADEMARK DILUTION ACT OF 1995

Section 1. Section one of the bill provides the short title of the bill, the ''Federal Trademark Dilution Act of 1995.''

Section 2. Section 2 of the bill clarifies the references in the bill to the ''Trademark Act of 1946,'' giving the full title of the law and statutory citations.

Section 3. Section 3 of the bill would create a new Section 43© of the Lanham Act to provide a cause of action for dilution of ''famous'' marks. A new Section 43(c)(1) would provide protection to the owners of famous marks against another person's commercial use in commerce of the mark which dilutes the distinctive quality of the mark. The section would provide protection to famous marks, whether or not the mark is the subject of a federal trademark registration.

Section 3 identifies a list of nonexclusive factors that a court may consider in determining whether a mark qualifies for protection. These factors include: (1) the degree of distinctiveness of the mark; (2) the duration and extent of use of the mark; (3) the geographical extent of the trading area in which the mark is used; and (4) whether the mark is federally registered.

With respect to relief, a new Section 43(c)(2) of the Lanham Act would provide that, normally, the owner of a famous mark will only be entitled to an injunction upon a finding of liability. An award of damages, including the possibility of treble damages, may be awarded upon a finding that the defendant willfully intended to trade on the trademark owner's reputation or to cause dilution of the famous mark.

Under section 3 of the bill, a new Section 43(c)(3) of the Lanham Act would provide that ownership of a valid federal trademark registration is a complete bar to an action brought against the registrant under state dilution law. In this regard, it is important to note that the proposed federal dilution statute would not preempt state dilution laws.

A new Section 43(c)(4) sets forth various activities that would not be actionable. These activities include the use of a famous mark for purposes of comparative advertising, the noncommercial use of a famous mark, and the use of a famous mark in the context of news reporting and news commentary. This section is consistent with existing case law. The cases recognize that the use of marks in certain forms of artistic and expressive speech is protected by the First Amendment.

Section 4. Section 4 of the bill defines the term ''dilution'' to mean the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of (1) competition between the owner of the famous mark and other parties, or (2) likelihood of confusion, mistake, or deception. The definition is designed to encompass all forms of dilution recognized by the courts, including disparagement. In an effort to clarify the law on the subject, the definition also recognizes that a cause of action for dilution may exist whether or not the parties market the same or related goods and whether or not likelihood of confusion exists.

Section 5. Section 5 of the bill makes the legislation effective upon enactment.

SENATE RESOLUTION 206—MAKING MINORITY PARTY APPOINTMENTS

Mr. LEAHY (for Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 206

Resolved, That the following shall constitute the minority party's membership on the Committee on Veterans' Affairs for the second session of the 104th Congress, or until their successors are appointed: Mr. Rockefeller, Mr. Graham, Mr. Akaka, Mr. Wellstone, and Mrs. Murray.

ADDITIONAL STATEMENTS

TEXAS' STATEHOOD SESQUICENTENNIAL

● Mr. GRAMM. Mr. President, I am honored today to recognize a momentous occasion in the history of the great State which I have the privilege to represent, the proud Lone Star State of Texas. This month we recognize and celebrate Texas' statehood sesquicentennial, 150 years during which we have been blessed and have prospered.

The spirit of Texas has been evident since our earliest days, when we were conceived in the eternal struggle for freedom. The men and women of Texas have an innate and inherent commitment to God and country, and even our flag displays a single star—our people have always looked to the Heavens.

No utterance in our State's history better represents the spirit, virtue, and values of Texas, then or now, than the remarkable letter written on February 24, 1836, by William Barret Travis at the Alamo:

To the People of Texas and all Americans in the world—

Fellow citizens and compatriots—

I am besieged, by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man—The enemy has demanded a surrender at discretion; otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat. Then, I call on you in the name of Liberty, or patriotism and of everything dear to the American character, to come to our aid, with all dispatch—The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country—Victory or Death.

WILLIAM BARRET TRAVIS,
Lieutenant Colonel Commandant.

Colonel Travis' letter captures the heart and soul of the people of Texas, and I am honored to recognize the statehood sesquicentennial of my beloved Texas.●

SIGNING DULY ENROLLED BILLS

Mr. DOLE. Mr. President, today when the Senate convened, the President pro tempore, Senator THURMOND, appointed the Senator from Idaho, Senator KEMPTHORNE, to be Acting President pro tempore for the day. It is my understanding Senator THURMOND is necessarily absent attending business in South Carolina and attending the funeral of the president pro tempore of the South Carolina State Senate, the Honorable Marshall Williams.

While Senator KEMPTHORNE was Acting President pro tempore for today, one of his responsibilities was to sign duly enrolled bills. Signing enrolled bills is part of the process necessary prior to the documents being sent to the White House for the President's approval or disapproval.

Senator KEMPTHORNE had the distinct pleasure to sign the following enrolled bills, therefore facilitating their being sent to the White House: H.R. 4, welfare reform; H.R. 394, State pensions; H.R. 1878, enrollment of HMO's; and H.R. 2627, Smithsonian coin.

I want to commend Senator KEMPTHORNE and congratulate him on his work today. I hope the President signs all the bills. That may or may not be the case.

REAUTHORIZING THE TIED AID CREDIT PROGRAM

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2203, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2203) to reauthorize the Tied Aid Credit Program of the Export-Import Bank of the United States, and to allow the Export-Import Bank to conduct a demonstration project.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 2203) was deemed read the third time and passed.