that as long as there is competition between Federal and State programs for LWCF appropriations, the State matching grants will lose. He suggested a separate source of funds.

I am taking his advice to heart, and calling upon Congress to establish a separate and permanent fund for State matching grants.

My legislation creates an $800 million permanent endowment to provide LWCF matching grants to the States. Interest from that account will help provide parks, campgrounds, trails, and recreation facilities for millions of Americans. It will also help preserve open spaces for the future.

Where does that money come from? On June 19, 1997, the Supreme Court ruled the Federal Government retains title to lands underlying tidal waters off Alaska's North Slope. As the result, the government will receive $1.6 billion in escrowed oil and gas lease revenues.

This sum is twice the amount the Congressional Budget Office estimated for the concurrent budget resolution. My bill places this bonus $800 million in a permanent endowment account.

This new approach is consistent with the vision of the Land and Water Conservation Fund Act and a promise made to the American people 30 years ago.

Our Government promised us that a portion of proceeds from offshore oil and gas leases would fund outdoor recreation and conservation. My bill makes good on that promise—permanently. It makes sure the State grants are never forgotten again.

That sound we hear on the doors to this Chamber is opportunity knocking. We must seize the opportunity and use those funds to renew and reinvigorate the bipartisan vision of the LWCF.

I urge my colleagues to join me in this endeavor and support the Community Recreation and Conservation Endowment Act of 1997.

By Mr. ABRAHAM:

S. 1119. A bill to amend the Perishable Agricultural Commodities Act, 1930 to increase the penalty under certain circumstances for commission merchants, dealers, or brokers who misrepresent the country of origin or other characteristics of perishable agricultural commodities; to the Committee on Agriculture, Nutrition, and Forestry.

FOOD SAFETY LEGISLATION

Mr. ABRAHAM. Mr. President, in March of this year, over 200 schoolchildren in my State contracted the hepatitis A virus from food served by the school lunch program. As news of the outbreak began to pour in, the Michigan Department of Community Health and the Centers for Disease Control went into action to determine the cause. They soon found the culprit: Frozen strawberries sold to the school lunch program by a San Diego company named Andrews and Williamson. Investigators also discovered that some of the strawberries sold to the school lunch program had been illegally certified as domestically grown when, in fact, they had been grown in Mexico.

There does not currently exist a method for testing strawberries for the hepatitis A virus. Thus, we may never know whether the strawberries brought in from Mexico were the source of this pathogen. Given the growing conditions that USDA investigators found at the farm, however, the likelihood is strong.

And one thing we do know, Mr. President, is that these strawberries should never have been served in the school lunch program in the first place. By law, products sold to the school lunch program must be certified as being domestically grown. Unfortunately, because the USDA lacks the resources to effectively enforce this requirement, companies have typically been trusted to do the right thing. Andrews and Williamson chose to do something else. They chose to break the law by misrepresenting their product's country-of-origin, and over 200 people were poisoned as a result.

This dangerous incident, the poisoning of Michigan children by their own school lunch program, compelled and received my immediate involvement. Shortly after the outbreak, I called for, and was granted, a hearing on the matter. I arranged to have officials from the CDC come to my state to brief the families of those affected. During this process I learned of the similar efforts being made by a private organization called Safe Tables Our Priority [STOP]. Their assistance throughout this process has been invaluable.

One of the first things I learned while studying this issue was that a specific statute exists which states that misrepresenting the country-of-origin of a perishable good is a crime. Unfortunately, the penalty for such fraud is a $2,000 fine and possible loss of license; a rather small price to pay for poisoning over 200 people.

Of course, this does not mean that A&W will walk away from this incident without paying a price. After reviewing the case made by investigators from the USDA, the U.S. Attorneys Office filed 47 charges against A&W. The first charge is conspiracy to defraud the United States. Counts two, three and four are for making false statements, and counts five through forty-seven are for making false claims. For each of these counts, the maximum penalty is 5 years and/or $250,000 per count or $500,000 for a corporation.

I state these charges because they do not include any mention of the specific crime which A&W is accused of violating, namely, misrepresenting the country-of-origin for a perishable food. Well, Mr. President, I intend to rectify this oversight. Today I am introducing legislation which modifies current law such that an intentional misrepresentation of the origin, kind or character of any perishable commodity, the reckless disregard of the effects on the public safety of such action, or violations which result in serious injury, illness or death will constitute a felony with a maximum penalty of five years imprisonment and/or a fine of $250,000 per count.

This change in law will ensure that individuals who intentionally misrepresent their goods will now suffer the appropriate consequences of their actions. The recent outbreaks of hepatitis A, Cyclospora and E Coli demonstrate that a new commitment to food safety is sorely needed in this country. I will continue working to see that Congress takes the appropriate measures to assist the USDA, FDA and Centers for Disease Control in their efforts to keep America's food supply the safest in the world.

Mr. President, I ask consent that the full text of the bill be printed in the RECORD.

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

S. 1119

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MISREPRESENTATION OF COUNTRY OF ORIGIN OR OTHER CHARACTERISTICS OF PERISHABLE AGRICULTURAL COMMODITIES.

Section 2(5) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499b(5)), is amended by adding at the end the following: ''If a court of competent jurisdiction finds that a person has intentionally, or with reckless disregard, engaged in a misrepresentation described in this paragraph and the misrepresentation resulted in a serious bodily injury (as defined in section 1365(g) of title 18, United States Code) to, or death of, an individual, the person shall be guilty of a Class D felony that is punishable under title 18, United States Code.''

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THOMPSON, and Mr. KOHL):

S. 1121. A bill to amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty; to the Committee on the Judiciary.

THE WIPO COPYRIGHT AND PERFORMANCE AND PHONOGRAMS TREATY IMPLEMENTATION ACT OF 1997

Mr. HATCH. Mr. President, today I am introducing legislation proposed by the Clinton administration to implement two important treaties that were adopted last December by the World Intellectual Property Organization (WIPO). The distinguished Ranking Member of the Judiciary Committee, Sen. LEAHY, the distinguished Senator for Tennessee, Sen. THOMPSON, and the distinguished Senator from Wisconsin, Sen. KOHL, join me as original cosponsors. I strongly support adoption of the treaties, and I am introducing this bill on behalf of the Administration as an essential step in that process. I believe that the Administration's bill provides an excellent starting point for the debate on exactly what must be changed in U.S. law in order to comply with the treaties.

The WIPO Copyright Treaty and the WIPO performances and Phonograms

Treaty—completed after years of intense lobbying by the United States government—will update international copyright law for the digital age and ensure the protection of American creative products abroad. I want to commend Secretary of Commerce Bill Daley, Commissioner of Patents and Trademarks Bruce Lehman, and their staffs for their efforts in moving this important issue forward, and I welcome the opportunity to work with them during the legislative process.

The United States leads the world in the production of creative works and high-technology products—including software, movies, recordings, music, books, video games, and information. Copyright industries represent nearly 6% of the U.S. gross domestic product, and nearly 5% of U.S. employment. Yet American companies lose $18–20 billion every year due to international piracy of copyrighted works. The film industry alone estimates its annual losses due to counterfeiting in excess of $2.3 billion, even though full-length motion pictures are not yet available on the Internet. The recording industry estimates that it looses more than $1.2 billion each year due to piracy, with seizures of bootleg CDS up some 1,300 percent in 1995. These figures will only continue to grow with the recent technological developments that permit creative products to be pirated and distributed globally with the touch of a button, significantly weakening international protection for the copyrighted works that are such a critical part of this country's economic backbone and costing the U.S. economy exports and jobs.

The WIPO treaties will raise the minimum standards for copyright protection worldwide, providing the U.S. with the tools it needs to combat international piracy. But the treaties will be meaningless unless they are ratified by a large number of countries. It is therefore up to the United States to demonstrate leadership on this issue by ratifying and implementing the treaties promptly. Swift U.S. action will encourage global implementation of the WIPO treaties, and will signal U.S. determination to curb the threat that international piracy poses to U.S. jobs and the economy.

This bill takes the approach that the substantive protections in U.S. copyright law already meet the standards of the new WIPO treaties, and therefore very few changes to U.S. law are necessary in order to implement the treaties. In addition to minimal technical amendments, the treaties require signatory countries to provide legal protections against the circumvention of certain technologies that copyright owners use to protect their works and to guard against the alteration or falsification of identifying data known as copyright management information (CMI).

This ''minimalist'' bill is the product of much hard work by the Administration, and represents many months of negotiations among interested parties, including software companies, computer manufacturers, and the copyright community. This bill is a compromise; it does not represent any group's ''wish list'' for WIPO implementing legislation. The Administration has tried to craft a bill that addresses only those issues required by the treaties without altering the substantive protections and exceptions provided under U.S. copyright law or injecting extraneous issues into the treaty process. The Administration has tried to preserve the delicate balance that U.S. law already strikes between copyright owners and users, since the WIPO treaties were not intended to upset that balance.

I urge my colleagues to give this legislation serious consideration. The Judiciary Committee will begin hearings on this bill shortly. I would like to see the treaties go into effect this year, and I will try hard to meet this goal. However, the late date on which the Administration has submitted the legislation may render this goal unachievable.

In any event, we must act promptly to ratify and implement the WIPO treaties in order to demonstrate leadership on international copyright protection, so that the WIPO treaties can be implemented globally and so that further theft of our nation's most valuable creative products may be prevented.

Mr. President, I ask unanimous consent that a copy 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. 1121

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

SECTION 1. SHORT TITLE.

This Act may be cited as the ''WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997''.

SEC. 2. TECHNICAL AMENDMENTS.

(a) Section 101 of Title 17, United States Code is amended—

(1) by deleting the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin; of a Berne Convention work,'' by deleting ''The 'country of origin; of a Berne Convention work,'', capitalizing the first letter of the word ''for'', deleting ''is the United States'' after ''For purposes of section 411,'', and inserting ''a work is a 'United States work' only'' after ''For purposes of section 411,'',

(3) in subsection (1)(B) of the definition of ''The 'country' of a Berne Convention work'', by inserting ''treaty party of parties'' and deleting ''nation of nations adhering to the Berne Convention'';

(4) in subsection (1)(C) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(5) in subsection (1)(D) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(6) in section (3) of the definition of ''The 'country of origin' of a Berne Convention work'', by deleting ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States'';

(7) after the definition for ''fixed'', by inserting ''The 'Gevena Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland on October 29, 1971.'';

(8) after the definition for ''including''; by inserting ''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party,'';

(9) after the definition for ''transmit'', by inserting ''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(10) after the definition for ''widow'', by inserting ''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(11) after the definition for ''The 'WIPO Copyright Treaty'', by inserting ''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland on December 20, 1996.'', and

(2) by inserting, after the definition for ''work for hire'', ''The 'WTO Agreement' is the Agreement Establishing the World Trade Organization entered into on April 15, 1994. The terms ''WTO Agreement'' and ''WTO member country'' have the meanings given those terms in paragraph (9) and (10) respectively of section 2 of the Uruguay Round Agreements Act.''

(b) Section 104 of Title 17, United States Code is amended—

(1) in section (b)(1) by deleting ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(2) in section (b)(2) by deleting ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(3) by renumbering the present section (b)(3) as (b)(5) and moving it to its proper sequential location and inserting a new section (b)(3) and to read:

''(3) the work is a sound recording that was first fixed in a treaty party; or '';

(4) in section (b)(4) by deleting ''Berne Convention work'' and inserting ''pictorial, graphic or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party'';

(5) by renumbering present section (b)(5) as (b)(6),

(6) by inserting a new section (b)(7) to read:

''For purposes of paragraph (2), a work that is published in the United States or a treaty party within thirty days of publication in foreign nation that is not a treaty party shall be considered first published in the United States or such treaty party as the case may be.'';

and

(7) by inserting a new section (d) to read:

''(d) Effect of Phonograms Treaties.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this

title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) Section 104A(h) of Title 17, United States Code, is amended—

(1) in paragraph (1), by deleting ''(A) a nation adhering to the Berne Convention or a WTO member country, or (B) subject to a Presidential proclamation under subsection (g),'' and inserting

''(A) a nation adhering to the Berne Convention,

''(B) a WTO member country;

''(C) a national adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performance and Phonograms Treaty, or

''(E) subject to a Presidential proclamation under subsection (g)'';

(2) paragraph (3) is amended to read as follows—

''(3) the term ''eligible country'' means a nation, other than the United States that—

''(A) becomes a WTO member country after the date of enactment of the Uruguay Round Agreements Act;

''(B) on the date of enactment is, or after the date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g)'';

(3) in paragraph (6)(C)(iii), by deleting ''and'' after ''eligibility'';

(4) at the end of paragraph (6)(D), by deleting the period and inserting ''; and'';

(5) by adding the following new paragraph (6)(E):

''(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording'',

(6) in paragraph (8)(B)(i), by inserting ''of which'' before ''the majority'' and striking ''of eligible countries''; and

(7) by deleting paragraph (9).

(d) Section 411 of Title 17, United States Code, is amended—

(1) in subsection (a), by deleting ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) in subsection (a), by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) Section 507(a) of title 17, United States Code, is amended by adding at the beginning, ''Except as expressly provided elsewhere in this title.

SEC. 3. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States code, is amended by adding the following new chapter: ''Chapter 12.—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''Sec.

''1201. Circumvention of Copyright Protection Systems

''1202. Integrity of Copyright Management Information

''1203. Civil Remedies

''1204. Criminal Offenses and Penalties

''§ 1201. Circumvention of Copyright Protection Systems

''(a)(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under title 17.

''(2) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that

''(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under Title 17,

''(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under Title 17, or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing a technological protection measure that effectively controls access to a work protected under Title 17.

''(3) As used in this subsection,

''(A) 'circumvent a technological protection measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological protection measure, without the authority of the copyright owner.

''(B) a technological protection measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b)(1) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof,

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof, or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof.

''(2) As used in this subsection,

''(A) 'circumvent protection afforded by a technological protection measure' means avoiding, bypassing removing, deactivating, or otherwise impairing a technological protection measure;

''(B) a technological protection measure 'effectively protects a right of a copyright owner under Title 17' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under Title 17.

''(c) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer or consignee of any technology, product, service, device, component, or part thereof as described in this section shall be actionable under section 1337 of Title 19.

''(d) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under Title 17.

''(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

''§ 1202. Integrity of Copyright Management Information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly—

(1) provide copyright management information that is false, or

(2) distribute or import for distribution copyright management information that is false, with the intent to induce, enable, facilitate or conceal an infringement of any right under Title 17.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under Title 17.

''(c) DEFINITION.—As used in this chapter, 'copyright management information; means the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form:

''(1) The title and other information identifying the work, including the information set forth on a notice of copyright;

''(2) The name of, and other identifying information about, the author of a work;

''(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright;

''(4) Terms and conditions for use of the work;

''(5) Identifying numbers or symbols referring to such information or links to such information; or

''(6) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.''

''(d) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

''§ 1203. Civil Remedies

''(a) CIVIL ACTION.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

''(2) at any time while an action in pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof.

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device

or product involved in the violation that is in the custody or control of the violator or has been impounded under subsection (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this chapter, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided by subsection (2), or

''(B) statutory damages, as provided by subsection (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—

''(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention device, product, component, offer or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

''§ 1204. Criminal Offenses and Penalties.

''(a) Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both for the first offense and shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both for any subsequent offense.''

''(b) Notwithstanding section 507(a) of this title, no criminal proceeding shall be brought under section 1204 unless such proceeding is commenced within five years after the cause of action arose.''

SEC. 4. CONFORMING AMENDMENTS.

The table of chapters for Title 17, United States Code, is amended by adding at the end the following:

''12. COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS .... *1201''.*

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act, except clause (5) of the definition of ''international agreement'' as amended by section 2(a)(8) of this Act, section 2(a)(10) of this Act, clause (C) of section 104(h)(1) of Title 17 as amended by section 2(c)(1) of this Act and clause (C) of section 104(h)(3) of Title 17 as amended by section 2(c)(2) of this Act shall take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, and clause (6) of the definition of ''international agreement'' as amended by section 2(a)(8) of this Act, section 2(a)(11) of this Act, section 2(b)(7) of this Act, clause (D) of section 104A(h)(1) of Title 17 as amended by section 2(c)(2) of this Act, and sections 2(c)(4) and 2(c)(5) of this Act shall take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States.

Mr. LEAHY. Mr. President, the successful adoption by the World Intellectual Property Organization [WIPO] of two new copyright treaties—one on written material and one on sound recordings—in Geneva last December was appropriately lauded in the United States. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty will give a significant boost to the protection of intellectual property rights around the world, and stand to benefit important American creative industries—from movies, recordings, computer software and many other copyrighted materials that are subject to piracy on-line.

According to Secretary Daley of the Department of Commerce, for the most part, ''the treaties largely incorporate intellectual property norms that are already part of U.S. law.'' What the treaties will do is give American owners of copyrighted material an important tool to protect their intellectual property in those countries that become a party to the treaties. With an ever-expanding global marketplace, such international protection is critical to protect American companies and, ultimately, American jobs and the U.S. economy.

Over the past few months, I spoke and wrote to Secretary Daley urging him to transmit without delay the administration's proposal for implementing legislation. I am very pleased that earlier this week, the administration did so. The legislative package we received is an excellent start for moving forward, and I commend the administration, Secretary Daley and, in particular, Assistant Secretary Bruce Lehman of the Patent and Trademark Office for their hard work on this proposal.

I am glad to introduce this legislation, with Senator HATCH, on behalf of the administration. I hope we will take this matter up for hearings and further deliberation and action promptly after the recess.

In sum, this bill makes certain technical changes to conform our copyright laws to the treaties and substantive amendments to comply with two new Treaty obligations. Specifically, the treaties oblige the signatories to provide legal protections against circumvention of technological measures used by copyright owners to protect their works, and against violations of the integrity of copyright management information [CMI], which identifies a work, its author, the copyright owners and any information about the terms and conditions of use of the work. The bill adds a new chapter to U.S. copyright law to implement the anti-circumvention and CMI provisions, along with corresponding civil and criminal penalties.

Technological developments, such as the development of the Internet and remote computer information data bases, are leading to important advancements in accessibility and affordability of art, literature, music, film and information and services for all Americans. As Vinton Cerf, the coinventor of the computer networking protocol for the Internet, recently stated in The New York Times:

> The Internet is now perhaps the most global and democratic form of communications. No other medium can so easily render outdated our traditional distinctions among localities, regions and nations.

We see opportunities to break through barriers previously facing those living in rural settings and those with physical disabilities. Democratic values can be served by making more information and services available.

These methods of distribution also dramatically affect the role of copyright. Properly balancing copyright interests to encourage and reward creativity, while serving the needs of public access to works, can be a challenge. The public interest requires the consideration and balancing of such interests. In the area of creative rights that balance has rested on encouraging creativity by ensuring rights that reward it while encouraging its public performance, distribution and display.

I was glad to have played a role in the development and enactment of the Digital Performance Right in Sound Recording Act, Public Law 104–39. That legislation served in many respects as the precursor to the WIPO Treaty on performance rights adopted last December. Performance rights for sound recordings is an issue that has been in dispute for over 20 years. I was delighted in 1995 when we were finally able to enact a U.S. law establishing that right.

I believe that musicians, singers and featured performers on recordings ought to be compensated like other creative artists for the public performances of works that they create and that we all enjoy. I wanted companies that export American music not to be disadvantaged internationally by the lack of U.S. recognition of such a performance right. Most of all, I wanted to be sure that our laws be fair to all parties—to performers, musicians, songwriters, music publishers, performing rights societies, emerging companies expanding new technologies, and, in particular, consumers and the public.

I am glad to have been able to play a role in redesigning the performance right in sound recording law to meet these objectives. Our substitute, which was ultimately enacted, preserved existing rights, encouraged the development of new technologies, and promoted competition as the best protection for consumers. Working with Senator THURMOND, then chairman of the Antitrust Subcommittee, and with the

help of the Antitrust Division of the Department of Justice, we were able to strengthen the bill in significant regard. I was pleased to cosponsor the substitute and to work for its passage.

I have also been supportive of copyright protection and anticircumvention legislation over the past several years and been working on ways to utilize copyright management information to protect and inform consumers.

I anticipate that at Judiciary Committee hearings on this important measure, we will examine the impact of the treaties and this implementing legislation, both domestically and internationally, on the careful balance we always strive to maintain between the authors' interest in protection along with the public's interest in the accessibility of information.

Ours is a time of unprecedented challenge to copyright protection. Copyright has been the engine that has traditionally converted the energy of artistic creativity into publicly available arts and entertainment. Historically, the Government's role has been to encourage creativity and innovation by protecting copyrights that create incentives for the dissemination to the public of new works and forms of expression. That is the tradition which I intend to continue.

Mr. KOHL. Mr. President, along with my colleagues, Senators HATCH and LEAHY, I rise in support in the WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997. This proposal, while clearly not a final product, is nevertheless an important step forward in our ongoing battle against illegal copying of protected works—such as movies, books, musical recordings, and software. Let me also commend the administration, especially the Commerce Department and the Patent and Trademark Office, for their hard work in pushing for the underlying treaty and assembling a workable proposal to ensure the value of intellectual property.

What makes this legislation so important to our economy? Consider that the copyright industries had over $53 billion in foreign sales in 1995, surpassing every other export industry except automobiles and agriculture. Also consider that the copyright industries employ nearly 6 million people in the United States, or about 4.8 percent of our work force. But despite the tremendous contribution these businesses make to our economy, we still lose more than $15 billion each year due to foreign copyright piracy, according to some estimates. That is not only wrong; it is unacceptable.

Mr. President, we need to maintain our status as an international leader in the fight against illegal copying because many nations look to us for guidance in setting their own standards for copyright protection. And we need to show strong leadership in this area because, otherwise, some nations with troubling histories of copyright piracy will be even less likely to improve their records. This proposal moves us in the right direction.

Some of my colleagues may remember back in 1991 when I introduced similar legislation, the Motion Picture Anti-Piracy Act, to deal with the problem of video bootlegging. Although today's technology is more advanced than in 1991, the problem of unauthorized copying remains. Indeed, it has in some respects grown even worse. The spread of copying technology worldwide, including piracy that takes place with the touch of a button over the Internet, begins to explain the scope of this problem. And because the piracy problem extends across national borders, the best way to address unauthorized copying is through international agreements that go after devices deliberately designed to circumvent technological protection measures.

Mr. President, this bill generally takes the right approach. It makes it illegal to circumvent various copyright protection systems, it protects the integrity of copyright management information, and it provides for both civil and criminal penalties to deter potential violators. Some have suggested that it goes too far, while others argue that the bill does not go far enough. In any event, we should view this proposal as a point of departure rather than a final product. And we should make certain, as the measure moves forward, that it doesn't restrict products that have other beneficial uses.

Mr. President, let me make one additional point. The bill does not address the issue of online service provider liability. This issue needs to be discussed and resolved, whether as part of this legislation or separately. But it shouldn't slow down the consideration of the bill we have before us. The WIPO Implementation Act is a significant step in curbing illegal copying, and I urge my colleagues to join me in supporting it.

By Mr. KOHL (for himself, Mr. GRASSLEY, and Mr. REID):

S. 1122. A bill to establish a national registry of abusive and criminal patient care workers and to require criminal background checks of patient care workers; to the Committee on Finance.

THE PATIENT ABUSE PREVENTION ACT

Mr. KOHL. Mr. President, I rise to introduce the Patient Abuse Prevention Act, a bill to establish greater safeguards in our health care system for vulnerable Americans. I am pleased to be joined in offering this bill by Senate Committee on Aging Chairman CHARLES GRASSLEY and Senator HARRY REID.

One of the most difficult times for any family is when a senior or disabled member enters a long-term care arrangement. That family should not also be faced with the worry that the long-term care facility or its staff may pose a threat.

Whatever health care setting a family chooses, whether institutional or community-based, there should be assurances that care will be provided by trained and compassionate professionals.

Thankfully, that is the case in most facilities. But in a few cases—and that is a few cases too many—a long-term care facility hires someone who doesn't have the best interests of the patient in mind.

A disturbing number of cases have been reported where health care workers with criminal backgrounds have been cleared to work in a long-term care facility and have abused patients in their care. If only greater attention was given to discovering the background of these applicants, the abuses may have been prevented.

A recent report from the Nation's long-term care ombudsmen indicates that, in 29 States surveyed, 7,043 cases of abuse, gross neglect or exploitation occurred in nursing homes and board and care facilities.

According to a random-sample survey of nursing home staff, 10 percent admitted committing at least one act of physical abuse in the preceding year, and 40 percent committed psychological abuse. Thirty-six percent of the sample had seen at least one incident of physical abuse in the preceding year by other staff members.

These statistics may only scratch the surface of the problem. It's quite likely that the incidence of abuse is far more prevalent. In fact, the Office of Inspector General at the Department of Health and Human Services has reported that 46 percent of respondents questioned believed abuse is only sometimes or rarely reported.

Mr. President, the vast majority of health care facilities and their employees are dedicated and work hard under stressful conditions to provide the best care possible. But it only takes a few abusive staff to cast a dark shadow over what should be a healing environment.

Although some facilities run thorough background checks on prospective employees, most do not. And even if they wanted to run more complete checks, facilities are prevented due to a fractured and inefficient system.

It is far too easy for a health care worker with a criminal or abusive background to gain employment and prey on the most vulnerable patients.

Why is this? Because current State and national safeguards are inadequate to screen out abusive workers. All States are required to maintain nurse aide registries, but these registries are not comprehensive or efficiently maintained.

Many States limit their registries to nursing home aides, failing to cover home health aides, assisted living workers and hospital aides. Most States don't require criminal background checks of long-term care workers. Further, due to hit and miss investigations, many reports of abuse fall through the cracks.

The problem I find most troubling is the lack of information sharing between States about known criminal

and abusive workers. There are no Federal requirements or guidelines on information sharing about abusive workers—even those who have been convicted in a court of law.

Because no national registry of abusive health care workers exists, people with histories of abuse or serious crimes in one State can simply travel to another State to find work. These workers can also move from a nursing home to home health agencies or to hospitals without ever undergoing a complete background check.

Problems also exist with reporting abuse. Rather than going through the trouble of making a report and drawing possible unwanted attention, a facility often will dismiss a worker without a report ever filed. Further, States hesitate to document problem workers due to the fact that a listing means barring a worker from nursing homes for life.

Much of the public scrutiny on patient abuse has focused on nursing homes. But this is not the only care setting that should have increased protections. Home health care has been dramatically growing as a preferred long-term care option. Yet, protections for home care recipients are even more lax than those for nursing home residents.

While I am pleased to report that some States, including Wisconsin, have begun working to establish criminal background checks and improve their registries, it is clear that effective national protections must be in place to fill the gaps in the system.

The legislation I offer today builds on recommendations by State ombudsmen programs who are the watch guards for long-term care residents. This effort is also in response to calls from consumer groups and the long-term care industry for a streamlined, accurate way to screen potential workers for abusive or criminal histories.

The Patient Abuse Prevention Act creates a national registry of abusive health care workers and requires criminal background checks for those entrusted to care for vulnerable patients.

This would enable States and employers—either by computer or by phone—to check if a potential employee has a criminal record or other problem in their past that should preclude them from caring for the infirm.

The national registry would also create a coordinated information network between States so that violators could not simply travel to another state to find work in a nursing home or other setting.

By far, the best way to stop abuse is to address the situations that lead to problem behaviors. Most studies that have looked into patient abuse indicate that better training would make a big difference. Therefore, this bill creates a demonstration program to investigate best practices in patient abuse prevention. What we learn from this program can then be disseminated by the Department of Health and Human Services and made available to all health care settings.

Mr. President, when a patient moves into a nursing home, or hires a home health care agency, they are entrusting that company with an enormous responsibility.

Any instance of patient abuse is intolerable and inadequate background checks of health care workers is inexcusable.

I believe that protecting our Nation's elderly and infirm Americans from abuse, neglect, and mistreatment should be a national priority. When senior citizens and disabled Americans check into a nursing home or other care setting, they should not have to check their right to a safe environment at the door.

I urge my colleagues to join in this effort so that all Americans can rest more comfortably knowing that their loved ones are receiving the best and safest care possible.

Mr. President, I ask that the text of the Patient Abuse Prevention Act, along with a comprehensive summary now appear in the RECORD.

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

S. 1122

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 ''Patient Abuse Prevention Act''.

SEC. 2. ESTABLISHMENT OF NATIONAL REGISTRY OF ABUSIVE WORKERS.

(a) IN GENERAL.—The Secretary shall establish, under the health care fraud and abuse data collection program established under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), a registry to be known as the ''National Registry of Abusive Workers'' (hereafter referred to in this section as the ''Registry'') to collect and maintain data on covered health care workers (as defined in subsection (e)) who have been the subject of reports of patient abuse.

(b) SUBMISSION OF INFORMATION BY STATE REGISTRIES.—Each State registry under sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (42 U.S.C. 1395i–3(e)(2) and 1396r(e)(2)) shall submit to the Registry any existing or newly acquired information contained in the State registry concerning covered health care workers who have been the subject of confirmed findings of patient abuse.

(c) SUBMISSION OF INFORMATION BY STATE.—Each State shall report to the Registry any existing or newly acquired information concerning the identity of any covered health care worker who has been found to have committed an abusive act involving a patient, including the identity of any such worker who has been convicted of a Federal or State crime as described in section 1128(a)(2)(A) of the Social Security Act (42 U.S.C. 1320a–7(a)(2)(A)). The State shall provide such workers with a right to issue a statement concerning the submission of information to the Registry under this subsection. Any information disclosed concerning a finding of an abusive act shall also include disclosure of any statement submitted by a worker in the registry relating to the finding or a clear and accurate summary of such a statement.

(d) SUBMISSION OF INFORMATION BY FACILITIES.—Each covered health care facility shall report to the State concerning a covered health care worker who has been found to have engaged in an act of patient abuse. The State shall, in accordance with the procedures described in part 483 of title 42, Code of Federal Regulations (as in effect on July 1, 1995), conduct an investigation with respect to a report under this subsection to determine the validity of such a report.

(e) BACKGROUND CHECK.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Each covered health care facility (as defined in subsection (f)), prior to employing a covered health care worker, shall—

(i) in the case of a covered health care worker who has not otherwise undergone a criminal background check as part of the licensing requirements of a State, as determined under regulations promulgated by the Secretary, provide for the conduct by the State of a criminal background check (through an existing State database (if any) and through the Integrated Automated Fingerprint Identification System) concerning such worker, and provide the worker with prior written notice of the requirement for such a background check;

(ii) obtain from a covered health care worker prior to employment a written certification that such worker does not have a criminal record, and that a finding of abuse has not been made relating to such worker, that would preclude such worker from carrying out duties that require direct patient care; and

(iii) in the case of all such workers, contact the State health care worker registries established under sections 1819(e)(2) and 1919(e)(2) which shall also contact the Registry for information concerning the worker.

(B) IMPOSITION OF FEES.—A State may assess a covered health care facility a fee for the conduct of a criminal background check under subparagraph (A)(i) in an amount that does not exceed the actual cost of the conduct of the background check. Such a facility may recover from the covered health care worker involved a fee in an amount equal to not more than 50 percent of the amount of the fee assessed by the State for the criminal background check.

(C) EFFECTIVE DATE.—The requirement in subparagraph (A)(i) shall become applicable on January 1, 1999, or on such earlier date as the Director of the Federal Bureau of Investigation determines that the Integrated Automated Fingerprint Identification System has become operational.

(2) PROBATIONARY EMPLOYMENT.—Each covered health care facility shall provide a probationary period of employment for a covered health care worker pending the completion of the background checks required under paragraph (1)(A). Such facility shall maintain direct supervision of the covered health care worker during the worker's probationary period of employment.

(3) PENALTY.—

(A) IN GENERAL.—A covered health care facility that violates paragraph (1) or (2) shall be subject to a civil penalty in an amount not to exceed—

(i) for the first such violation, $2,000; and

(ii) for the second and each subsequent violation within any 5-year period, $5,000.

(B) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under subparagraph (A), a covered health care facility that—

(i) knowingly continues to employ a covered health care worker in violation of paragraph (1) or (2) in a position involving direct patient care; or

(ii) knowingly fails to report a covered health care worker who has been determined to have committed patient abuse;

shall be subject to a civil penalty in an amount not to exceed $5,000 for the first such

violation, and $10,000 for the second and each subsequent violation within any 5-year period.

(f) DEFINITIONS.—In this section:

(1) COVERED HEALTH CARE FACILITY.—The term ''covered health care facility'' means—

(A) with respect to application under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), a provider of services, as defined in section 1861(u) of such Act (other than a fund for purposes of sections 1814(g) and 1835(e));

(B) with respect to application under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), any nursing facility, home health agency, community-based residential facility, adult day care center, adult family home, assisted living facility, hospice program, hospital, treatment facility, personal care worker agency, supportive home care worker agency, board and care facility, or any other entity that receives assistance or benefits under the medicaid program under that title;

(C) a facility of the National Institutes of Health;

(D) a facility of the Indian Health Service;

(F) a health center under section 330 of the Public Health Service Act (42 U.S.C. 254b);

(G) a hospital or other patient care facility owned or operated under the authority of the Department of Veterans Affairs or the Department of Defense.

(2) COVERED HEALTH CARE WORKER.—The term ''covered health care worker'' means any individual that has direct contact with a patient of a covered health care facility under an employment or other contract, or under a volunteer agreement, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and non-licensed individuals providing such services as defined by the Secretary including nurse assistants, nurses aides, home health aides, and personal care workers and attendants.

(3) PATIENT ABUSE.—The term ''patient abuse'' means any incidence of abuse, neglect, mistreatment, or misappropriation of property of a patient of a covered health care facility. The terms ''abuse'', ''neglect'', ''mistreatment'', and ''misappropriation of property'' shall have the meanings given such terms in part 483 of title 42, Code of Federal Regulations.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(g) CONSULTATION.—In carrying out this section the Secretary shall consult with the Director of the Federal Bureau of Investigation.

(h) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall promulgate regulations to carry out this section. With respect to subsections (b) and (c), the regulations shall call for the submission of information to the Registry not later than 30 days after the date of a conviction or on which a finding is made.

SEC. 3. EXCLUSION OF CERTAIN INDIVIDUALS FROM PARTICIPATION IN PROGRAMS.

(a) MANDATORY LIFETIME EXCLUSION.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following:

''(5) CRIMINAL CONVICTION.—Any individual or entity that has been—

''(A) convicted, under Federal or State law, of a criminal offense involving a crime against bodily security, including homicide, battery, endangerment of safety, sexual assault, child or elder abuse, and spousal abuse; or

''(B) found to have—

''(i) knowingly continued to employ an individual described in subparagraph (A) in a position involving direct patient care; or

''(ii) knowingly failed to report an individual who has been determined to have committed a crime described in subparagraph (A).''.

(b) PERMISSIVE EXCLUSION.—

(1) IN GENERAL.—Section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7(b)) is amended—

(A) in subsection (b), by adding at the end the following:

''(16) FINDING RELATING TO PATIENT ABUSE.—Any individual or entity that—

''(A) is or has been the subject of a specific documented finding of patient abuse by a State (as determined under procedures utilized by a State under section 1819(e)(2) or 1919(e)(2)); or

''(B) has been found to have—

''(i) knowingly continued to employ an individual described in subparagraph (A) in a position involving direct patient care; or

''(ii) knowingly failed to report an individual who has been determined to have committed patient abuse as described in subparagraph (A).''; and

(B) in subsection (c)(3), by adding at the end the following:

''(G) In the case of an exclusion of an individual or entity under subsection (b)(16), the period of exclusion shall be determined in accordance with regulations promulgated by the Secretary based on the severity of the conduct that is the subject of the exclusion.''.

(2) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate regulations to establish periods of exclusion for purposes of section 1128(c)(3)(G) of the Social Security Act.

(c) EXCLUSIONS APPLY TO ANY ENTITY ELIGIBLE FOR FEDERAL REIMBURSEMENT.—Section 1128 of the Social Security Act (42 U.S.C. 1320a–7) is amended by adding at the end the following:

''(j) APPLICABILITY OF CERTAIN EXCLUSIONS.—The exclusion (or direction to exclude) an individual or entity under subsections (a)(2) and (b)(16) shall provide that such individual or entity is excluded from working for or on behalf of any entity that is eligible for reimbursement under a Federal health care program, as defined in section 1128B(f).''.

SEC. 4. PREVENTION AND TRAINING DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration program to provide grants to develop information on best practices in patient abuse prevention training (including behavior training and interventions) for managers and staff of hospital and health care facilities.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall be a public or private nonprofit entity and prepare and submit to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—

(1) examine ways to improve collaboration between State health care survey and provider certification agencies, long-term care ombudsman programs, the long-term care industry, and local community members;

(2) examine patient care issues relating to regulatory oversight, community involvement, and facility staffing and management with a focus on staff training, staff stress management and staff supervision;

(3) examine the use of patient abuse prevention training programs by long-term care entities, including the training program developed by the National Association of Attorneys General, and the extent to which such programs are used; and

(4) identify and disseminate best practices for preventing and reducing patient abuse.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

PATIENT ABUSE PREVENTION ACT

SECTION 1. SHORT TITLE: ''PATIENT ABUSE PREVENTION ACT''

SECTION 2. CREATION OF NATIONAL REGISTRY OF ABUSIVE WORKERS

The National Registry will be established and maintained by the Department of Health and Human Services, Office of Inspector General. HHS is currently setting up a health care fraud and abuse data bank pursuant to the Health Insurance Portability and Accountability Act. This bill would increase the scope of that data bank and require active use of the registry. HHS will coordinate criminal findings and listings with the FBI.

Timeline—Within six months after the bill is enacted, HHS will establish the National Abuse Registry and publish regulations regarding submission of information from state abuse registries to the National Registry. Abuse findings will be reported to the Registry no later than 30 days following confirmation.

CONTENTS/USE OF REGISTRY

States will submit current nurse aide abuse registries to HHS following issuance of regulations on standard formats for submission.

States will expand nurse aide abuse registries to include other health care workers and personnel that have direct contact with vulnerable patients. Current state registries are limited to nurse aides, and in some states, home health aides.

The National Registry will also include all health care workers who have been convicted of an abuse, who have been subject to an abuse finding or who have a criminal record that has a bearing on the care of vulnerable patients.

Any provider hiring or employing a direct care worker would contact the state for a check on the state registry and a check of the National Registry. In addition, a criminal background check will be initiated (described below).

REPORTS OF ABUSE

Current HHS regulations require long-term care facilities to investigate and report abuses for further investigations to the appropriate state agency. This codifies that requirement.

Similarly, states must investigate patient abuse reports and contact the National Registry with any confirmed abuses.

Any finding of abuse will be submitted to the National Registry along with a statement of the person subject to the finding. Any abuse disclosure shall be accompanied by the statement.

States will also report known serious criminal convictions of health care workers outside of the health care setting to the national abuse registry. HHS will consult with the Department of Justice to address privacy concerns and to ensure coordination of the health care registry with national criminal data bank maintained by the FBI.

MANDATORY CRIMINAL BACKGROUND CHECKS

FBI criminal background checks will be required for those direct patient care workers who have not been subject to a criminal background check under state licensing requirements. This includes licensed practitioners who have not undergone a background check, nurse aides, home health aides

and other workers that will have unsupervised contact with a vulnerable patient.

States will submit check requests to the FBI national criminal background check system (fingerprint checks). Because of the current backlog at FBI for fingerprint checks, the provision is delayed until no later than January 1, 1999. At that time, FBI should have the Integrated Automated Fingerprint Identification System fully operational. That system should operate within a two-day turn around and at less cost than the current manual system.

Fees: States may charge fees to cover cost of FBI check, not to exceed their cost. Facilities may split the cost of the fees with the applicant.

PENALTIES FOR NON-COMPLIANCE

If a provider fails to inquire with the state and hires a known abuser, the provider is subject to a fine of $2,000 for the first violation and $5,000 for subsequent violations. If there is willful disregard of the background check and reporting requirements, the fines increase up to $10,000.

SECTION 3. CHANGES TO CURRENT LAW EXCLUSIONS AND OBRA '87 PROVISIONS

Current law requires that only nurse aides are listed on state registries. This requirement will be expanded to cover all direct case workers.

Current law already mandates exclusion for those convicted of patient abuse or other crimes within the health care setting. This adds a prohibition to health care workers who have been convicted of the most serious crimes outside of the health care setting, including homicide, battery, sexual assault, and child, elder or spousal abuse.

Varying degrees of abuse ''findings'' will be allowed on state and national registry. One of the main complaints of providers and state ombudsman programs is that a ''finding'' of abuse equates to a ''death sentence'' by banning an individual from working as a nurse aide for life. Due to the severity of the ban, facilities may avoid pursuing a case and States may hesitate to aggressively pursue abuse reports that may or may not lead to a ''finding.'' Therefore, other health facilities may be unaware of instances of abuse or mistreatment. This bill will allow HHS to issue regulations on varying degree's of findings and exclusions so that those who have had problems will be listed, but not necessarily prohibited from working for life.

DEFINITIONS

Covered Care Workers—Patient care workers who have direct assess to vulnerable patients.

Covered Health Care Facilities—those receiving Medicare or Medicaid reimbursement, such as: nursing homes, skilled nursing facilities, home health agencies, community-based residential facilities, board and care facilities, adult day care centers, adult family homes, assisted living facilities, hospice programs, and hospitals. Federal health care facilities are also subject to the requirements.

Abuse—Any finding of abuse, neglect, mistreatment of residents or misappropriation of their property as defined in current Federal regulations relating to nurse aides (CFR, Sect. 483.13 (c)(ii).

Crime—those that reflect a clear disregard for the health, well-being, safety and general welfare of other people must be prohibited from working in direct contact with vulnerable long term care residents or consumers. Current law already requires exclusion of those convicted of health care fraud and acts of abuse in the health care setting. Other crimes may be cause for exclusion under current law at the discretion of the Secretary of HHS. This bill adds a mandatory exclusion of those convicted of serious crimes that occur outside of the health care setting.

SECTION 4. ABUSE PREVENTION/TRAINING DEMONSTRATION

Because the best way to combat patient abuse is to prevent it from occurring, a new demonstration program is created to compile information on best practices in abuse prevention training for managers and staff of health care facilities. The demonstration will focus on ways to improve collaboration between state health care survey and certification agencies, long-term care ombudsman programs, the long term care industry and community members. Current patient abuse prevention training programs will be studied for effectiveness and application to other health care settings.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. D'AMATO, and Mrs. BOXER):

S. 1123. A bill to amend the Internal Revenue Code of 1986 relating to the unemployment tax for individuals employed in the entertainment industry; to the Committee on Finance

UNEMPLOYMENT OFFSET LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce legislation to correct a problem with the way unemployment benefits are currently offset when received by participants in a multiemployer pension plan.

Under our current Unemployment Compensation [UC] system States pay and administer UC benefits. The federal government shares in the cost of these benefits. Since 1980, the Federal Government has required that UC benefits be offset or reduced by any pension benefits that an individual receives from a base-period employer. A base period employer is any employer of the recipient during the 52-week period before the loss of a job.

Here is how it works. If you are involuntarily separated from the same employer that is paying your retirement benefits and your employment caused your retirement benefits to increase any unemployment compensation you may qualify for will be offset by any retirement income received for this same employer. Thus, retirement benefits received could significantly reduce or eliminate any unemployment benefits.

Mr. President, this policy was implemented, in part, to prevent employees from receiving pension benefits and qualifying for unemployment compensation from the same employment.

Unfortunately, the application of the offset requirement to participants in multiemployer pension plans can unfairly penalize some taxpayers. Under current law, all employers in a multiemployer plan group are considered base-period employers for unemployment compensation purposes. Because of this, members of a multiemployer pension plan, such as actors and actresses that return to work, even through it may be for another employer (i.e., studio), are treated as returning to work for the same employer because all entertainment industry employers are part of the same multiemployer pension plan. Thus, when they return to work in their later years and their pension is increased by a nominal amount their unemployment compensation benefits are offset by their full pension amount. This can leave some with the little or no unemployment compensation benefits.

Mr. President, to correct this, I am introducing legislation that would simply limit the unemployment benefit offset to the amount of the pension increase rather than the full pension amount received. Similar legislation has been introduced in the House by Rep. English as H.R. 841.

Mr. President, I hope we can pass this change to allow workers in multiemployer pension plans to receive the same treatment as participants in other plans.

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. 1123

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDIVIDUALS EMPLOYED IN ENTERTAINMENT INDUSTRY.

(a) IN GENERAL.—Section 3304(a)(15) of the Internal Revenue Code of 1986 (relating to reductions in tax) is amended.

(1) by striking ''and'' at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ';and'', and

(3) by adding at the end of the following:

''(C) in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under an entertainment industry plan contributed to by an employer—

''(i) such a reduction shall not be required by reason of such a payment unless—

''(I) such individual worked for such employer before the base period, and

''(II) such employer contributed to such plan an account of such individual's work for such employer before the base period, and

''(ii) subject to subparagraph (B), such reduction shall not exceed the amount (if any) of the increase referred to in subparagraph (A)(ii) in such payment which is attributable to services performed by such individual for such employer;''.

(b) ENTERTAINMENT INDUSTRY PLAN AND EMPLOYER.—Section 3304 of such Code is amended by adding at the end of the following new subsection:

''(g) ENTERTAINMENT INDUSTRY PLANS AND EMPLOYERS.—For purposes of subsection (a)(15)(C)—

''(1) ENTERTAINMENT INDUSTRY PLAN.—The term 'entertainment industry plan' means any multi-employer plan substantially all of the contributions to which are made by entertainment industry employers.

''(2) ENTERTAINMENT INDUSTRY EMPLOYER.—The term 'entertainment industry employer' means any employer substantially all of the trades or businesses of which consists of either or both—

''(A) radio or television broadcasting, and

''(B) the production or distribution of visual images or sound on—

''(i) video or audiotype,

''(ii) film, or

''(iii) computer-generated or other visual for audio media,

for public dissemination (whether for entertainment, informational, commercial, educational, religious, or other purposes).''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to weeks beginning after December 31, 1997.

(2) SPECIAL RULE.—In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not successive) between the date of the enaction of this Act and December 31, 1997, the amendments made by this section shall apply to weeks beginning after the date which is 30 calendar days after the first day on which such legislative is in session on or after December 31, 1997.

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

S. 1124. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on the Judiciary.

WORKPLACE RELIGIOUS FREEDOM ACT

Mr. KERRY. Mr. President, I send a bill to the desk and I ask for its appropriate referral.

Mr. President, I am introducing today a bipartisan bill, together with Senator COATS of Indiana. This is the Workplace Religious Freedom Act of 1997.

This bill would protect workers from on-the-job discrimination related to religious beliefs and practices. It represents a milestone in the protection of the religious liberties of all workers. Senator COATS and I developed this new bill based on a similar bill I introduced earlier this session.

In 1972, Congress amended the Civil Rights Act of 1964 to require employers to reasonably accommodate an employee's religious practice or observance unless doing so would impose an undue hardship on the employer. This 1972 amendment, although completely appropriate, has been interpreted by the courts so narrowly as to place little restraint on an employer's refusal to provide religious accommodation. The Workplace Religious Freedom Act will restore to the religious accommodation provision the weight that Congress originally intended and help assure that employers have a meaningful obligation to reasonably accommodate their employees' religious practices.

The restoration of this protection is no small matter. For many religiously observant Americans the greatest peril to their ability to carry out their religious faiths on a day-to-day basis may come from employers. I have heard accounts from around the country about a small minority of employers who will not make reasonable accommodation for employees to observe the Sabbath and other holy days or for employees who must wear religiously-required garb, such as a yarmulke, or for employees to wear clothing that meets religion-based modesty requirements.

The refusal of an employer, absent undue hardship, to provide reasonable accommodation of a religious practice should be seen as a form of religious discrimination, as originally intended by Congress in 1972. And religious discrimination should be treated fully as seriously as any other form of discrimination that stands between Americans and equal employment opportunities. Enactment of the Workplace Religious Freedom Act will constitute an important step toward ensuring that all members of society, whatever their religious beliefs and practices, will be protected from an invidious form of discrimination.

It is important to recognize that, in addition to protecting the religious freedom of employees, this legislation protects employers from an undue burden. Employees would be allowed to take time off only if their doing so does not pose a significant difficulty or expense for the employer. This common sense definition of undue hardship is used in the ''Americans with Disabilities Act'' and has worked well in that context.

We have little doubt that this bill is constitutional because it simply clarifies existing law on discrimination by private employers, strengthening the required standard for employers. Unlike the Religious Freedom Restoration Act [RFRA], which was declared unconstitutional recently by the Supreme Court, the bill does not deal with behavior by State or Federal Governments or substantively expand 14th amendment rights.

I believe this bill should receive bipartisan support. This bill is endorsed by a wide range of organizations including the American Jewish Committee, Baptist Joint Committee, Christian Legal Society, Seventh-day Adventists, National Association of Evangelicals, National Council of the Churches, National Sikh Center, and Presbyterian Churches. I ask unanimous consent that the letter from the Coalition for Religious Freedom in the Workplace, which represents all of these groups, be included in the RECORD.

I want to thank Senator COATS for joining me in this effort. I look forward to working with him to pass this legislation so that all American workers can be assured of both equal employment opportunities and the ability to practice their religion.

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

S. 1124

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 ''Workplace Religious Freedom Act of 1997''.

SEC. 2. AMENDMENTS.

(a) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(1) by inserting ''(1)'' after ''(j)'';

(2) by inserting '', after initiating and engaging in an affirmative and bona fide effort,'' after ''unable'';

(3) by striking ''an employee's'' and all that follows through ''religious'' and insert ''an employee's religious''; and

(4) by adding at the end the following:

''(2) As used in this subsection, the term 'employee' includes a prospective employee.

''(3) As used in this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense—

''(A) an accommodation shall be considered to require significant difficulty or expense if the accommodation will result in the inability of an employee to perform the essential functions of the employment position of the employee; and

''(B) other factors to be considered in making the determination shall include—

''(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

''(ii) the number of individuals who will need the particular accommodation to a religious observance or practice; and

''(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.''.

(b) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e–2) is amended by adding at the end the following:

''(o)(1) As used in this subsection:

''(A) The term 'employee' includes a prospective employee.

''(B) The term 'leave of general usage' means leave provided under the policy or program of an employer, under which—

''(i) an employee may take leave by adjusting or altering the work schedule or assignment of the employee according to criteria determined by the employer; and

''(ii) the employee may determine the purpose for which the leave is to be utilized.

''(C) The term 'undue hardship' has the meaning given the term in section 701(j)(3).

''(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, an accommodation by the employer shall not be deemed to be reasonable if such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee.

''(3) An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.

''(4) It shall not be a defense to a claim of unlawful employment practice under this title for failure to provide a reasonable accommodation to a religious observance or practice of an employee that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate such observance or practice—

''(A) an adjustment would be made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or