

Well, these kinds of numbers are very consistent with new data recently released by the Employee Benefit Research Institute in its annual Retirement Confidence Survey. Slightly more than one-third of the people surveyed in 1997 have even tried to determine how much they need to save by retirement. Only 27 percent of Americans had an idea of what they would need to accumulate in order to retire and maintain their standard of living.

And people are very afraid. A recent poll by USA Today indicated that 49 percent of people are afraid of not having enough money for retirement.

Clearly, people need help in learning how to achieve a secure retirement. The SAVER bill which is now before the Senate, will do that. The SAVER Act will direct the Department of Labor to maintain an ongoing public education campaign about the need to save for retirement. This campaign will include a broad scope of initiatives including public service announcements, covering public meetings, and crating and disseminating educational materials.

Education has proven to be a powerful motivator for people to pay attention to their retirement savings. According to the Retirement Confidence Survey, of those employees who were provided educational programs and materials about the company pension plan, 45 percent said that it led them to begin contributing to the plan. Furthermore, 49 percent said that the educational programs and materials led them to reallocate their money among investment options offered.

The Department of Labor already has a good start on a public education initiative; this legislation will ensure that public education will continue beyond the current administration because this is a problem that will not go away.

The second important piece of this legislation is the creation of a national event—a national summit on retirement savings at the White House. This summit will be a truly bipartisan event—hosted by both the executive and congressional branch. The summit will bring together more than 200 experts in the field of pensions and retirement savings, elected officials, and representatives from the private sector and the public—all with the goal of raising the profile of the importance of saving and identifying barriers to saving and pension formation.

The first national summit will be held in the summer of 1998—just a short time from now. We will be able to get the summit organized due in large part to the groundwork already laid by a very effective group—the American Savings Education Council or ASEC. ASEC is unique in its origins and its mission. Its membership is made up of public and private sector employers financial, educational, and service organizations; and government agencies.

The organization is committed to helping individuals understand what

they need to do to prepare for retirement and to encourage savings for the future. ASEC has already made appearances in towns around the country to talk about retirement planning and has distributed a logical choice for a private partner to work with the public sector lead—the Department of Labor—to get the national summit on track for 1998.

I would like to commend Congressmen HARRIS FAWELL and DONALD PAYNE for introducing this legislation in the House. The support they generated was an important part of the successful consideration of this bill. I also want to acknowledge the cosponsors in the Senate—Senator KERRY, Senator KYL, Senator HAGEL, Senator TIM HUTCHINSON, Senator ROBB, Senator COLLINS, and Senator COCHRAN.

Today's workers need to be prepared for retirement—private savings can help minimize the risk that they will spend down their employers's 401(k) or count on more pension benefits than they will actually receive from their employer. Or, help prepare for the costs of medical care through long-term care insurance—that is an expense that worries many of today's retirees and their children. As we prepare for debate over the future of public retirement programs we must not overlook the role that private savings and an employer-based pension will play. The Government should play role in encouraging individuals to acquire knowledge that will help them achieve a secure standard of living when they are no longer able to work—SAVER is a critical first step in helping people achieve their hopes for retirement.

Mr. LOTT. Mr. President, I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 1612) was agreed to.

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

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

The bill (H.R. 1377), as amended, was read a third time and passed.

CLONE PAGER AUTHORIZATION ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 166, S. 170.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 170) to provide for a process to authorize the use of clone pagers, and for other purposes.

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

Mr. LEAHY. Mr. President, I am pleased to sponsor S. 170, the clone pager authorization Act, and urge its speedy passage. This bill would enable law enforcement officers to gain quicker and easier access to an important investigatory tool, called a clone pager, which has proven invaluable in gathering evidence against gang members, drug traffickers and organized crime members.

I was pleased to have helped improve this bill from the version introduced in the last congress. We included it in the juvenile crime bill, S. 15, that I sponsored along with other Democratic Members on the first day of this session and which the Democratic leader designated among our top legislative priorities.

While pagers are, of course, used legitimately by millions of people, these devices are relied upon by gangsters and drug dealers to carry on their illicit business from roving offices that enable time to commit crimes no matter where they are at any time of day or night. Indeed, pagers are so popular among drug traffickers, these devices are considered a regular tool of the drug trade.

A clone pager is programmed identically to the pager used by a suspected criminal so that it displays the same numbers transmitted to, and displayed on, the suspect's pager. A law enforcement officer using the clone pager is thereby able to receive the identical pager message at the same time as the targeted criminal.

How does this help law enforcement? When a drug dealer moves about town conducting his illicit business, he can keep in constant touch with his criminal associates, including his drug suppliers and customers, by carrying a pager. Contacting the dealer wherever he may be is a simple matter of calling his pager. The drug dealer can then pull up to the nearest public telephone to return the call at the number displayed on his pager. A clone pager, which simultaneously displays the same call-back numbers received by the targeted drug dealer, alerts law enforcement officers to the telephone numbers used by the dealer's suppliers and associates, and through those numbers, their locations.

To determine the telephone numbers of associates called by, or calling to, a criminal suspect's land-line or cellular telephone, law enforcement officers use a pen register or trap and trace device. Yet, when criminals opt to conduct their business using pagers—often times to thwart police surveillance—law enforcement officers must obtain authority under the wiretap law to use a clone pager. Even though clone pagers reveal essentially the same information about the telephone numbers of associates calling the suspect as do pen register and trap and trace devices, the procedures for wiretap authorization are significantly more complicated and more time-consuming than those to obtain authority for

use of pen register and trap and trace devices. The additional procedural hurdles necessary to use clone pagers benefit only the criminal.

This bill would permit law enforcement to use a clone pager based on the same form of court authorization necessary to use a pen register or trap and trace device. In fact, certain of the requirements for wiretap authorization simply make no sense when the investigatory tool being authorized is a clone numeric pager.

Thus, courts confronted with defense motions to suppress evidence derived from clone pagers for failure to comply with wiretap procedures have concluded that certain statutory requirements for wiretaps do not apply. For example, since clone numeric pagers do not reveal the content of any conversation or even whether any conversation actually occurred, courts have found that it is impossible to minimize clone numeric pager interceptions as is required for interceptions of wire, oral or electronic communications. See, e.g., *U.S. v. Bautista*, 1992 U.S. App. LEXIS 16829, 7 (4th Cir. 1992); *U.S. v. tutino*, 883 F.2d 1125, 1141 (2d Cir. 1989), cert. denied, 493 U.S. 1081 (1990) (“minimization requirements cannot reasonably be applied to clone beepers”); *U.S. v. Gambino*, 1995 U.S. Dist. LEXIS 10689, 7 (S.D.N.Y. 1995).

Furthermore, since the numbers captured from clone numeric pagers are usually manually, rather than electronically or mechanically, recorded by law enforcement officers, courts have concluded that the recordation and sealing requirements of the wiretap law have limited utility and refused to suppress for failure to comply with these requirements. *U.S. v. Suarez*, 906 F.2d 977, 984 (4th Cir. 1990) *U.S. v. Paredes-Moya*, 722 F. Supp. 1402, 1408 (N.D. Tex. 1989).

Instead of providing fodder for defense motions, the time is long overdue for Congress to apply common sense and require law enforcement to follow more appropriate procedures—no more and no less—to obtain authorization to use clone numeric pagers.

this bill would conform the requirements to obtain legal authorization for use of a clone pager to those for use of a pen register or trap and trace device. As one court recognized, “[u]nlike telephone wiretaps, duplicate paging devices reveal only numbers, not the content of conversation. In this way they are similar to pen registers.” *U.S. v. Tutino*, supra, 883 F.2d at 1141. Specifically, the bill would authorize a Federal court to issue an order authorizing the use of a clone numeric display pager to receive the communications intended for another such pager, upon certification of an attorney for the government or law enforcement officer that the information likely to be obtained is relevant to an ongoing criminal investigation.

This new authority would be limited to clone numeric display pagers, not more sophisticated pagers that trans-

mit and receive written or oral textual messages. The only communications obtained from, and displayed on, clone numeric display pagers are numbers dialed into a telephone for transmission to the suspect’s pager—just like the information obtained from a pen register or trap and trace device.

These numbers usually are callback telephone numbers, but may also include other incidental or coded numbers. Such incidental or coded numbers are also captured by pen register or trap and trace devices. The capturing of incidental or coded numbers by pen registers prompted Congress to require in the 1994 Communications Assistance for Law Enforcement Act [CALEA] that technology “reasonably available” be used to restrict the recording or decoding of numbers to the “dialing or signaling information utilized in call processing.” 18 U.S.C. §3121(c).

Tone-only paging devices are already completely exempt from the wiretap law, as amended in 1986 by the Electronic Communications Privacy Act [ECPA]. The ECPA extended the protections of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (“Title III”) to unauthorized interceptions of “electronic communications.” My main purpose in sponsoring ECPA was, as the Senate Report indicates, “to update and clarify Federal privacy protections and standards in light of dramatic changes in new computer and telecommunications technologies.” S. Rep. No. 541, 99th Cong., 2d Sess. 1, reprinted in 1986 U.S. Code Cong. & Admin. News 3555, 3555. Alpha-numeric display pagers, which visually display both numbers and letters, and sophisticated tone and voice pagers should, in my view, continue to be subject to the wiretap authorization procedures. The nature of the communication captured by numeric display pagers, however, is so akin to the information obtained by pen register and trap and trace devices, that the procedures and standards for their authorized use by law enforcement should be equalized.

As criminals use technological advances for their own ill purposes, Congress must continue, as we did with ECPA and CALEA, to give law enforcement the reasonable authority it needs to keep up, while protecting legitimate privacy interests. This bill does so, and I support its passage.

Passage of this bill will not mean the end of our work in this area, however. The judicial role in approving the use of pen register and trap and trace devices is severely limited and, in fact, relegates judges to merely a ministerial role. *U.S. v. Fregoso*, 60 F.3d 1314, 1320 (8th Cir. 1995); *U.S. v. Hallmark*, 911 F.2d 399, 402 (10th Cir. 1990); In re Order Authorizing Installation of Pen Reg., 846 F. Supp. 1555, 1558–59 (M.D. Fla. 1994). The court’s limited role is to confirm, first, the identity of the applicant and investigating law enforcement agency, and second, certification from the applicant that the information

sought is relevant to an ongoing investigation. See 18 U.S.C. §§3121–3127.

Significantly, the judge is not authorized to review, let alone question, the basis for the relevancy determination. If the appropriate certification appears, the judge must authorize the pen register or trap and trace device. This is an anomalous limitation on the judicial role. While relevance to an ongoing criminal investigation remains an appropriate basis for use of a pen register or trap and trace device, Congress should reexamine the limitation on judicial authority to review this determination. This remains unfinished business.

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

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

The bill (S. 170) was read a third time and passed, as follows:

S. 170

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 “Clone Pager Authorization Act of 1996”.

SEC. 2. WIRE AND ELECTRONIC COMMUNICATIONS.

(a) DEFINITIONS.—Section 2510(12) of title 18, United States Code, is amended—

(1) in subparagraph (B), by striking “or” at the end;

(2) in subparagraph (C), by adding “or” at the end; and

(3) by adding at the end the following: “(D) any communication made through a clone pager (as that term is defined in section 3127).”

(b) PROHIBITION.—Section 2511(2)(h) of title 18, United States Code, is amended by striking clause (i) and inserting the following:

“(i) to use a pen register, a trap and trace device, or a clone pager (as those terms are defined for the purposes of chapter 206 (relating to pen registers, trap and trace devices, and clone pagers)); or”.

SEC. 3. AMENDMENT OF CHAPTER 206.

Chapter 206 of title 18, United States Code, is amended—

(1) in the chapter heading, by striking “AND TRAP AND TRACE DEVICES” and inserting “, TRAP AND TRACE DEVICES, AND CLONE PAGERS”;

(2) in the chapter analysis—
(A) by striking “and trap and trace device” each place that term appears and inserting “, trap and trace device, and clone pager”;

(B) by striking “and trap and trace devices” and inserting “, trap and trace devices, and clone pagers”; and

(C) by striking “or a trap and trace device” each place that term appears and inserting “, a trap and trace device, or a clone pager”;

(3) in section 3121—

(A) in the section heading, by striking “and trap and trace device” and inserting “, trap and trace device, and clone pager”; and

(B) by striking “or a trap and trace device” each place that term appears and inserting “, a trap and trace device, or a clone pager”;

(4) in section 3122—

(A) in the section heading by striking “or a trap and trace device” and inserting “, a trap and trace device, or a clone pager”;

(B) by striking "or a trap and trace device" each place that term appears and inserting " , a trap and trace device, or a clone pager";

(5) in section 3123—

(A) in the section heading, by striking "or a trap and trace device" and inserting " , a trap and trace device, or a clone pager";

(B) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—Upon an application made under section 3122, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court, or of a clone pager for which the service provider is subject to the jurisdiction of the court, if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation."

(C) in subsection (b)(1)—

(i) in subparagraph (A), by inserting before the semicolon the following: " , or, in the case of a clone pager, the identity, if known, of the person who is the subscriber of the paging device, the communications to which will be intercepted by the clone pager";

(ii) in subparagraph (C), by inserting before the semicolon the following: " , or, in the case of a clone pager, the number of the paging device, communications to which will be intercepted by the clone pager"; and

(iii) in paragraph (2), by striking "or trap and trace device" and inserting " , trap and trace device, or clone pager";

(D) in subsection (c), by striking "or a trap and trace device" and inserting " , a trap and trace device, or a clone pager"; and

(E) in subsection (d)—

(i) in the subsection heading, by striking "OR A TRAP AND TRACE DEVICE" and inserting " , TRAP AND TRACE DEVICE, OR CLONE PAGER"; and

(ii) in paragraph (2), by inserting "or the paging device, the communications to which will be intercepted by the clone pager," after "attached,";

(6) in section 3124—

(A) in the section heading, by striking "or a trap and trace device" and inserting " , a trap and trace device, or a clone pager";

(B) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(C) by inserting after subsection (b) the following:

"(c) CLONE PAGER.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to acquire and use a clone pager under this chapter, a Federal court may order, in accordance with section 3123(b)(2), a provider of a paging service or other person, to furnish to such investigative or law enforcement officer, all information, facilities, and technical assistance necessary to accomplish the operation and use of the clone pager unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the programming and use is to take place."

(7) in section 3125—

(A) in the section heading, by striking "and trap and trace device" and inserting " , trap and trace device, and clone pager";

(B) in subsection (a)—

(i) by striking "or a trap and trace device" and inserting " , a trap and trace device, or a clone pager"; and

(ii) by striking the quotation marks at the end; and

(C) by striking "or trap and trace device" each place that term appears and inserting " , trap and trace device, or clone pager";

(8) in section 3126—

(A) in the section heading, by striking "and trap and trace devices" and inserting " , trap and trace devices, and clone pagers"; and

(B) by inserting "or clone pagers" after "devices"; and

(9) in section 3127—

(A) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(B) by inserting after paragraph (4) the following:

"(5) the term 'clone pager' means a numeric display device that receives communications intended for another numeric display paging device;"

FORT BERTHOLD INDIAN RESERVATION ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 258, S. 1079.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1079) to permit the leasing of mineral rights, in any case in which the Indian owners of an allotment that is located within the boundaries of the Fort Berthold Indian Reservation and held in trust by the United States have executed leases to more than 50 percent of the mineral estate of that allotment.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. LEASES OF ALLOTTED LANDS OF THE FORT BERTHOLD INDIAN RESERVATION.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) INDIAN LAND.—The term "Indian land" means an undivided interest in a single parcel of land that—

(i) is located within the Fort Berthold Indian Reservation in North Dakota; and

(ii) is held in trust or restricted status by the United States.

(B) INDIVIDUALLY OWNED INDIAN LAND.—The term "individually owned Indian land" means Indian land that is owned by 1 or more individuals.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) EFFECT OF APPROVAL BY SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—The Secretary may approve any mineral lease or agreement that affects individually owned Indian land, if—

(i) the owners of a majority of the undivided interest in the Indian land that is the subject of the mineral lease or agreement (including any interest covered by a lease or agreement executed by the Secretary under paragraph (3)) consent to the lease or agreement; and

(ii) the Secretary determines that approving the lease or agreement is in the best interest of the Indian owners of the Indian land.

(B) EFFECT OF APPROVAL.—Upon the approval by the Secretary under subparagraph (A), the lease or agreement shall be binding, to the same extent as if all of the Indian owners of the In-

dian land involved had consented to the lease or agreement, upon—

(i) all owners of the undivided interest in the Indian land subject to the lease or agreement (including any interest owned by an Indian tribe); and

(ii) all other parties to the lease or agreement.

(C) DISTRIBUTION OF PROCEEDS.—The proceeds derived from a lease or agreement that is approved by the Secretary under subparagraph (A) shall be distributed to all owners of the Indian land that is subject to the lease or agreement in accordance with the interest owned by each such owner.

(3) EXECUTION OF LEASE OR AGREEMENT BY SECRETARY.—The Secretary may execute a mineral lease or agreement that affects individually owned Indian land on behalf of an Indian owner if—

(A) that owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(B) the heirs or devisees referred to in subparagraph (A) have been determined, but 1 or more of the heirs or devisees cannot be located.

(4) PUBLIC AUCTION OR ADVERTISED SALE NOT REQUIRED.—It shall not be a requirement for the approval or execution of a lease or agreement under this subsection that the lease or agreement be offered for sale through a public auction or advertised sale.

(b) RULE OF CONSTRUCTION.—This Act supercedes the Act of March 3, 1909 (35 Stat. 783, chapter 263; 25 U.S.C. 396) only to the extent provided in subsection (a).

Mr. LOTT. I ask unanimous consent the committee substitute be agreed to; the bill, as amended, be read three times, passed and the motion to reconsider be laid upon the table; and the amendment to the title be agreed to; that any statements relating thereto be printed in the RECORD at the appropriate place as if read.

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

The committee amendment was agreed to.

The bill (S. 1079), as amended, was passed.

The title was amended so as to read:

A bill to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease.

JOHN F. KENNEDY CENTER PARKING IMPROVEMENT ACT OF 1997

Mr. LOTT. I ask unanimous consent the Senate now proceed to the consideration of Calendar 89, H.R. 1747.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1747) to amend the John F. Kennedy Center Act to authorize the design and construction of additions to the parking garage and certain site improvements, and for other purposes.

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. LOTT. I want to express my appreciation to Senator DOMENICI for his cooperation in making the adoption of this legislation, which has been pending for quite some time, possible tonight.