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Senate

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Gracious Father, the day stretches out before us filled with opportunities and responsibilities. There also are pressures and problems, stresses and strains, fears and frustrations. We commit the day to You, Father. There are vital things we know that You will never do. You will never give us more than we are able to carry. You will never leave or forsake us, and You will not let us drift from Your care. And there are some reassuring things that we can count on You to do. You will supply us with strength for each challenge, wisdom for each decision, enabling love for each relationship. We claim Your promise, ''I will be with you; I will comfort and uplift you; I will show the way.''

Thank You for being our Light in darkness, our Peace in turmoil, and our Security in distress. We praise You for giving us this new day and for showing us the way. Through the Way, the Truth, and the Life. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. BROWNBACK. I thank the Chair.

SCHEDULE

Mr. BROWNBACK. Mr. President, today the Senate will be in a period of morning business until 12 noon. Following morning business, the Senate will resume consideration of S. 96, the Y2K bill. A cloture motion on the pending McCain amendment was filed on Tuesday. Therefore, that cloture vote will take place on Thursday at a time to be determined by the two leaders. All Senators will be notified when that time has been decided. Votes are possible today on any legislative or executive items cleared for action.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon with Senators permitted to speak therein for up to 10 minutes each.

The distinguished Senator from Kansas is recognized.

Mr. BROWNBACK. I thank the distinguished Senator from Kansas very much for the recognition.

MUSIC IN OUR CULTURE

Mr. BROWNBACK. Mr. President, I have some comments I will make today following what has happened in Colorado, the Columbine tragedy that occurred this last week which has caused all of us really to reflect on the causes and the cures. As we mourn the loss of so many precious young lives, we really have to ask ourselves, how did we get to this place? Why do so many young people with so much going for them in their lives have such despair and so much hate?

Obviously, there are no easy answers and certainly no silver bullets. There are many factors which led those two young men to don trench coats and kill, just as there were many factors that resulted in the shootings in Jonesboro, Paducah, Pearl, and Springfield, communities the names of which have become all too familiar to us via school tragedies where a child has killed other children.

But there are enough common factors that I believe we can start to pull together some ideas as to what is causing this and some solutions. One of the most obvious conclusions is this: The immersion of troubled kids in a violence-glorifying culture is a recipe for disaster.

Monday, I addressed this body on the need for a commission on cultural renewal. Today, I would like to address the importance of one of the most important elements that makes up our culture, and that is our music. In many ways the music industry is more influential than anything that happens here in Washington. Most people spend far more time listening to music than watching C–SPAN or reading the newspaper. They are more likely to recognize musicians than Senators—I guess maybe unless the Senators sing. And they spend more time thinking about music than about government.

All of those can seem to be some fairly trite statements, but when you look at what we are putting out in the music and then ask that question, it takes on a different color.

Of course, no one spends more time listening to music than the young people. In fact, one recent study conducted by the Carnegie Foundation concluded that the average teenager listens to music around 4 hours a day—about 4 hours a day. In contrast, they spend less than an hour a day on homework or reading, less than 20 minutes a day talking with mom, and less than 5 minutes a day talking with dad.

If this study is true, there are thousands, perhaps even tens or hundreds of thousands, of teens who spend more time listening to the music of such artists as Marilyn Manson or Master P than mom or dad.

In fact, Marilyn Manson himself said this:

Music is such a powerful medium now. The kids don't even know who the President is,

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

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but they know what's on TV. I think if anyone like Hitler or Mussolini were alive now, they'd have to be rock stars.

Over the past few years, I have grown increasingly concerned with the popularity of some lyrics, lyrics which glorify violence and devalue life. Some recent best selling albums have included graphic descriptions of murder, torture, and rape. Women are objectified, often in the most degrading ways. Songs such as Prodigy's ''Smack My B. . . Up'' or ''Don't Trust a B. . .'' by the group Mo' Thugs actively encourage animosity or even violence towards women. A few years ago, the alternative group ''Nine Inch Nails'' enjoyed critical and commercial success with their song ''Big Man With a Gun,'' which described forcing a woman into oral sex and shooting her in the head at point-blank range.

I brought along a few examples of the kind of music I am talking about. Each of the Marilyn Manson songs shown here are from his 1996 album ''Anti-Christ Superstar,'' an album which debuted at No. 3 on the Billboard charts. These are some of the song lyrics that you can look at. I want to point it out because it is about the culture of violence and the culture of death, and they may be unpleasant words for us to look at, but when these debut at No. 3 on the Billboard charts, when that song wraps itself around one's inside, when it wraps around a person's soul, it has an impact just as significant as when we might listen to John Philip Sousa's music and it makes us feel patriotic and uplifted or a love song makes us loving. Violent, hateful, misogynistic music encourages that in us as will violence come from hate music.

Look at this:

MARILYN MANSON, ''IRRESPONSIBLE HATE ANTHEM'' (ANTI-CHRIST SUPERSTAR) ON NOTHING/INTERSCOPE RECORDS

I'm so all-American, I'd sell you suicide
I am totalitarian, I've got abortions in my eyes
I hate the hater, I'd rape the raper
I am the animal who will not be himself
F*** it
Hey victim, should I black your eyes again?
Hey victim, you were the one who put the stick in my hand
I am the ism, my hate's a prism
Let's just kill everyone and let your god sort them out
F*** it
Everybody's someone else's n**ger/I know you are so am I
I wasn't born with enough middle fingers/I don't need to choose a side.

DMX, ''GET AT ME DOG'' (IT'S DARK AND HELL IS HOT) ON DEF JAM RECORDS/POLYGRAM

Well in the back with ya fag*** a** face down
Lucky that you breathin but you dead from the waist down
The f*** is on your mind? Talking that s**t you be talkin
And I bet you wish you never got hit cause you be walkin
But s***t happens and f*** it, you gon' did ya dirt
Because we wondering how the f*** you hid your skirt
Right under their eye, master surprise to the guys
And one of their mans was b**ch in disguise
F*** home we capture with more hits and slaughter more kids. . .
You know for real the n**ga came f**in sucked my d**k
And it's gonna take all these n**gaz in the rap game
To barely move me, cause when I blow s**t up
I have n**gaz falling like white b**ches in a scary movie
Ah, you know I don't know how to act
Get too close to n**gaz, it's like:
''Protected by viper, stand back''
What's this, I thought n**gaz you was killas demented
F*** y'all n**gaz callin' me coward finish him and send it.

MASTER P, ''COME AND GET SOME'' (GHETTO D) ON NO LIMIT/PRIORITY RECORDS

I got friends running out the f***in' crack house
I'm not P but I dumpin n**gas like Stackhouse
They call me C-murder, I'm a member of the TRU clique
You run up the wrong boy, you might get your wig split
I'm known in the ghetto for slangin' narcotics
Them feds be watchin but dem 'hoes can't stop me s**t
My game so tight ain't got no time fo slip-ups
I come up short I'ma bust yo' f***in' lip up
Cuz money and murder is the code that I live by
Come to ya set and do a muthaf***in' walk-by
Deep in the game, preparing for the worse
(What about dem po po's)
I wanna put them in a hearse
They took me to jail wit 2 keys in the back trunk
Fresh out of the county still smellin like about a buck
If you want something, come and get somethin . . .

DOVE SHACK, ''SLAP A 'HO'' (THE DOVE SHACK) ON POLYGRAM

Hello all you pimps and playas that got hoes out there that get outta line.
You know the ones that's talking heads, but not giving head.
They wanna be spoon-fed.
You know the ones I'm talking about with no money, wanna be calling you honey? . . .
Hey, if your gal is giving you problems (and I know she is) what I want you to do is . . .
Run out and get the amazing Slap-a-Hoe device.
This stupendous device will put any hard-headed, loud-mouth talking in public b**ch in check in less than 20 minutes. . . .
Post up against that b**ch's tilt for a little bit, smack her around with the Slap-a-Hoe and I guarantee in less than 20 minutes that b**ch will be back in line . . .
Hey, how do you keep hoes in check?
Well god * * * *, I had more problems than O.J.
But now, I reach back with 9.6 velocity and slap the snot out of the b**ch . . .
I used to have all the problems in the world with dem hoes.
Spending my last penny and not gettin' no p***y.
But now, thanks to that amazing device, I invoke that touch and get twice as much . . .
Brought to you by the makers of Slam-a-Ho and Drag-a-Ho.

FIEND, ''ON A MISSION'' (THERE'S ONE IN EVERY FAMILY) ON NO LIMIT/PIORITY RECORDS

N**ga you really f***ed up.
We on a muthaf***in' mission . . .
Retaliation is a must
Dumpin rounds on my muthaf**in adversaries.
N**ga, n**ga ridin dirty for revenge
With my friends, I'm on a caper
Ready to kill 'em, if I see 'em
F*** alarm, hold my paper
I'm a rider, so I leave 'em where I left 'em
When I creep, n**gas sleep
And they ain't restin til they deep up in concrete. . . .
Loco this is the deal, let's put the gun
To the small of his neck, we got caught up and blast
Until there's nothing left . . .
Pulled the trigga on my n**ga
As the forty caliber shell, blew up in the neck
Twice in the head, he was dead 'fore his body hit the ground.
Pull up next to the bodies, I was runnin'
My dog's head was blew off . . .
Hit the driver's side window, as they crash into a pole
With a few left in the clip
Some for the driver, the passenger, and the rest of the trigger men.

If these were some off-beat records that were out in a few isolated places, you would probably say, well, you know, that is the price you pay for freedom, for a free culture. But these are not. These are top-of-the-chart hits that are out there playing endlessly in too many cases and even being marketed to a very troubled youth's mind.

Are we really surprised, then, when some things happen that are pretty strange? That there seems to be so much violence and so much hatred out in this culture? Are we really that surprised? Should we be really that surprised?

I hope people are listening and I hope they are looking.

These are not obscure songs. They are immensely popular, and hugely profitable. They are backed by some of the largest, most prestigious corporations in our country and the world—Time-Warner, Seagrams/Universal, Sony, Polygram, Viacom, BMG, and Thorne-EMI.

I ask if any of the executives of these companies would allow their children to listen to this music? Would they? I hope not. Yet they are selling it and making millions.

Many of my colleagues may not be familiar with these lyrics. Until the past couple of years, I wasn't, either. But most kids are very familiar with them. They make up a vital part of the cultural ocean in which they swim. The messages of these songs are heard over and over, until they are, at the least, familiar, and at worst, internalized.

A little over a year ago, I chaired a hearing on the impact of violent music on young people. During this hearing, we heard a variety of witnesses testify on the effects of music lyrics that glorified violence, sexual torture, and suicide. We heard from the nation's experts on the subject. Their conclusion was unanimous: music helps shape our attitudes.

This is important. Studies indicate that the average teenager listens to music around four hours a day. It simply stands to reason that what we hear, and see, and experience cannot help but affect our attitudes and assumptions, and thus, our decisions and behavior. If it didn't, commercials wouldn't exist, and anyone who spent a dollar on advertising would be a fool. But advertising is a multi-billion dollar business. Why? Because it works. It creates an appetite for things we don't need, it affects the way we think, the things we want, and the things we buy. What we see and what we hear changes how we act.

Thousands of years ago, the philosopher Plato noted ''Musical training is a more potent instrument than any other, because rhythm and harmony find their way into the inward places of the soul, on which they mightily fasten.'' Can anybody listening to this today not readily pull up a song in their mind and listen to it right now? Because it wraps around their inner being.

Unfortunately, perhaps the last sector of society to acknowledge the importance and effects of music is the music industry.

In this hearing, I asked Hilary Rosen, the president of the Recording Industry Association of America, the trade organization of the music industry, the following questions. I asked, ''Who purchases Marilyn Manson albums? Do you know anything about the demographics of those who purchase these albums?'' She answered ''No.''

I asked, ''Have you looked at the demographic profile of those who purchase shock rock or gangsta rap records? She answered ''No.'' Later in her testimony, she asserted that ''the purchasers of this [Marilyn Manson's ''Anti-Christ Superstar'' album] album in retail stores are over the age of 17.''

I thought—I would be happy to be wrong about this, but somehow, I doubt that the majority of Marilyn Manson fans are out of their teens. The appeal of this music appears to be the greatest to teenagers—the very group of people who are supposed to be protected from it. But they're not.

Let me be clear: I am opposed to censorship of music. I believe the first amendment ensures the widest possible latitude in allowing various forms of speech—including offensive, obnoxious speech. But the fact that lyrics which celebrate should be allowed does not mean that they should be given respectability. There are some forms of speech which should be thoroughly criticized and roundly stigmatized, even though they are allowed. Freedom of expression is not immunity from criticism.

What we honor says as much about our national character as what we allow. There is an old saying ''Tell me what you love, and I'll tell you what you are.'' A love of violence, murder, mayhem, destruction, debasement and pain, as reflected in the popularity of gory movies, violent music, a burgeoning porn industry, grotesque video games, and sleazy television is a cause for national concern. What we honor and esteem as a people both reflects and affects our culture. We grow to resemble what we honor, and we become less like what we disparage.

Glorifying violence in music is dangerous—Because a society that glorifies violence will grow more violent. When we refuse to criticize the gangsta rap songs that debase women, we send the message that treating women like chattel is not something to be upset about. Record companies that promote violent music implicitly push the idea that more people should listen to, purchase, and enjoy the sounds of slaughter. When MTV named Marilyn Manson the ''Best New Artist of the Year'' last year, they help him up as an example to be aspired to. Promoting violence as entertainment corrodes our nation from within.

This is not a new idea. Virtually all of the Founding Fathers believed—even assumed—that nations rise and fall based on what they honor and what they discourage. Samuel Adams stated ''A general dissolution of principles and manner will more surely overthrow the liberties of America than the whole force of a common enemy.''

Next week, we will have a hearing to explore whether violence is actually marketed to children. We have invited the presidents and CEOs of the big entertainment conglomerates—Time-Warner, Viacom, BMG Sony, Sega, Nintendo, Hasbro. We hope they will come and help us begin a fruitful discussion on what can be done to protect our children from entertainment which glorifies and glamorizes violence.

Mr. President, I have gone on for some time, but I think this is critically important, particularly in light of what we experienced this past week that has shocked us as a nation and really caused us to ask why and what do we do to change.

I think it perhaps was best summarized in a speech given by the Most Rev. Charles Chaput who is the Archbishop of Denver.

Mr. President, he said this:

As time passes, we need to make sense of the Columbine killings. The media are already filled with ''sound bites'' of shock and disbelief; psychologists, sociologists, grief counselors and law enforcement officers—all with their theories and plans. God bless them for it. We certainly need help. Violence is now pervasive in American society—in our homes, our schools, on our streets, in our cars as we drive home from work, in the news media, in the rhythms and lyrics of our music, in our novels, films and video games. It is so prevalent that we have become largely unconscious of it. But, as we discover in places like the hallways of Columbine High, it is bitterly, urgently real.

The causes of this violence are many and complicated: racism, fears, selfishness. But in another, deeper sense, the cause is very simple: We're losing God, and in losing Him, we're losing ourselves. The complete contempt for human life shown by the young killers at Columbine is not an accident, or an anomaly, or a freak flaw in our social fabric. It's what we create when we live a contradiction . . . we can't market avarice and greed . . . and then hope that somehow our children will help build a culture of life.

He concludes by saying—and the title of his speech is, ''Ending the violence begins with our own conversion'':

In this Easter season and throughout the coming months, I ask you to join me in praying in a special way for the families who have been affected by the Columbine tragedy. But I also ask you to pray that each of us—including myself—will experience a deep conversion of heart toward love and non-violence in all of our relationships with others.

Mr. President, I ask unanimous consent that the speech of the Most Rev. Charles Chaput be printed in the RECORD.

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

[From the Denver Catholic Register, Apr. 21, 1999]

ENDING THE VIOLENCE BEGINS WITH OUR OWN CONVERSION

(By Most Reverend Charles J. Chaput, O.F.M. Cap.)

He descended into hell.

Over a lifetime of faith, each of us, as believers, recites those words from the Creed thousands of times. We may not understand them, but they're familiar. They're routine. And then something happens to show us what they really mean.

Watching a disaster unfold for your community in the glare of the international mass media is terrible and unreal at the same time. Terrible in its bloody cost; unreal in its brutal disconnection from daily life. The impact of what happened this past week in Littleton, however, didn't fully strike home in my heart until the morning after the murders, when I visited a large prayer gathering of students from Columbine High School, and spent time with the families of two of the students who died.

They taught me something.

The students who gathered to pray and comfort each other showed me again the importance of sharing not just our sorrow, but our hope. God created us to witness His love to each other, and we draw our life from the friendship, the mercy and the kindness we offer to others in pain. The young Columbine students I listened to, spoke individually—one by one—of the need to be strong, to keep alive hope in the future, and to turn away from violence. Despite all their confusion and all their hurt, they would not despair. I think I understand why. We're creatures of life. This is the way God made us: to assert life in the face of death.

Even more moving was my time with the families of two students who had been murdered. In the midst of their great suffering—a loss I can't imagine—the parents radiated a dignity which I will always remember, and a confidence that God would somehow care for them and the children they had lost, no matter how fierce their pain. This is where words break down. This is where you see, up close, that faith—real, living faith—is rooted finally not in how smart, or affluent, or successful, or sensitive persons are, but in how well they love. Scripture says that ''love is as strong as death.'' I know it is stronger. I saw it.

As time passes, we need to make sense of the Columbine killings. The media are already filled with ''sound bites'' of shock and disbelief; psychologists, sociologists, grief counselors and law enforcement officers—all with their theories and plans. God bless

them for it. We certainly need help. Violence is now pervasive in American society—in our homes, our schools, on our streets, in our cars as we drive home from work, in the news media, in the rhythms and lyrics of our music, in our novels, films and video games. It is so prevalent that we have become largely unconscious of it. But, as we discover in places like the hallways of Columbine High, it is bitterly, urgently real.

The causes of this violence are many and complicated: racism, fear, selfishness. But in another, deeper sense, the cause is very simple: We're losing God, and in losing Him, we're losing ourselves. The complete contempt for human life shown by the young killers at Columbine is not an accident, or an anomaly, or a freak flaw in our social fabric. It's what we create when we live a contradiction. We can't systematically kill the unborn, the infirm and the condemned prisoners among us; we can't glorify brutality in our entertainment; we can't market avarice and greed . . . and then hope that somehow our children will help build a culture of life.

We need to change. But societies only change when families change, and families only change when individuals change. Without a conversion to humility, non-violence and selflessness in our own hearts, all our talk about ''ending the violence'' may end as pious generalities. It is not enough to speak about reforming our society and community. We need to reform ourselves.

Two questions linger in the aftermath of the Littleton tragedy. How could a good God allow such savagery? And why did this happen to us?

In regard to the first: God gave us the gift of freedom, and if we are free, we are free to do terrible, as well as marvelous things . . . And we must also live with the results of others' freedom. But God does not abandon us in our freedom, or in our suffering. This is the meaning of the cross, the meaning of Jesus' life and death, the meaning of He descended into hell. God spared His only Son no suffering and no sorrow—so that He would know and understand and share everything about the human heart. This is how fiercely He loves us.

In regard to the second: Why not us? Why should evil be at home in faraway places like Kosovo and Sudan and not find its way to Colorado? The human heart is the same everywhere—and so is the One for whom we yearn.

He descended into hell. The Son of God descended into hell . . . and so have we all, over the past few days. But that isn't the end of the story. On the third day, He rose again from the dead. Jesus Christ is Lord, ''the resurrection and the life,'' and we—His brothers and sisters—are children of life. When we claim that inheritance, seed it in our hearts, and conform our lives to it, then and only then will the violence in our culture begin to be healed.

In this Easter season and throughout the coming months, I ask you to join me in praying in a special way for the families who have been affected by the Columbine tragedy. But I also ask you to pray that each of us—including myself—will experience a deep conversion of heart toward love and non-violence in all our relationships with others.

Mr. BROWNBACK. It is time we address this. It is time we address it strongly. It is time we address it clearly and ask two questions: How did we get here, and how do we get out? This is not the culture we were raised in and this is not the culture we want our kids to be in, as one of our colleagues, Senator LIEBERMAN, put it. I hope we can start the change and renew our culture and start to do that by renewing ourselves.

Mr. President, I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Montana is recognized.

INTERNATIONAL TRADE AND FINANCE

Mr. BAUCUS. Mr. President, I rise to note that this week the world's finance ministers and central bank presidents have gathered in Washington for the annual meeting of the World Bank and the International Monetary Fund. I suspect that Secretary of the Treasury Rubin reminded us last week that, despite the hype about the end of the world's financial crisis, we are just at the starting point of making those structural changes necessary to put the globe back on a solid growth path.

Obviously, it is critical to repair the global financial system, and Secretary Rubin has been the leader in this with excellent ideas. But there is a whole other piece, which we can't ignore; that is, the need to maintain and expand an open trading system. Take a look at some troubling trade statistics released last week.

First, the United States merchandise trade deficit in February hit an all-time record—over $19 billion. Imports into the United States are growing faster now than at any time in the last four years. Furthermore, American exports are lower than they were just one year ago. And remember that one billion dollars in exports equals about 12,000 jobs.

Japan and China seem to be in a race to see who will have the largest deficit with us. Japan's trade deficit with the United States in February was over $5 billion, while China's was a little under $5 billion.

There is more. Another troubling statistic was the World Trade Organization announcement that last year the world's exports grew only 3.5 percent. That compares to a 10.5 percent growth rate in 1997. And they expect the growth of world trade to slow down even further this year.

Third, and this is even worse news, while imports into North America were up 10.5 percent, our exports from North America, which means mainly the United States, rose only 3 percent last year. That is, imports rose three and a half times faster than exports.

All this means that the world economy is surviving by exporting a lot to us while importing less and less.

Why is this?

A major reason is that our economy is so much stronger today than any others. This is due to American economic strength and competitiveness, as well as to the global financial turmoil that has hurt so many of our trading partners.

But another significant reason for the growing trade deficit is the continuing discrepancy between the openness of our market versus the openness of others. It is true that once the world emerges from the financial crisis and global recovery begins to kick in, these numbers will change somewhat. However, the trade barriers that existed prior to the start of the global financial crisis are still there today and will still be there tomorrow.

If Secretary Rubin and other financial leaders succeed in their efforts, foreign economies will pick up later this year or next. We should see an increase in our exports as those economies need American capital goods and start buying more consumer products. But, economic recovery overseas does not mean that trade barriers will disappear. We must deal aggressively with barriers to our goods and services to take advantage of this opportunity for greater export growth.

That is why we must always keep market opening and trade liberalization on the top of our national agenda, aggressively negotiating new agreements, insisting on full implementation of existing agreements, and repairing those aspects of our trade law that are not working.

Our farmers, manufacturers, and service providers are the most efficient in the world. They must have the same freedom to do business overseas that foreign businesses have in our country. And it is the duty of the Congress and the Administration to ensure that those opportunities exist.

We have all been pretty frustrated by the European Union's unwillingness to abide by WTO decisions on beef and bananas. In fact, Europe's reaction to the WTO beef hormone decision is to become even more protectionist. We have also been frustrated by Japan's unwillingness to implement its trade agreements with the United States. A recent study concluded that Japan was implementing fewer than one-third of those agreements.

One possible bright side to this picture, however, lies in the WTO negotiations with China. USTR, USDA, and other agencies have done yeoman's work over the past month. I hope the agreements made thus far with China hold together and the negotiations underway can bring it to a conclusion. We have an opportunity to expand significantly American exports in many sectors—agriculture, manufacturing, and services, for example. Another example of this is the Pacific Northwest wheat agreement, which has been a problem for us in the Pacific Northwest. China now agrees that we will be able to sell our Pacific Northwest wheat to China.

Mr. President, I firmly believe that opening markets is profoundly important for our national well-being. But it requires persistent, aggressive, high-level attention at all levels of our government. I will do everything in my power to ensure that this is done.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUTCHINSON). The clerk will call the roll.

The legislative assistant called the roll.

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

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

HANDGUNS IN AMERICA

Mr. TORRICELLI. Mr. President, last week the sense of security that Americans had in their own communities, our sense of the strength of our culture, our ability to protect our families and our homes, was once again shattered.

The challenge did not come from Kosovo, and it was not from a computer problem with the new millennium. It was from the most basic form of human violence, striking us where we are most vulnerable, and taking the life of a child.

James Agee once wrote that in every child who is born, no matter what circumstances or without regard to their parents, the potentiality of the human race is born again. It may be because of the sense we possess that our own renewal is in the life of our children that the death of a child shakes us so dramatically. Rarely have we seen an America more traumatized by individual acts of violence than as a result of the murders in Littleton, CO.

All of us recognize that there is no one answer, no one explanation for this tragedy. The answer lies in the strengths of our families, the responsibility of parents, the roles of school administrators and parents and local police. Almost every critic has a point; virtually none has a complete answer.

The increasing level of violence in the entertainment industry, the new use of technologies which have sanitized the very concepts of death and murder, the failure of role models, the growing isolation of children from parents and siblings and extended families—all critics are right; no criticism is complete.

But in this constellation of problems there is the persistent issue of access to guns in American society. Only a few years ago, when a similar tragedy rocked the United Kingdom, the British Parliament responded in days. A gunman killed 16 students in Dunblane, Scotland. The Parliament was outraged. The British people responded. And the private ownership of high-caliber handguns was not regulated or controlled; it was banned.

This Congress can rightfully cite a variety of challenges to the American people to ensure that Littleton never occurs again, though, indeed, we failed to do so after Jonesboro, Paducah, Springfield, and a variety of other cities and schools that had similar tragedies.

Now the question is, Do we visit upon this tragedy the same silence as after those other school shootings, or do we have the same courage the British Parliament exhibited 3 years ago in dealing with this problem?

The amount of death that this Congress is prepared to witness before we deal realistically with the problems of guns in America defies comprehension. Last year, 34,000 Americans were victims of gun violence. But the year before and the year before that, for a whole generation, the carnage has been similar. Every year, 1,500 people die from accidental shootings. Every 6 hours, another child in America commits suicide with a gun. No gun control can eliminate all of this violence. I do not believe any gun control can eliminate a majority of this violence. But no one can credibly argue that some reasonable gun control cannot stop some of this violence.

I am heartened that the majority leader has promised the Senate that within a matter of weeks there will be a debate on this floor and an opportunity to present some reasonable forms of additional gun control. At a minimum, this should include the question of parental responsibility for children who get access to guns. Where parents have knowledge or facilitate that purchase, they must bear some responsibility for the likely, in some cases inevitable, consequences of minors having those weapons.

Second, there is the question of whether or not minors should be able to purchase certain weapons at all. It is arguable that a minor should not be able to purchase a handgun. It is irrefutable, in my judgment, that a minor should not be able to purchase a semiautomatic weapon.

Third, the question of whether, through the new technologies of the Internet, it is appropriate that guns be sold or purchased in any form; if it is not an invitation to violate and avoid existing State and Federal laws; if a person does not have to present themselves in a retail establishment with credentials to purchase a weapon. Remote sales, in my judgment, should not be allowed.

Then there is the larger question of the regulation of all weapons through the Federal Government—whether, when we live in a society where everything from an automobile to a child's teddy bear has regulations on their designs and materials to ensure safety, that same regulatory scheme should not be used for weapons; whether a weapon is designed properly to assure its safety; whether its materials are the best possible; whether technology is being used to ensure that the gun is used properly.

One can envision that the Treasury Department or another Federal agency would require gun manufacturers to have safety locks so that children could not misuse them. Future technology may allow a thumbprint to ensure that only the owner of the gun is using the gun. More basic technologies might require better materials or that a gun does not misfire when it is dropped. Proper regulations might ensure how these guns are sold, to ensure that they are sold properly, that State gun laws are not being evaded by oversupplying stores on State borders with permissive laws so that they are sold into States with restrictive laws. Inevitably this must be part of the debate: the proper Federal role in ensuring the proper design and distribution and sale of these weapons.

I am grateful, Mr. President, that the majority leader has invited the Senate to participate in this debate; proud, if the Senate responds to the challenge.

There were so many prayers throughout this country for the victims of the shooting in Littleton, sincere prayers on the floor of the Senate. The victims and their families and traumatized Americans need our prayers, but they need more than our prayers. They need the courage that comes from a people who recognize that change is both possible and required to avoid these tragedies from repeating themselves.

The victims of Littleton will be grateful for our prayers, but they will curse our inaction if political intimidation, the fear of change, results in the Senate offering nothing but prayers. This Senate has a responsibility to respond. We know what needs to get done. The President of the United States has challenged us. Americans are waiting and watching.

Every Senator must use these next few weeks to think about how they will vote, searching their own consciences on how they will answer their constituents, their families, and themselves, if Littleton becomes one more town in a litany of forgotten schools, forgotten children, and a rising spiral of carnage.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRAMS. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The Senate is in morning business.

The Senator from Minnesota is recognized.

(The remarks of Mr. GRAMS pertaining to the introduction of S. 896 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent, notwithstanding the previous order, I be allowed to speak in morning business for up to 15 minutes.

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

Y2K

Mr. LEAHY. Mr. President, there has been some discussion about Y2K and the Y2K liability bill. It seems every

moment I settle down in my office to do other work, I get calls for another meeting on Y2K. I thought it might be good to let my colleagues and the public know what is in the Y2K bill we will be discussing this afternoon.

I have a chart; we like charts in this place. This chart shows how simple this bill is not. It illustrates the detours, roadblocks, and dead ends the bill would impose on innocent plaintiffs in our State-based legal system.

I have a real-life example so we can see what will happen. A small business owner from Warren, MI, Mark Yarsike, testified before the Commerce and Judiciary Committees about his Y2K problems. A few years ago, he bought a new computer cash register system for his small business, Produce Palace. However, they didn't tell him it wasn't Y2K compliant. This brand-new, high-tech cash register system, which the company was happy to sell him for almost $100,000, kept crashing.

The computer cash register system kept breaking down. After more than 200 service calls, it was finally discovered why; it couldn't read credit cards with an expiration date in the year 2000—like the credit card I have in my wallet right now. That is a Y2K computer defect that would be covered under this bill and the company would be protected, not Mark Yarsike. The company that sold him this defective piece of equipment for $100,000 would be protected.

At the top of this chart is how the State-based court system works today for Mark Yarsike, whose business buys a new computerized cash register system and, because of a Y2K defect, the system crashes.

I will in a moment speak to what happens if we pass this legislation before the Senate. Assume we show some sense and reject the legislation; if Mark Yarsike asks the company to fix the system, if the company knows they have to do something for the owner, they will either agree to fix the problem—which is really what he wants; he doesn't want to sue, he just wants his problem fixed—they agree to fix it and make a quick, fair settlement for his damages. That is it.

Or they could fail to fix it, he could go into court, and a trial would decide who is at fault.

Now, that is basically what happens today. In fact, that is what happened to Mark Yarsike. He was forced to buy a new computer cash register system from another company. He sued the first company which sold him the computer that wasn't Y2K compliant, that caused him to lose so much business. He recouped his losses through a fair settlement, and the court system worked for him.

Now, say ''Joe's'' business—not Mark Yarsike, who went through the normal court process—buys a computer cash register system under the bill before the Senate. Assume we pass this bill, assume the President signs it into law. All of a sudden, instead of this very simple straight line as indicated on the chart, the Congress of the United States is saying: We are from the Government and we are here to help you, we will make life simpler for you.

Instead of giving the nice straight line, which is what the law is today, this is what he is presented: first he has to wait 30 days, during which nothing happens; during that time, he still has to turn away business because every customer with a new credit card can't use it, and they will say, to heck with this place, I will go somewhere else. Even if after the 30 days, the company may send a written response and just say that we have another 60 days you will have to wait; if that doesn't put you out of business, then you can also file a lawsuit to recover damages if you are not already out of business anyway.

If he files a lawsuit, under the bill's contract preservation provision we get to our first dead end on the road to justice. The cash register company may be able to enforce unconscionable limits on any recovery if it is in a written contract. Under this bill before the Senate, the unconscionable limits in the written contract are strictly enforced unless the enforcement of that term would manifestly and directly contravene State law and statute in effect January 1999 specifically addressing that term.

In other words, if the State legislatures had not known by January 1 of this year what the U.S. Congress, in its infinite wisdom, was going to do in May of this year when enacting a statute that specifically anticipated what we might do, Joe is out of luck.

If the small business owners can't recover the losses from the Y2K defective cash register system because of this contract preservation provision, then he does have other alternatives: He can go bankrupt; he can fire his employees, lay them off; or if somehow he was able to get past these roadblocks, he could actually file a suit.

We have another detour. The company gets another 30-day extension to respond to the complaint. Their business isn't hurting, but Joe is barely able to hang on. When the small business owner files that lawsuit, he has to meet special pleading requirements under this bill. He has to file with complaints specific statements on the defendant's state of mind, the nature of the amount of damage, and the material Y2K defect. So he has three more roadblocks—all of which can lead to this dead end.

If he misses any one of those hurdles we have put in his way, he is right back to a dead end. The cash register company can say, bye bye, see you; tough, Joe; we will send you a postcard when you are at the bankruptcy court.

Now, suppose the cash register company had sold others of these $100,000 system with a Y2K defect. Should we all join together and bring a class action? No, we come into a new roadblock, back to a dead end, back to bankruptcy again. So let's move on to the next roadblock that is put in the bill—the roadblock we are putting in the way of small businesses. That is something the business lobbyists are not telling the small businesses about, all the roadblocks that are in this special interest legislation.

This bill has a ''duty to mitigate'' section that turns traditional tort law on its head. It requires the plaintiff to anticipate and avoid any Y2K damage before it occurs, not after. Almost all the States have adopted the traditional duty to mitigate tort law, which requires the injured party to mitigate his damages once the harm occurs. That makes some sense. But this requires mitigation before the harm occurs. If the owners bought this $100,000 cash register and didn't anticipate that a lot of its customers are going to leave because the cash register does not work as he was told it was going to, how does he mitigate? He wants to run his business. He doesn't make cash registers. He expects them, for $100,000, to do it right. But if he didn't try to mitigate before the system crashed, then he could be caught in another dead end, end of the road here, and right back down to bankruptcy, and employees are out.

I do not understand how he could have known his cash register system was not going to be able to read credit cards with the year 2000 expiration date after he paid $100,000 for it, but that doesn't matter. This case would be dismissed because of the bill's duty to mitigate provision.

So, roadblock after roadblock—in fact, there is another one. Let's assume somehow Joe is driving a humvee of some sort through the legal system and he is getting it past these roadblocks. He has another one. Because what he does not know is that the Senate has overridden the 50 State legislatures. We have said to the legislators: Boy, you guys are dumb. The men and women in these State legislatures are not as smart as we are. So we are just going to throw your laws out and we will just pass our laws and override you. Because the bill would override State contract law and could even preempt existing implied warranties under State law.

For the small business owner, the bill's Federal preemption contract clauses may override the State common law claims of breach of implied warranties. Again, here he is at another roadblock, another dead end leading back to bankruptcy.

Then, say he somehow got through all of these roadblocks and dead ends that we put in, basically to make it impossible for a small business owner; everything that we have done to put roadblocks and dead ends in. Let's say he gets through all of them. He still has more limits on his legal rights at the jury verdict point. There are severe limits on recovery. In fact, if it is a small business, then $250,000 is the ceiling for any punitive damages award. If

he can prove they intentionally defrauded him, then there is an exemption from these punitive damage caps. This bill is saying: If you can prove intention to defraud, we might give you a chance.

This is a meaningless exception in the real world. Nobody is going to be able to meet this exception, proving the injury was specifically intended. How in the world is our small business owner, who is just trying to keep the place alive at this point, going to prove the cash register company intentionally tried to injure him by selling him a Y2K defective cash register system? Let's get real here. It is not going to happen. Again, the best thing for him is bankruptcy. The big company can breathe a sigh of relief and they are out.

And on and on. Severe joint liability limits; for directors and officers, partial immunity; severe caps on recovery—all of these things end up protecting the companies, overriding State laws, and saying to the small business owner we are not going to do anything for you.

You know, directors and officers are already protected by the business judgment rule adopted by each of the 50 States. But we put a special legal protection for them in this bill. I think that sends the wrong message to the business community. We want to encourage decision makers to be overseeing aggressive year 2000 compliance measures. Instead, we say: Don't worry, be happy.

I want those corporate officers motivated to fix their company's Y2K problems now. After their corporation is Y2K compliant and they have worked with their suppliers and customers and business partners and we have avoided Y2K problems is the time to be happy.

A few of these detours, roadblocks and dead ends may be justified to prevent frivolous Y2K litigation. But certainly not all of them.

This bill makes seeking justice for the harm caused by a Y2K computer problem into a game of chutes and ladders—but there are only chutes for plaintiffs and no ladders. The defendant wins every time under the rigged rules of this game.

Unfortunately, this bill overreaches again and again. It is not close to being balanced.

In addition, this bill preempts all 50 state consumer protection laws and makes ordinary consumers face the bill's legal detours, road blocks and dead ends on the road to justice. That is not fair.

Today, I filed a consumer protection amendment to exclude ordinary consumers from the legal restrictions in the bill. I hope the majority will permit amendments to be brought up on this legislation soon.

I remain open to continuing to work with interested members of the Senate on bipartisan, consensus legislation that would deter frivolous Y2K lawsuits and encourage responsible Y2K compliance. Those of us in Congress who have been active on technology-related issues have struggled mightily, and successfully, to act in a bipartisan way. It would be unfortunate, and it would be harmful to the technology industry, technology users and to all consumers, if that pattern is broken over this bill.

I hope Members will look at what we are doing here. Here is the system we have today for Y2K. Here is the system we are suggesting with all these dead ends, all these roadblocks: Roadblock, roadblock, roadblock, roadblock, all leading to small businesses going bankrupt and all because we stand up here and say to 50 State legislatures: You are not smart enough. You are not as smart as we are. We are going to override you.

I think that is wrong. I think we ought to go back to the drawing boards. I think we ought to do what we did last year when we passed good Y2K legislation because we did it in a bipartisan fashion where we had businesses, Members of Congress, lawyers, those in the high-tech field—we came together and passed legislation that worked and the President signed it into law.

This maze, this unnecessary trampling of State legislatures, will not be signed into law by the President of the United States.

The PRESIDING OFFICER. The Senator from Alabama.

VIOLENCE IN COLORADO

Mr. SESSIONS. Mr. President, I know you, the Senator from Arkansas, are familiar with tragedies in high schools involving our young people who create havoc and take the lives of fellow students and others. The event in Colorado is the most glaring and stunning example of the kind of violence that we are apparently capable of as a nation today. As chairman the Senate Judiciary Committee Subcommittee on Youth Violence, I have given an awful lot of thought to it. But I am perplexed. A few things occur to me. There is what appears to me a pattern here that would suggest how we have gotten to this point.

It strikes me that an extremely small number of young people today have gotten on a very destructive path. They have headed down the road of anger and violence. They have not been acculturated with the kind of gentlemanliness and gentlewomanliness, not inculcated with religious faith and discipline, maybe a lack of values or whatever—somehow it did not take. Maybe their parents tried. Maybe they did not.

But, in addition to that, they are alienated and angry. They are able to hook into the Internet and play video games that are extraordinarily violent, that cause the blood pressure to rise and the adrenalin level to go up, games that cause people to be killed and the players to die themselves. It is a very intense experience. They are able to get into Internet chatrooms and, if there are no nuts or people of the same mentality in their hometown, hook up with people around the country. They are able to rent from the video store—not just go down and see ''Natural Born Killers'' or ''The Basketball Diaries''—but they are able to bring it home and watch it repeatedly. In this case even maybe make their own violent film. Many have said this murder was very much akin to ''The Basketball Diaries,'' in which a student goes in and shoots others in the classroom. I have seen a video of that, and many others may have.

In music, there is Marilyn Manson, an individual who chooses the name of a mass murderer as part of his name. The lyrics of his music are consistent with his choice of name. They are violent and nihilistic and there are groups all over the world who do this, some German groups and others.

I guess what I am saying is, a person already troubled in this modern high-tech world can be in their car and hear the music, they can be in their room and see the video, they can go into the chatrooms and act out these video games and even take it to real life. Something there is very much of a problem.

All of us have to look for the signs of children who may be moving deeper and deeper into death, violence, nihilism, and other bad trends. We ought to say and we ought to encourage our teachers and our school administrators and our parents to intervene and to assert that life is better than death, that peace is better than violence, and honesty is better than falsehood; that respect for your brothers and tolerance and patience, even in the face of adverse actions by somebody toward you, is essential in a civilized society. I am concerned about that.

What I really want to mention today, because I have been through this for a number of years, is the question of what we do about firearms in America. I was at a church event, not too many months ago, and the preacher prayed against guns. I thought that was odd for him to pray against an inanimate object that does what the holder tells it to do. But I think we would do well to focus on what it is that is eating at the soul of too many people in America today, No. 1.

What about this problem with guns? I was a Federal prosecutor for 15 years, 12 as U.S. attorney under Presidents Reagan and Bush. They created a program called Project Triggerlock. In that program, this Congress passed legislation that said if you are convicted of carrying a firearm during a crime, a felony, it is 5 years without parole consecutive for the underlying offense. If you are a felon and you possess a firearm and you are guilty of a felony, you can get 2 or 3 more years in jail.

Those are bread-and-butter gun laws focusing on people who commit crimes with firearms. There are a lot of others: having a firearm without a serial

number, having a sawed-off shotgun, a fully automatic weapon, and now assault weapons. There are literally hundreds of gun laws.

The directive came down from the President of the United States that he wanted these people prosecuted for violating those gun laws. I took the directive. I was one of the lieutenants in the war, and we went to work. I created a newsletter and sent it to every sheriff. I said: If you have the kind of criminal that needs prosecuting under Federal gun laws, you bring those cases to me and we will prosecute them.

Our numbers went up tremendously, and the word began to get out. The word got out in the streets: If you have a gun, they will take you to Federal court.

By the way, most people do not realize that some good laws have been passed for Federal court. Ask your sheriffs and police chiefs which has the fastest justice system, which has the most severe punishment and the most certainty of punishment, which one is the felon least likely to get out of jail on parole, and every one of them will tell you the Federal system is tougher than any State. Whatever State you are in, the Federal justice system is tougher: We have a 70-day speedy trial act; whatever the sentence is, you have to serve at least 85 percent of it.

The Federal Sentencing Guidelines mandate tough sentences. The judges have to impose them. If not, the prosecutor can appeal, and they go to jail. They do not want to go to Federal court for a gun violation. I am telling you, the word gets out, in my professional opinion, having been a prosecutor, as I said, for 15 years in the Federal system and two as Attorney General. I actually believe there was a deterrence in the number of people carrying guns in criminal activities. That is where people get killed.

When I was elected to the Senate in 1996 after I left as a Federal prosecutor in 1992, I began to look at the Department of Justice statistics on the kinds of cases they are prosecuting, because I served 15 years in the Department of Justice, and I know how to read those numbers.

I want to show you what we discovered. What we found is in 1992, when President Bush's U.S. attorneys left office, they were prosecuting 7,048 gun cases each year in 1992. They prosecuted over 7,000. Notice this chart shows the decline in those cases. It was 3,800 in 1998, a 40-percent decline.

This is particularly shocking to me because this President is always talking about guns and how we need to have more laws and we need to prosecute more people for guns, and they are not doing it. His own Attorney General, Janet Reno, has overseen a 40-percent decline.

This is not a secret. Since I have been here, for 2 years, when the Attorney General has come before our committee, the Deputy Attorney General, Eric Holder, the Chief of the Criminal Division for confirmation and other hearings, I have pulled out this very chart. I have gone over these numbers with them and have asked them why they are not prosecuting these cases. I have not yet received a good answer, other than they are just not putting the message out to the U.S. attorneys that they expect them to enforce these laws.

But what we have is a President who wants to call press conferences, as he did yesterday, to announce more laws; that we need to pass more laws. The bread-and-butter laws are already on the books, and we have added scores of other laws, which I support and I willingly prosecuted aggressively.

It concerns me that people say, ''Oh, you just don't believe in gun laws, JEFF. You are just NRA bought and paid for and you don't want to do this.'' They believe in the second amendment right to bear arms, and so do I. If you want to change it, let's talk about changing it, but there is a constitutional right to bear arms. There also is a right for the Government to place reasonable restrictions on the right to bear arms.

I have spent a big part, a major part of my professional career actively engaged with people who violate those reasonable restrictions. Machine guns, fully automatic weapons have been outlawed since the thirties, the Al Capone days. Sawed-off shotguns have been outlawed for many years. Bombs are outlawed today and have been for many years.

First of all, it concerns me, and I think it is hypocritical and really dishonest for the President to suggest that the way to deal with violations of gun laws is to pass more laws, if you are not prosecuting the ones we have. But, oh, that is the big deal: Are you for coming a little further to that second amendment core principle that protects the right to bear arms? Let's see how far we can go and make people vote against it because they have a concern for the Constitution and a general belief that the Government has gone too far and then say they don't care about guns, all the time presiding over an administration that is showing this dramatic decrease, a 40-percent decrease in the prosecutions. That is not an imaginary number. I have raised it with the Attorney General, and we pulled it out of their statistics.

In addition to that, we have in the last several years, at the behest of gun control advocates, passed a number of bills, some of which are good, some of which are marginal, but we passed them. We were told that these were critical to prevent violence in America. And we need these gun laws.

I want to show you this chart. We pulled it out of the Department of Justice statistics. And I questioned them about it in hearings before this tragedy, because this isn't a recent deal, this is something that has been going on for several years, and it is well known.

One of the best things, I suppose, is, the possession of firearms on school grounds is a Federal crime. The First Lady, who sometimes it had been suggested was a de facto Attorney General at the beginning of this administration, yesterday was speaking about gun laws. And that is all right. But she has not had the experience I have had in prosecuting these cases. And she talks about, we need more of them. And this is one of them they highlighted.

But look at this. In 1997, the Clinton administration nationwide prosecuted five. In 1998, they prosecuted eight.

''But we're committed, JEFF.'' But they said—the First Lady did in her speech yesterday—that there were 6,000 incidents last year in schools of weapons being brought to school. So how come her prosecutors are prosecuting so few of them? Let me ask you. I think it is a good question.

Unlawful transfer of firearms to juveniles. I support that. And right now it is unlawful for a firearms dealer to transfer a pistol to a juvenile, a person under 21.

Look at this. In 1997, they prosecuted five. In 1998, they prosecuted six. What difference does it make if we pass laws if nobody is being prosecuted for them?

Possession or transfer of semiautomatic weapons. Those are the assault weapons. The assault weapon is a weapon that looks like one of these fully automatic military weapons; it has the handles on it, but it is really a semiautomatic weapon that fires one time when you pull the trigger. Traditionally, a lot of rifles are semiautomatic. But in that configuration it was made illegal.

Remember all the debate about that? We had tremendous debate over the first time a semiautomatic rifle had been made illegal. But the administration's position was, it just had to have the law. They just had to have it. And it is an unpleasant weapon, I assure you. I do not think you have to have it to go hunting. But at any rate, in 1997, four of those cases were prosecuted in the entire United States; in 1998, four.

I say all that to say this: I believe we have to quit doing symbolic things. We need to quit doing things for headlines. We need to sit down and figure out how to reduce crime in America.

With regard to this very odd group of people we have seen in five States going on rampages in high schools, that is a unique and special group. And if they are determined to build a bomb, and can build one by looking it up on the Internet, whether or not they have to go down to the store to buy a weapon and give their name or whatever is not going to make much difference. That is real. And if they are seeing this on television, in videos, whether or not there is a law about it, as clever as these kids are, it is not likely to make much difference.

But I just say that that is a crucial matter for us. I would think, as one who has been at this for a long time, we need to maintain our discipline

now. And if something good can come out of this tragedy in Colorado, I pray that it will.

When that young girl affirmed her faith with a gun at her head, subjecting herself to summary execution by a laughing, diabolical shooter, I think we ought to take time to pause a minute and think about that, because this is really serious. It is deeper than whether or not you prosecute with 4 or 20 gun laws in the United States. It is deeper than that. That is what I am saying. But it does not mean that effective prosecutions of gun laws can't reduce crime.

Let me tell you this story.

Within the last month I, as chairman of the Judiciary Subcommittee on Juvenile Crime, called a hearing. We were going to discuss a program known as Project Exile in Richmond which the leader of it called ''Trigger Lock with Steroids.'' Not only did they prosecute every gun violation they could find in Richmond, they ran ads on television saying: ''We will prosecute you.'' They put up signs saying how long you would serve in the Federal slammer if you carried a gun during a crime or illegality.

Their prosecutions went sky-high. But there were questions in the Department of Justice. The program was not supported because it was not the trend with this Department of Justice. But they kept doing it. And just last year they found they had over a 40-percent reduction in violent crime in Richmond. And the U.S. attorney, appointed by the President of the United States, President Clinton, testified and others involved with it—the chief of police in Richmond—testified that they were convinced that aggressive criminal prosecutions in a trigger-lock-type fashion of violent criminals, and other criminals who carried guns, helped drive down the murder rate.

I thought we ought to have a hearing about it. I wanted to highlight that and encourage it. What I want to say to you is funny, almost; and maybe something good came from that hearing. The hearing was set for Monday in our little, lowly committee, the Senate Judiciary Committee Subcommittee on Juvenile Crime. On Saturday, before that hearing, the President went on his national radio show and said he wanted to adopt the Richmond project and promote and expand it.

So I hope maybe our hearing had something to do with getting the attention of the Department of Justice. But I have not seen any numbers to indicate that. It is easy to say words. But what we most often heard is that, we want new laws—which are not being prosecuted—and if we can pass a law, then we can say we did something.

I have been in this body just 2 years. I think there is a real problem here. Whenever there is a national matter of intense interest, what happens? We up and pass a law and say we did something. ''Hey, give me a medal. I passed a law. I am against assault weapons. I am fighting crime.'' If you have been in the pit and dealt with criminals professionally for a long time, you know it takes more than that. It takes a sustained effort.

If you do it consistently and aggressively, and you crack down on gun violations, you can in fact reduce the crime rate. Ask the U.S. Attorney and the chief of police in Richmond if it is not so.

I do hope the statement that the President made in his radio show really indicates a commitment to get these numbers up, because this is not acceptable for any administration, but particularly one which claims that the prosecuting of criminals and violations of Federal gun laws is a high priority of theirs. Obviously it is not. We have a 40-percent reduction.

So, maybe somebody says, ''JEFF, that is just political.'' It is not political with me. It is something I have lived with. I prosecuted these kinds of cases. I believe it reduces murders. I believe it saves the lives of innocent people. And I would like to see an effective program conducted by this administration. And it has in fact been demolished, as these numbers show. It undermines the effectiveness of that effort.

There are innocent people, I will assure you, today who have been shot and wounded—some people who have been killed—who would not have been had the Triggerlock Project continued.

So it is something that I have been raising since I first got to this Senate—at virtually every Judiciary Committee hearing I have had. I hope this tragedy will do one thing: It will get the attention of the President and the Attorney General and the Chief of the Criminal Division and the Associate Attorney General and Deputy Attorney General, and they will start sending the word out to their prosecutors. And they have more of them now than they had in 1992 when I was there. They ought to be putting more of these people in jail. If we do, they will make some difference. But I really don't think even those prosecutions are likely to have any significant impact on the bizarre few people who are willing to go to a school and slaughter their own classmates, commit suicide, worship Adolf Hitler, and think of Marilyn Manson as something cool. That is a different matter with which we have to deal.

I hope as a nation we will confront it honestly and directly and begin to bring back in every school system, because some parents apparently are not doing it, a program that teaches character and good values like we are used to in America. There are those who say, well, you cannot do that, that is violating civil liberties, you cannot express a concern about right and wrong in a classroom because that is a value judgment.

Well, we are suffering today from 30 or 40 years of liberalism, relativism, that anything goes. Well, some will say that is just old-fashioned talk.

No, it is not. No nation, in my view, can remain strong in which there are no values which we can affirm. If we can't affirm that Adolf Hitler is bad, what are we? If we can't affirm that Charles Manson is not a fit person to emulate, then what are we as a nation? If we can't say that telling the truth is more important than telling a lie, that reality is better than spin, then we are in trouble.

I hope we have not reached that. I think the American people are good. I hope this tragedy has some ability to cause us to confront that and, if so, our Nation would be better for it.

Mr. President, I thank the Chair for allowing me to address this body on this important issue. I have shared with the Senate some thoughts and concerns of mine that have been a part of me for a long time. I believe it is something our Nation has to consider, and I hope and pray we will.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

MEASURE PLACED ON CALENDAR—S.J. RES. 22

Mr. MCCAIN. Mr. President, I understand there is a joint resolution at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will read.

The legislative assistant read as follows:

A joint resolution (S.J. Res. 22) to reauthorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact.

Mr. MCCAIN. Mr. President, I object to further proceedings on this matter at this time.

KOSOVO

Mr. MCCAIN. Mr. President, first I will discuss an issue that is going to come before the Senate either late this week or next week. I am not sure. That is the issue of Kosovo. I believe it is important we address the issue. I believe it is important we address the issue as we have previous foreign policy issues.

In the case of our resolution supporting United States involvement in Bosnia, we had a Dole resolution and we had a couple of others that were voted on. In the case of the Persian Gulf resolution, we had a resolution that was proposed by then-Senator Dole, who was then the minority leader, and one that was proposed by Senator Mitchell. I hope we will proceed in a fashion where more than one resolution is considered and voted on at the

time. That is our responsibility, and I hope we intend to do it.

I strongly urge the majority leader to accept a vote on a resolution that I have already introduced.

THE Y2K ACT

Mr. MCCAIN. Mr. President, let me say we are ready to move forward on the bill. We have a couple of amendments that can be accepted by both sides. I would like to move forward with that and hope that both supporters and opponents of the bill will come to the floor.

Today I see a Statement of Administration Policy:

> The Administration strongly opposes S. 96 as reported by the Commerce Committee, as well as the amendment intended to be proposed by Senators McCain and Wyden as a substitute. If S. 96 were presented to the President, either as reported or in the form of the proposed McCain-Wyden amendment, the Attorney General would recommend a veto.

Let me say, I am glad to see the administration's position on this. I think it makes it very clear as to whose side they are on. I hope all the manufacturers, the small businesses, the medium size businesses and the large businesses in America will take careful note of the administration's absolute opposition to an effort that would solve this very, very serious issue.

Of course, they support amendments that are proposed by the trial lawyers which would gut this legislation. I have no doubt that if we accepted the amendments that are going to be proposed, it would gut it. But let us come to the floor and debate these amendments and move forward.

We have been on this bill now for 3 days. We still haven't had a single amendment. I say to the opponents of this legislation and the substitute that Senator WYDEN and I proposed, come to the floor. Let us debate your amendments and let us move forward. There is a cloture petition that will be voted on tomorrow. We may have to move forward in that fashion.

In USA Today, Mr. President, there is an interesting column under Technology by Kevin Maney: ''Lawyers Find Slim Pickings at Y2K Lawsuit Buffet.''

> Y2K lawyers must be getting desperate, in much the way an overpopulation of squirrels gets desperate when there aren't enough nuts to go around.
>
> So far, there's been a beguiling absence of breakdowns and mishaps because of the Y2K computer problem. The ever-multiplying number of lawyers chasing Y2K lawsuits apparently have had to scrounge for something to do. At least that's the picture Sen. John McCain [R-Ariz.] painted on the Senate floor Tuesday.
>
> McCain, who is sponsoring legislation to limit Y2K lawsuits, told the story of Tom Johnson. It seems that Johnson has filed a class action against retailers, including Circuit City, Office Depot and Good Guys. The suit charges that salespeople at the stores have not warned consumers about products that might have Y2K problems.
>
> For one thing, that's like suing a Chrysler dealership because the sales guy didn't tell you a minivan might break down when you're 500 miles from home on a family vacation. Or suing a TV network for failing to announce that its shows might stink.
>
> Beyond that, Johnson doesn't claim in the suit that he has been harmed. He's just doing it for the good of humanity—and ''relief in the amount of all the defendants' profits from 1995 to date from selling these products.''
>
> * * * * *
>
> Think Johnson's case is an anomaly? We haven't even hit seersucker season, and the lawsuits focusing on Jan. 1 are flying. More than 80 have been filed so far. If you sift through the individual suits, a few seem understandable. The rest seem like Rocco Chilelli v. Intuit.
>
> Chilelli's suit says older versions of Intuit's Quicken checkbook software are not Y2K ready and alleges that Intuit refuses to provide free upgrades. Filed in New York, the suit is a class action on behalf of ''thousands of customers (who) will be forced to spend even more money to acquire the latest Quicken version and may be required to spend time acquainting themselves with the updated program and possibly re-inputting financial information.''
>
> After much legal wrangling, the Supreme Court of the State of New York, County of Nassau, found that—duh!—no damage had yet happened, as the calendar hasn't yet flipped to 2000. The case was dismissed.

Mr. President, the column goes on to talk about the frivolous suits that have been filed already. We need to act.

I note the presence of the Senator from South Carolina. I ask if he is ready to consider two Murkowski amendments at this time, which have been agreed to by both sides.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HOLLINGS. Mr. President, my distinguished chairman continues to say let's talk, let's vote, let's move along. He thinks it is a procedural question. I guess, in a way, it is when it comes to joint and several.

Mr. President, there is an old story told about the days when they used to block minorities from voting down in Mississippi. A gentlemen presented himself at the poll and the poll watcher showed him a Chinese newspaper. These were the days of the literacy tests in order to be able to vote. He presented him with a Chinese newspaper and he said, ''Read that.'' The poor voter takes it and turns it around different ways and says, ''I reads it.'' The poll watcher said, ''What does it say?'' The poor minority says, ''It says: Ain't no minority going to vote in Mississippi today.''

Now, Mr. President, in a similar vein, when you have been in this 20 years, like Victor Schwartz down there at the NAM, when you have been in speaking panels before the manufacturers groups, when you have seen every trick of the trade that they have had to repeal the 10th amendment and take away from the States the administration of the tort system, and you know that there are the strong States righters but they are willing to do this, and when you know there is a nonproblem—I emphasize ''nonproblem'' —in the sense that there have only been 44 cases brought and over half have already been disposed of—some 10 others have been settled, and only 8 or 9 are pending—and you know that here we have a contract case, not a tort case, and you have to have privity of contract under joint and several in contract cases.

But you know this extreme strain about punitive, about joint and several, and all of these other hurdles they put in there to discourage anybody bringing a suit, setting precedence, if you please, in the tort field, then like the poor voter that ''can read'' the Chinese newspaper, I can read S. 96. That is right. I can read the McCain-Wyden amendment. What that says is, we don't care about Y2K, but we do care about reforming torts and federalizing it and taking the richest, most capable crowd in the world and giving them all kinds of rights and defenses and privileges and take away from middle sector, the small businessman, the small doctor.

We put into the RECORD, Mr. President, where an individual doctor up in New Jersey—he came before the committee—bought this particular computer in 1996. He talked about the salesman who bragged in terms that it would last 10 years. Like the old adage regarding the Packard, he said, ''Ask the man who owns one. Go and see these. They will last for years. This will take you into the next century.'' And then he finds, of course, that this past year it broke down. It didn't work and he could not get his surgical appointments straight, and otherwise. So he called the salesman and the company, and they absolutely refused.

After several weeks he writes a letter and demands, and they still refuse. A couple of months pass and he gets an attorney. When he gets the attorney, at first they don't respond. But somehow the attorney, or others, had the smarts to put it on the Internet. The next thing you know, they had 17,000 doctors who were similarly situated, and the computer company immediately settled and replaced them free.

When the demands were first made, they said, ''Yes, we can fix it for you for $25,000,'' when the instrument itself, the computer, only cost $13,000 in 1996. But to fix it was $25,000. He didn't, of course, have the $25,000. So all of those cases were settled to the satisfaction of both parties, the computer company, and everything else.

So these are not bad back cases, or some that are indeterminate with respect to injury, pain, and suffering, and a sentimental kind of case of a person

having lost his job, in that sense, and all that, where you get poor people injured in a wreck; but, on the contrary, responsible business people who operate by way of contract with the company. You see all of these tort things superimposed and you hear them in the conferences say it is nonnegotiable, there is a nonnegotiable item here, joint and several; it is nonnegotiable because under the chairman's onslaught here, it is, ''Let's move, let's vote, let's vote.''

I responded to him yesterday. I am a minority of a minority. I am trying to make sense out of a bum's rush. They have all the organizations. I have been talking to the trial lawyers about this thing. I know all of them, and they have been big friends of mine, and they did respond handsomely last year in the campaign. But I have been in it 20 years. In the early eighties, in the Presidential race and everything else, I still pleaded the cause and I got no help. So I have a track record of not just taking a position to help good friends in the trial business, but I have the greatest respect for all those friends, because they are there for the injured parties. They are the ones setting the record on health. These trial lawyers have done more to save people from cancer than Koop and Kessler put together. I have been on the floor 33 years now, and we could not get anything moving on cancer and smoking.

Now we have it. Not only on account of dollars, not only on account of the Cancer Institute, not only on account of the American Cancer Society, all leaders that they are with concerns in this field, but on account of trial lawyers. I see them institute the Environmental Protection Agency and institute the Consumer Product Safety Commission.

When you see those cars recalled, yes. That trial lawyer, Mark Robinson, out there in San Diego, back in 1978 got a $128 million verdict. It was $3.5 million actual, but $125 million punitive. He never has collected a red cent of the $125 million punitive. But he has brought to the automobile manufacturers a conscience rather than a cost-benefit study to just write it off and let them pay and pay the lawyers, and pay the doctors, and pay for the injuries, or beat the case on a cost-benefit study. On the contrary, there was one company just last week that recalled another million cars. You see these car recalls. That is my trial lawyer friends. I am very proud of them.

But in this particular case I am trying to protect on the one hand that small doctor, that small businessman, or, on the other hand, what we are trying to do is protect the States and the administration of tort law.

They talk about the ''glitches''—the ''glitches'' and ''deep pockets'' and ''deep pockets.'' We have at this minute, as I speak, on the floor of the Senate, glitches. Everybody has a computer. It comes up again and again with a glitch. You learn how to get it fixed. Nobody is running down to the courthouse. There were only 40 more cases this past year. Deep pockets—you have people running around here. They had a gentleman come in here from America Online. I saw in the USA Today his income last year —just annual—income $325 million. He has deep pockets. But nobody is suing him. He is a wonderful, brilliant individual who deserves every dollar he makes. I am for him. That is the American way.

But there are deep pockets in this technology computerization industry. And there are glitches.

Don't give me this stuff about January 1 glitches, glitches all of a sudden, and that we have to change the whole tort system. You can go ahead and get your computer now. As Business Week shows, they are demanding that the small businessmen come about with the changes in their equipment and become Y2K compliant, or else they are going to run out of suppliers and other distributors that will be Y2K compliant. They are in business. They are not in the law game that the Chamber of Commerce is in downtown. That is their political gain—to get them, pile on, find a nonproblem, but find the organizations, go tell all of them, and say, ''Do you believe in tort?'' ''Yes. I believe in tort reform.'' ''Write your letters to the Senators and talk about $1 trillion''—outrageous estimations. There is not going to be any such thing. Everybody knows it.

I am happy today to receive from the White House a ''Statement of Administration Policy.'' ''This statement has been coordinated by OMB with the concerned agencies.''

Mr. President, I ask unanimous consent to have it printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY—S. 96—Y2K ACT

[McCain (R–AZ) and Frist (R–TN)]

The Administration strongly opposes S. 96 as reported by the Commerce Committee, as well as the amendment intended to be proposed by Senators McCain and Wyden as a substitute. If S. 96 were presented to the President, either as reported or in the form of the proposed McCain-Wyden amendment, the Attorney General would recommend a veto. The Administration, however, understands that Senators Kerry and Robb and others are working on an amendment in the nature of a substitute that would address its primary concerns and which the Administration can support.

The Administration's main goal is to ensure that all organizations—private, public, and governmental—do everything they can between now and the end of this year to ensure that their systems and those of their customers and suppliers are made Year 2000 compliant. The Administration also recognizes both the importance of discouraging frivolous litigation and the need to keep the courts open for legitimate claims, especially those brought by small businesses and consumers with limited resources to press their cause.

The Administration's overriding concern is that S. 96, as amended by the McCain-Wyden amendment, will not enhance readiness and may, in fact, decrease the incentives organizations have to be ready and assist customers and business partners to be ready for the transition to the next century. This measure would protect defendants in Y2K actions by capping punitive damages and by limiting the extent of their liability to their proportional share of damages, but would not link these benefits to those defendants' efforts to solve their customers' Y2K problems now. As a result, S. 96 would reduce the liability these defendants may face, even if they do nothing, and accordingly undermine their incentives to act now—when the damage due to Y2K failures can still be averted or minimized.

S. 96 also would substantially modify the procedural law of the 50 States by imposing new pleading requirements and by effectively requiring nearly all Y2K class actions to use Federal certification standards. While the Administration could support the adoption of certain federal rules that would, in some meaningful way, help identify and bar frivolous Y2K lawsuits, the broad and intrusive provisions of S. 96 sweep far beyond this purpose and accordingly raise federalism concerns.

The Administration has been working with the Senate on alternatives that would more closely achieve the goals S. 96 purports to serve—creating incentives for organizations to be Y2K compliant, weeding out frivolous Y2K lawsuits, and encouraging alternatives to litigation. In that regard, the Administration would support provisions encouraging alternative dispute resolution, and carefully drawn modifications to pleading rules and substantive law that encourage Y2K readiness. The Administration would support Senators Kerry and Robb's amendment because it satisfactorily addresses many of the previously mentioned concerns (although we are working with the Senators to address drafting issues raised by the Department of Justice).

Mr. HOLLINGS. Mr. President, I thank the Chair.

There it is, Mr. President. We are trying to mushroom a nonproblem into a crisis with $1 trillion worth of lawsuits all on the political juggernaut of the Chamber of Commerce downtown for greed, and taking away rights to protect the group that is not only protectable—God knows they have the money—but they know it. They can bring in their instrument right now and make it compliant.

Those who are purchasing are being told, like that doctor in New Jersey, that it is compliant. But they are being taken advantage of. You find out it is not, and it is not until they have everybody ready to go that, ''Oh, no. We are ready to give you a new computer free.'' Not $25,000, as they charged for months, but they would have to be paid before they get any results. ''We are glad to give you this free, and even to pay your attorney fees.'' Right or wrong? Is this a frivolous lawsuit, some kind of bad back, injured party case coming across trying to go after deep pockets? It is legitimate small businesses that can work right now. They will be like an automobile dealer trying to offload their old year models, with misleading purchases sometimes. But they find out that hasn't paid, so they have gotten very competitive.

This market this minute is very, very competitive. Read Business Week.

The market is working. But there is a political agenda here on course, not really to look out for the small businessman, but change the rights of the States under the 10th amendment to administer tort cases. Here with the administration, do you see any States coming up and saying that they are totally inadequate, that they can't handle it, that what they really need is the Federal Government to interpose and change the rules of jurisprudence?

Does any State come up here? Does any legitimate legal organization come up here? Not at all.

I heard what the distinguished Senator from Oregon read about the American Bar Association, but give us hearings before the American Bar and give us the legal folks—they understand law. That is one of the difficulties we have in the Commerce Committee. We don't necessarily have profound legal talent, so they don't want to study it. They look at a business cost-profit standpoint and then it is the bum's rush for S. 96.

I am glad the rush now has stopped with the policy of the administration and the recommended veto of S. 96 and the McCain-Wyden amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, as always, the Senator from South Carolina has raised a number of important issues. I will take a minute or two to respond.

First, it needs to be understood by the Senate that, under the substitute offered by the chairman and myself, a plaintiff can file suit immediately for injunctive relief should they choose to go that route.

There have been all kinds of discussion raised and I gather it is always raised by the administration that somehow the rights of plaintiffs are being cut off. The fact of the matter is, under the substitute being offered by the Senator from Arizona and myself, it is possible for a plaintiff to move for injunctive relief immediately.

What we are saying is, we ought to look at ways to try to bring about corrections in the private sector by private parties coming together, trying to encourage the alternative dispute resolution, a process which is clearly laid out in our legislation.

Our substitute makes it very clear that if a plaintiff wants to file a suit on day one, they can. If they believe they are being jerked around in the marketplace, they can go out on that very first day and seek injunctive relief. We think it would be preferable and avoids causing this bedlam with everybody rushing to court. We think a lot of those approaches can be resolved by the parties coming together.

Second, it seems to me those who will look at the substitute will understand in the vast majority of instances private contract law is going to govern. In most other instances it will be State law. In this administration statement, the notion is that somehow we are federalizing everything, where the substitute clearly lays out in the vast majority of cases contract law is going to take the lead in this area. That, regrettably, is a part of the administration's position that simply is not accurate.

In fact, I and others raised that issue in the committee. We felt there wasn't a strong enough bias in favor of protecting private contract law. That was a change made after the bill left committee, because a number of consumer and other organizations thought it was very important.

I think what is especially troubling about the policy statement that has now been offered by the administration—and this Senator and others are going to continue to work with them—is that they are essentially telling the Senate that over in the Justice Department they know more about the technical issues of running computers and the software businesses than do those businesses that have to do it every single day.

The administration statement says this legislation is going to decrease the incentives, that these computer and software and other technology organizations have to be ready to assist customers to be ready for the transition of the next century.

The fact of the matter is, all of these groups that have to actually work with computers and software every single day believe this legislation is absolutely critical to their being ready for the transition to the next century. Essentially what we have is folks at the Justice Department on this issue saying they know a whole lot more about the technical issues of the computer business than the folks who actually have to work with these systems every single day.

I raise this issue again with respect to defendants who engage in truly outrageous, egregious action. There have been statements made on the floor by others and raised in the administration's letter as well with respect to the question of proportional liability and particularly what you are going to do about those defendants who engage in fraudulent activity.

Under the substitute before the Senate, if a defendant is engaged in fraud, it is very clear that joint and several liability stays in place. There are no changes whatever with respect to joint and several liability if, in fact, a defendant is engaged in an egregious type of conduct. We also ensure that joint and several liability is kept when a defendant is insolvent. We felt it was important to make sure the plaintiff would have an opportunity to be made whole in instances where there was an injured party who badly needed a remedy.

The fact is that there have been many, many changes made in this legislation since it left the committee. In order to be responsive to the consumer, the chairman of the committee reached out to a variety of parties—myself and others—in order to make those changes. I will take a minute or two to outline a couple of those.

Perhaps the most important is the fact that this is a bill with a strong sunset provision. Neither the original McCain legislation nor the Hatch-Feinstein legislation, which has many, many good features, nor the legislation that our colleague, Senator DODD of Connecticut, offered, which also has many good features in it—none of those bills had a sunset provision originally.

We felt it was important to make sure that this legislation was not producing a set of changes for all time but it was going to be legislation that specifically targets problems directly related to Y2K so we don't have an open-ended onslaught with respect to product liability issues.

I happen to think the Senator from South Carolina made a number of important points with respect to tobacco. I also happen to think there were other issues that were relevant on this debate. I and others in the other body were able to get the tobacco executives under oath to say that nicotine was addictive which certainly helped to open up this issue in order to protect consumers and injured parties. I think the Senator from South Carolina makes a number of important points with respect to the issue of lawyers who stand up for injured parties and consumers.

Make no mistake, colleagues, this is not an open-ended tort reform bill. It is not an open-ended product liability bill. It is essentially a 3-year bill to deal directly with a problem that, frankly, could not have been envisaged at the time. At the time many of these decisions were made, there was a real question as to whether there would be adequate space for disks and for memory, so there was an engineering tradeoff adopted a number of years ago to get more space for disks and memory. We find it hard today to believe that at one point disk and memory space was at a premium. It was at that time.

Now we are in a position where we have to come up with ways to ensure we make our computer and technology systems ready for the next century while at the same time providing a safety net when, in fact, there are real problems such as frivolous suits.

I hope our colleagues will look at the many changes that have been made: The fact that there is joint liability when a defendant knowingly commits fraud, there is joint liability when you have an insolvent defendant in order to make a plaintiff whole, that there are punitive damages when an individual acts in bad faith, that there are not new preemptive Federal standards for establishing punitive damages, that there has been an elimination of the vague Federal defenses for reasonable efforts.

I hope our colleagues will look at those changes that have been made. I, for one, am going to continue to work with the administration. I think there

are many in the administration who realize this is a very, very serious problem. But I really have to say to the Senate today, with respect to the policy statement issued today, that there simply are a number of statements in there that, to be charitable, are inaccurate. The fact is, this idea that under our substitute injured persons are having their rights to sue cut off is simply wrong. Under our substitute, a plaintiff, an injured consumer, can go out and file a suit immediately on the very first day.

Under the McCain-Wyden substitute, if you feel that you are a wronged party, you can file a suit the first day. We just do not think, as a matter of public policy, that is a particularly good idea. We would like to encourage parties to work together in the private sector. That is what we seek to do through the 90-day period. That is what we seek to do through the alternative dispute resolution system. But for those who think it is important to basically have the right to sue immediately, our legislation does that. We do it in a way that protects, first and foremost, contract law rather than writing whole new Federal standards to govern in this area.

Finally, and this is perhaps the area where I have the strongest disagreement with what the administration has offered today, I find it very, very far-fetched to believe that there are folks in the Justice Department who know more about the technical issues of helping those in the technology sector get ready for the 21st century; that those folks would know more about this technical job we have in front of us than people who have to do it every single day in my home State of Oregon and across the country. Those are folks who right now, every single day, come to work saying, What are we going to do about working with our suppliers? What are we going to do about individuals overseas who may have been slow to get ready for Y2K? Those folks know a whole lot more about the challenge of getting ready for the 21st century than do the folks in the Justice Department.

I hope we listen to those folks across the country in the small businesses, in the grocery stores and hardware stores, who, by the way, overwhelmingly support this substitute. We have had discussions about somehow the grocery stores and the hardware stores and others are ones that are not supportive of this legislation, who feel their rights are being cut off. The fact is they are overwhelmingly in support of this legislation.

A lot of my colleagues, I guess, are saying: Where do we go from here? Is it just going to be impossible to move forward? I am not one who shares that view. I think there is a centrist coalition in the Senate that very much wants to get a responsible bill that meets the needs of consumers and injured parties, and is also concerned about preventing bedlam in the private marketplace next January. We have been meeting on an ongoing basis for several days now. We have had some very thoughtful ideas presented. Senator DODD has some important suggestions; Senator HATCH, Senator FEINSTEIN, and others have made real contributions. I understand our colleague from Massachusetts, Senator KERRY, continues to negotiate on several of the issues that are outstanding.

So I am very hopeful that with the continued leadership of TOM DASCHLE and TRENT LOTT on this issue that we can continue to work through some of the outstanding issues. I have tried to respond this morning to areas where I think the administration is simply off base with respect to what the McCain-Wyden substitute is all about, but I want to make it clear I remain open to working with them.

But I would say now is the time for the Senate to deal with this issue. If we let this go on, if we just let it fester and take months and months and months and arrive at no resolution of this problem, I happen to think we may well be back here early next January for a special session of the Senate having to deal with this problem. There is not a Member of this body who wants that result. Let us continue to work together.

I plan to continue to negotiate with all the Senators I have mentioned this morning, and will continue to try to be responsive to the concerns raised by the distinguished Senator from South Carolina, although I think in the end it is quite clear we have a difference of opinion on this legislation. But this bill is too important to just say: This is it, the end, the administration has given its opinion and let's move on.

I think we have an opportunity to proceed under the McCain-Wyden substitute. We have made nine major changes that were requested by various organizations to be responsive to areas where they thought the committee bill was inadequate. We have made it clear we are open to a variety of other suggestions. Senator DODD, in particular, has offered several which I think are very important and ought to be addressed. I hope the Senate will continue to work in a bipartisan way to deal with this issue, because the time to deal with it is now and not next January.

I yield the floor.

Y2K ACT

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

The legislative clerk read as follows:

A bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of that year's date.

The Senate resumed consideration of the bill.

Pending:

McCain amendment No. 267, in the nature of a substitute.

Lott amendment No. 268 (to amendment No. 267), in the nature of a substitute.

Lott amendment No. 269 (to amendment No. 268), in the nature of a substitute.

Lott amendment No. 270 (to the language proposed to be stricken by amendment No. 267), in the nature of a substitute.

Lott amendment No. 271 (to amendment No. 270), in the nature of a substitute.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I take a moment on the pending issue before the Senate. The year 2000 litigation reform proposal has certainly been the subject of a lot of discussion over the last couple of days. As the ranking Democrat on the committee chaired by the distinguished Senator from Utah, ROBERT BENNETT, we have spent the last couple of years looking at this issue—intensely the last year and a half. We have held 18 or 19 hearings on the subject of this computer bug problem and its potential effect not only on our own economy but the global economy and the disruptions it would cause in the lives of average Americans, in everything from flying airplanes to operating elevators, emergency rooms in hospitals, schoolrooms and classrooms, the functions of small businesses that depend upon computer data information today to maintain their businesses.

A legitimate area of concern has been raised regarding potential litigation surrounding this issue. I, for one, am very supportive of passing legislation to try to minimize the tremendous cost of lawsuits that could ensue for a number of years as a result of this anticipated but undealt with problem.

I won't go into how the Y2K issue emerged. Suffice it to say that it went back to economies of scale a number of years ago when computers were in their infancy and we were trying to save space in developing or programming computer information. Rather than list all four digits, which took two more spaces, only two spaces were used, ending with the last two digits of the year rather than including all four digits. The assumption was, years ago, that modern technology would take over, the old computers would be replaced, and that new information would include the millennium, therefore solving the millennium problem.

As we painfully know, with some 245 days to go now before January 1 of the year 2000, that is not the case. Not only has this problem not been erased in terms of the date issue, but the embedded chip problem makes this a confounding issue.

Had it not been for Senator BENNETT of Utah calling out to all of the Members to get involved in this question, and my involvement with him after his initial interest in this in the Banking Committee where we examined financial institutions, I don't think we would have done as good a job getting the Federal Government and the country as a whole as interested in this subject matter as it is today. As our reports have indicated, we are actually in very good shape in many areas.

However, there is the potential problem of litigation. Some estimates indicate that the cost of litigation surrounding the year 2000 problem could be as much as $1 trillion. That may be an exaggeration. No one knows for certain how big a problem this may be in terms of clogging up our courts—primarily with companies suing companies, I presume, in contract litigation—over failed businesses or machinery that didn't operate as advertised.

There are several bills before us. We are trying to work out our differences, to see if we cannot put together a proposal here that would attract broad, bipartisan support of legislation that will do several things.

First of all, it tries to avoid litigation altogether. I think this is common of all the various proposals. I do not have each one of them in front of me, but all the proposals try to have some waiting period or some means by which a plaintiff and defendant could see if they could resolve the issue which had prompted the litigation in the first instance. I think that is a wise inclusion here. We ought to do everything we can to avoid litigation and the cost to defendants and plaintiffs. So I commend the authors of those provisions for trying to minimize the cost.

We then try to insist upon some specificity in the allegations, so plaintiffs would have to lay out in some detail what the charges are, where the shortcomings are, giving defendants an opportunity to know what they have been charged with. It sounds like a simple enough request, but in the past we have had a serious problem where merely broad, vague allegations were enough to prompt litigation that could tie up individuals for years and cost literally thousands, in some cases millions, of dollars to the defendants when, in the final analysis, there was a lack of proven culpability. So we are requiring some specificity in the allegations.

We are also talking about trying to reduce the probability of class action lawsuits, particularly in an area which is primarily contract law. But in order to do that, there is a sense of proportional liability here, which is something we included in the securities litigation reform bill—which passed this body and the other body substantially a few years ago and ultimately, after an initial veto, was passed over the President's veto by the Senate and the House—and the uniform standards legislation which followed thereafter.

The proportional liability idea is one of basic fairness. It says defendants ought to be brought into a lawsuit based on the percentage of their alleged culpability, not based on the depth of their pockets financially. If a company is 10-percent responsible for the problem, they ought to bear 10 percent of the cost of liability. In fact, the cases prove that too often what has happened is we have plaintiffs—their attorneys—who go out and seek out the companies with deep pockets that may have had little or nothing to do with the issue but, because they are affluent potential marginal defendants, they get brought into the litigation. If there is a successful result on the part of the plaintiff, then that marginally involved defendant, under the joint and several provisions of most of our law in this area, no matter how marginally involved, are responsible for the full cost of the lawsuit, paying the awards.

Again, I appreciate the lawyers who want to have that. I understand that is one way to get paid. But in fairness to those companies which are only marginally involved, it does not seem to be a very fair way to proceed.

There are some very legitimate issues people raise about trying to come up with some modified version of the proportional liability provisions. They may have some value. I am still listening to their arguments, but I am not yet convinced that is such that we need to modify it in this kind of bill.

The argument they make, and it has some appeal, is that in dealing with the year 2000 litigation, it is fundamentally contract law. Unlike securities litigation or litigation in product liability or other areas, in contract law the notion of proportional liability may not have as much meaning as it would in other areas. So there is some argument. There is an argument being made that you may have a more difficult time reaching offshore companies that are major computer producers, manufacturers, software manufacturers and producers. That argument, again, has some appeal. It has not yet persuaded this Senator to support any moderation in the proportional liability sections of these bills.

The last series of ideas I would like to see incorporated—and I am prepared at the appropriate time, if we get to it, to offer an amendment, I hope with several of my colleagues who share these views—is we ought not, in my view, have any caps on punitive damages except in the case of small businesses and municipalities. I do not think a cap on punitive damages is needed in this area. We are not talking about personal injury matters here; we are talking about contract law. I understand for smaller businesses that could be a huge problem and put them out of business—on a small lawsuit, destroy them. And for municipalities where taxpayers end up paying the costs of these burdens, I think most of our colleagues will accept those arguments.

The second is to try to raise the limits or lift the limits on the directors' and officers' liability. In this area, I also do not think there is a need for caps on the amount of liability a director or officer should pay in a successful plaintiffs' suit dealing with Y2K issues.

I say that because when we passed the disclosure act a year ago, dealing with the year 2000 legislation, we provided in that legislation a safe harbor for forward-looking statements by the officers and directors and managers of these businesses. It seems to me that protection plus the general business rule which protects business leaders from the kind of frivolous lawsuits that some might envision eliminates the necessity for having a cap on directors' and officers' liability in this area. So I include in my amendment lifting the cap on that issue.

Last is the issue of the state of mind question, which is the one that is a little more thorny for people. This can get rather arcane and esoteric, but it is an important issue. Presently, under the bill offered by the Senator from Arizona, which is the bill before us, the one that is on the floor, and I believe under the bill offered by my colleague from Utah, Senator HATCH and others, that would have a state of mind that would require that it be—I think clear and convincing is the standard that is used. I may be wrong on one of those, but I think it is in the McCain bill.

The argument there is that we used clear and convincing as a standard when we did the full disclosure bill. If we used it there, why not continue using it here? We used it there because we wanted to protect, in a sense, and encourage the leaders of industry and business to disclose to each other where they were in the Y2K remediation efforts. So, candidly, it was to make it more difficult for someone to sue an officer or director of a company that was reaching out to its clients, to its fellows in the business community, its peers, by sharing information. So it was part of the incentive of the Disclosure Act to get that information out.

The reason I am uneasy about including clear and convincing in this bill is because I can see some who want to bring lawsuits on income-related matters where it may actually be more of a product liability issue, it may be a tort issue, but the defendant will say it is an income issue.

So, even though the plaintiff is not thinking about the Y2K problem, the defendant will use the Y2K defense, raising the bar to clear and convincing and make it very difficult for that plaintiff to be able to bring an action which has little or nothing to do with the year 2000 issue.

I also think we established in the securities litigation area a lesser standard. In fact, I know we did, in clear and convincing. It seems to me that by using the standard we used in the securities litigation area, we will be adopting a standard in a more parallel fact situation than the disclosure bill of last year, and one that has already proved to be successful in winning a lot

of support in this Chamber and in the other body. It has become the law of the land. We now have a few years of experience of that standard in place.

Clear and convincing opens up a new door that we do not know, quite frankly, where it goes.

I urge my colleagues to be supportive of this proposal on the punitive caps on the directors' and officers' liability, with the exceptions that I have mentioned, when and if I get a chance to offer it, and on the issue of state of mind.

That may not be enough. I am sure there will be other amendments others may want to offer. But I think if you have a bill that roughly incorporates what I described to deal with the year 2000 problem, we can pass a bill with a substantial bipartisan vote; it can go to the House and go to the President's desk, which I am confident he will sign into law.

I know the administration and I know the President and the Vice President care about this issue. They think it is important. We have a responsibility to act. This issue is not as galvanizing, obviously, as the issue surrounding the tragedy in Kosovo or the tragedy in Colorado. Clearly, those are two issues which this Senate must debate and discuss, in my view.

TRAGEDY IN LITTLETON, COLORADO

We ought to be talking about ways in which we can minimize the tragedy that occurred at Columbine High School in Littleton, CO.

I want to hear my colleagues' ideas on what we can do as a country. I am suspicious of quick legislative solutions to what provoked and caused the loss of 13 lives in that tragedy in Colorado, but nonetheless, I want to hear a good discussion of what my colleagues are hearing from their constituents across this country as to how we, as a legislative body, can make a positive contribution to help this country not only come to terms with what happened a week ago, but how we can do everything in our power to minimize the recurrence of that tragedy.

KOSOVO

Secondly, on Kosovo, clearly there the events, as they are unfolding, indicate that we are on the right track. It is not a perfect policy, but I am proud of the fact that my country is standing up for the rights of human beings who have been treated so poorly, to put it mildly, by the regime of Slobodan Milosevic.

It was almost 60 years ago yesterday that a ship called the *St. Louis* left Europe with one-way tickets. Many who are part of the families of survivors or survivors of the Holocaust will know the name of the ship, *St. Louis.*

That ship sailed from Europe with a boatload of passengers, all of whom were Jewish. They were bound for Cuba. When they arrived at Cuba, only 28 of them were allowed to come ashore.

Unfortunately, our country denied that ship the right to enter U.S. waters. Rather than being a one-way ticket to freedom and avoiding the horrors of the Holocaust, the *St. Louis* was forced to return to Europe, and all those passengers on that boat faced the fate of the Holocaust.

This Nation and the nation of Cuba at the time turned its back on a shipload of people seeking freedom. Sixty years later, Mr. President, we are confronted with a human tragedy that, I argue, is not on the magnitude of the Holocaust but of a significant magnitude where 1.5 million people have been tortured, have been executed, have been displaced because of the appetites of one individual and those who support him in Serbia.

It is not easy to stand up. It is not easy to build coalitions. It is costly to be involved in this. In my America, we stand up for people who face that kind of a problem, and when we can do so with 18 other nations standing with us, bearing the cost in proportional ways, to try to right this wrong, then I think it is something of which all Americans can be proud.

It is legitimate to have a debate over the execution of this conflict, how it is being prosecuted, who is doing what and how fast it is occurring, whether or not we should have ground troops or whether or not the airstrikes are performing and achieving the desired results. I think we are on the right track. We ought to have a debate on that as well. It is healthy to have that kind of discussion.

I do not mean to say Y2K is not important. Hardly so. I think it is very important. It is an issue we should resolve in this body, come to terms with, try to pass it here, and send the bill to the President for his signature. If we do not, we will regret deeply what may happen, and we will look back and wish that we had taken the short time we need to pass a bill that will allow for this problem to be avoided. I also hope we will get to the issue of Kosovo, get to the issue of Columbine High School and the tragedy in Colorado, and discuss and debate how we think we can respond to those issues as well.

Mr. President, I see the arrival of my colleague from California. She may not be ready to say something at this moment. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GREGG). The clerk will call the roll.

The legislative assistant called the roll.

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

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

MOTION TO COMMIT WITH AMENDMENT NO. 291

Mr. KENNEDY. Mr. President, I send a motion to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] moves to commit the bill to the Committee on Health, Education, Labor, and Pensions to report back forthwith, with the following amendment No. 291 by Mr. KENNEDY.

At the appropriate place, insert the following:

SEC. ___. FAIR MINIMUM WAGE.

(a) SHORT TITLE.—This section may be cited as the ''Fair Minimum Wage Act of 1999''.

(b) MINIMUM WAGE INCREASE.—

(1) WAGE.—Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.65 an hour during the year beginning on September 1, 1999; and

''(B) $6.15 an hour beginning on September 1, 2000;''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on September 1, 1999.

(c) APPLICABILITY OF MINIMUM WAGE TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—The provisions of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to the Commonwealth of the Northern Mariana Islands.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 292

Mr. MCCAIN. Mr. President, I send an amendment to the desk to the motion to commit with instructions.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. LOTT, proposes an amendment numbered 292 to the instructions to the motion to commit.

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT REQUEST

Mr. MCCAIN. I ask unanimous consent that the pending business be temporarily laid aside in order for the Senate to consider two amendments en bloc to be offered by Senator MURKOWSKI, that such amendments be immediately considered en bloc and agreed to en bloc, the motion to reconsider be laid upon the table, and the Senate then return to the pending business.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I ask unanimous consent the pending matter before the Senate be set aside so I can speak on the pending bill overall.

The PRESIDING OFFICER. Is there objection?

CLOTURE MOTION

Mr. KENNEDY. Mr. President, reserving the right to object, and I will not object in just a moment, but I do send a cloture motion to the desk at this time.

Mr. MCCAIN. Mr. President, I believe I have the floor.

Mr. KENNEDY. Mr. President, I think I am entitled to express my right to object.

The PRESIDING OFFICER. I am advised that the cloture motion is in order, not withstanding the fact that the Senator from Arizona has the floor.

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Kennedy motion to commit S. 96:

Paul Wellstone, Barbara Mikulski, Harry Reid, John F. Kerry, Carl Levin, Charles E. Schumer, Frank R. Lautenberg, Tom Harkin, Ted Kennedy, Russell D. Feingold, Jack Reed, Patrick Leahy, Robert Torricelli, Dick Durbin, Barbara Boxer, and Jeff Bingaman.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from Arizona?

Without objection, it is so ordered.

The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I would like to respond to some of the examples of how S. 96 would deny justice to businesses injured by a Y2K failure that have been offered by the ranking member. In particular, the example of a company called Produce Palace has been raised a number of times. In fact, the owner of that business testified before the Commerce Committee.

Let me respond to the specific charges with the specific facts of that case and dispel the notion that S. 96 would make that business' situation even worse.

The small businessman who owns Produce Palace has testified frequently regarding the problem he had with a computerized point of sale system, including a credit card scanner which would not accept credit cards with expiration dates of ''00.'' He asserted his situation would somehow be worsened by S. 96. The facts are to the contrary. The situation would be better with the passage of S. 96.

Although he complains that S. 96 would require a 90-day waiting period, his lawsuit against the cash register system company was not commenced for over 2 years after the problem occurred. S. 96 would require that he provide 30 days notice to the company of the problem. This notice period does not foreclose emergency action for temporary restraining orders or similar extraordinary court involvement where warranted.

Although he communicated back and forth with the company responsible for his problems over many months, under S. 96 the company would have had to respond by the end of the 30 days, and fix the problem within another 60 days. He could have begun suit at the end of the 60-day remediation period if the problem was not fixed, and not continued to be strung along for months and months.

Additionally, most of the Produce Palace damages were suffered from lost profits and business. These losses may or may not be covered in his contract with the equipment provider. If those issues are included in a contract, then the contract terms prevail. If not, he would have every right to secure a new cash register or new credit card ''swipe'' machine so his business could proceed during the interim. This is something he apparently did not do under the current law.

S. 96 would not affect his right to sue if the problems were not fixed in a timely manner. In fact, he would have been able to sue much more quickly than he actually did. More to the point, under S. 96 defendants are encouraged to fix problems, and quickly, so that Mr. Yarsike's problems would have been alleviated more quickly and without the drain on his energy and financial resources that litigation entails.

We are sending a letter to Yarsike explaining to him this aspect, and we certainly look forward to his response, if there is any disagreement.

The second area that I will talk about is proportionate liability. Proportionate liability is one aspect of the bill that has caused some concern among my colleagues. I quoted this morning from a paper by the Progressive Policy Institute concerning the impact of Y2K litigation, and that same paper also discusses proportionate liability.

The Progressive Policy Institute paper says:

It is also extremely important that defendants be held liable for only their portion of the fault by eliminating joint and several liability. Given that computers and electronic products pass through many hands before they are finally sold, sourcing the liability like this will be that businesses that had no role in causing the problem will not be held accountable. To demand that a business with little complicity in a dispute provide the lion's share of reparations only because they have the deepest pockets or because they are the last ones left standing, would simply be unfair.

The other issue I will discuss is the financial impact of litigation. It costs everybody money. It raises the cost, goods, and services. Here are a few examples. Twenty percent of the price of a ladder, 50 percent of the price of a football helmet is attributable to liability and litigation costs. The cost of defensive medicine used to help avoid malpractice liability has been estimated at $50 billion annually. These kinds of costs will result in higher costs of technology goods and services.

These increased costs to consumers make technology a potentially more divisive element in our society, dividing the haves and have-nots, those who can afford technology, goods, and services versus those who cannot. Seminars on how to try Y2K cases are well underway. Approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on this event.

Let me just give you a sample of the Y2K litigation cost estimates:

The year 2000 computer bug is expected to cause some disruptions, even if 95 percent of computer system problems are corrected. Problems will dramatically worsen if only 85 percent or 75 percent of the bugs are found. Ninety-five percent corrected/best-case estimate: U.S. total costs (to replace and repair software and systems and pay for litigation) $90 billion; 85 percent: U.S. total costs: $500 billion; 75 percent, which is the worst-case: $1.4 trillion.

The source of that information is Capers Jones of Artemis Management Systems.

The amount of legal litigation associated with the year 2000 has been estimated by the Giga Information Group to be $2 to $3 for every dollar spent on fixing the problems. With the estimated size of the market for the year 2000 ranging from $200 billion to $600 billion, the associated legal costs could easily near or exceed $1 trillion.

Mr. President, the effects of abusive litigation could further be curbed by restricting the award of punitive damages. Punitive damages, as we all know, are meant to punish poor behavior and discourage it in the future. However, this is a one-time event. The only thing deterred by excessive punitive damages in Y2K cases would be remediation efforts by businesses.

I have managed a number of bills on the floor of the Senate, some of them more controversial than others. It is the rarest of occasions when we have seen a situation where amendments are not even allowed to be propounded and debated and voted on.

It is not clear to me why we can't move forward with the legislative process. We have a bill that was reported

out of committee. We have made several changes to it, as is normal between the time a bill is reported out of committee and when it gets to the floor. I know there are significant objections by the distinguished Democrat leader, Senator HOLLINGS, of the Commerce Committee. I do not quite understand why he wouldn't come forward, propose an amendment, et cetera.

Now we are playing parliamentary games with motions to recommit and cloture motions. I say to the Senator from Massachusetts, who I have great respect for, why don't we just amend, vote, and move forward on an issue that all of us realize is very, very important to the future of this country? The year 2000 is not going to wait.

I have never, in 13 years in the Senate—and many of those years, from 1987 to 1995, spent in the minority—come to this floor and tried some parliamentary maneuver such as I just saw. Never. I do not think it is the proper way we should conduct business here in the Senate.

We are going to have a cloture vote tomorrow. I believe we will get 60 votes. If we do not get 60 votes, then I believe we ought to have another cloture vote a day or two later and another cloture vote a day or two later and another cloture vote a day or two later. Because we ought to find out, Mr. President, who is really interested in curing this problem and who is interested in blocking legislation on behalf of the American Trial Lawyers Association.

I hope the Senator from Massachusetts will withdraw this foolishness that he just went through. I hope the Senator from Massachusetts will propose an amendment on anything that has to do with this bill, and we would debate it and vote on it. That is the courtesy that I used to give my colleagues on the other side of the aisle when I was in the minority.

I want to repeat, never once, never once did I propose a motion to recommit followed by a cloture motion, nor have I seen it here in this body that often, especially when we are dealing with an issue of this importance.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays are ordered.

AMENDMENT NO. 293 TO AMENDMENT NO. 292

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

Mr. MCCAIN. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. LOTT, proposes an amendment numbered 293 to Amendment No. 292.

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

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

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

Mr. MCCAIN. Mr. President, I regret that we have to go through this. It was chosen to attempt to recommit this important bill back to the committee. As a result of that action, it is not only impeding but making very difficult our progress on the legislation.

The Senator from Massachusetts and I have done battle on the floor of the Senate in an environment characterized with respect and appreciation. I do appreciate and respect the commitment that the Senate from Massachusetts makes to a variety of issues. I have not seen anyone on the floor who is committed as much as he is and willing to come to the floor day after day in advocacy of the issues that he believes in—health care, minimum wage, and many others. I hope the Senator from Massachusetts and others on the other side of the aisle will allow us to move forward with this legislation, whatever amendments they wish to propose, or amendments on this side, that we could have open debate and move forward.

With that commitment, I will move that we remove the cloture motion, if we have that commitment from the other side.

I hope we can move forward. Apparently, we will not. But it is not the way the American people expect us to do business.

There is a little book we hand out to people when they come here to the Capitol and we give to our constituents. It is called, ''How Our Laws are Made.'' Our laws aren't made this way. This isn't the way we describe it to the American people. The way we describe it to the American people is a bill is reported out of committee, it comes to the floor, the amending process takes place, and we then continue to final passage of the legislation and to a conference and come back to the floor of the Senate.

This is not that procedure. I do not think the schoolchildren will look very favorably on this kind of exercise that we are going through now. I appeal to the better angels of my colleague's nature that we move forward with this very important legislation as quickly as possible.

I note the presence of the distinguished majority leader.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I associate myself with the comments of the Senator from Arizona.

The bill before us is the Y2K liability legislation, which is time sensitive, which has bipartisan support, which would allow for a process for small business individuals and others who might be talked into Y2K computer problems, to deal with the problem without winding up with the typical lawsuits being filed.

That is what this is really all about, trying to deal with the liabilities that could be facing a lot of people inadvertently, or because they don't have the ability to deal with this problem, to find a way to deal with the problem, and not just, as is the idea of a lot of people, just to provide an avenue for a lot of lawsuits.

I had hoped we could have amendments on the subject and maybe substitute amendments by others. There are two or three different bills that are very close in this area. I thought we could deal with the subject matter and move forward. In a show of good faith, I wanted to leave those options open, and I didn't completely ''fill up the tree,'' as it is described around here, and offer a lot of amendments to block everybody, to see if we really had a good-faith intent of dealing with this important legislation. There are a lot of small business men and women, and businesses in general, who are very interested in this legislation and know it needs to be done, and they know it could be done in a bipartisan way.

But my show of good faith has been rewarded with an amendment that is unrelated and is intended to change the subject to fulfill an agenda that has been developed on the other side. They had the opportunity and they took advantage of it. That, I think, is a tragedy, but that is the way it goes around here. I have learned a lesson. If we are going to pass legislation, whether it is on bankruptcy or financial modernization, FAA reauthorization, or this legislation, Y2K legislation, which is important, I am going to have to take actions to block irrelevant, nongermane amendments that are just part of a political agenda.

Having said that, I move to table the motion to recommit the bill and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. Mr. President, I advise Members that in about 10 minutes we intend to have a recorded vote. I give Members notice that a vote is impending.

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

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. LOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue with the call of the roll.

The legislative clerk continued the call of the roll.

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

Mr. LOTT. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue with the call of the roll.

The legislative clerk continued the call of the roll.

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

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

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The clerk will call the roll.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum. No one is present, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 6]

Boxer	Gregg	McCain
Crapo	Kennedy	
Durbin	Lott	

The PRESIDING OFFICER. A quorum is not present.

Mr. LOTT. Mr. President, I move to instruct the Sergeant at Arms to request the presence of the absent Members, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New York (Mr. MOYNIHAN), is absent due to surgery.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—98

Abraham	Daschle	Inhofe
Akaka	DeWine	Inouye
Allard	Dodd	Jeffords
Ashcroft	Domenici	Johnson
Baucus	Dorgan	Kennedy
Bayh	Durbin	Kerrey
Bennett	Edwards	Kerry
Biden	Enzi	Kohl
Bingaman	Feingold	Kyl
Bond	Feinstein	Landrieu
Boxer	Fitzgerald	Lautenberg
Brownback	Frist	Leahy
Bryan	Gorton	Levin
Bunning	Graham	Lieberman
Burns	Gramm	Lincoln
Byrd	Grams	Lott
Campbell	Grassley	Lugar
Chafee	Gregg	Mack
Cleland	Hagel	McCain
Cochran	Harkin	McConnell
Collins	Hatch	Mikulski
Conrad	Helms	Murkowski
Coverdell	Hollings	Murray
Craig	Hutchinson	Nickles
Crapo	Hutchison	Reed
Reid	Sessions	Thompson
Robb	Shelby	Thurmond
Roberts	Smith (NH)	Torricelli
Rockefeller	Smith (OR)	Voinovich
Roth	Snowe	Warner
Santorum	Specter	Wellstone
Sarbanes	Stevens	Wyden
Schumer	Thomas	

NAYS—1

Breaux

NOT VOTING—1

Moynihan

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

VOTE ON MOTION TO TABLE THE MOTION TO COMMIT WITH INSTRUCTIONS

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to commit the bill with amendment No. 291 to the Committee on Health, Education, Labor, and Pensions. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New York (Mr. MOYNIHAN) is absent due to surgery.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote ''no.''

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 94 Leg.]

YEAS—55

Abraham	Frist	Murkowski
Allard	Gorton	Nickles
Ashcroft	Gramm	Roberts
Bennett	Grams	Roth
Bond	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kyl	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	Mack	Warner
Enzi	McCain	
Fitzgerald	McConnell	

NAYS—44

Akaka	Edwards	Levin
Baucus	Feingold	Lieberman
Bayh	Feinstein	Lincoln
Biden	Graham	Mikulski
Bingaman	Harkin	Murray
Boxer	Hollings	Reed
Breaux	Inouye	Reid
Bryan	Johnson	Robb
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Schumer
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	

NOT VOTING—1

Moynihan

The motion was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The majority leader.

MOTION TO RECOMMIT

Mr. LOTT. Mr. President, I move to recommit the bill with instructions to report back forthwith, and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 294

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

Mr. LOTT. Mr. President, I send an amendment to the desk to the motion to recommit with instructions.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 294 to the instructions of the Lott motion to recommit.

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

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 295 TO AMENDMENT NO. 294

Mr. LOTT. I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 295 to amendment No. 294.

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

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

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

Mr. LOTT. Mr. President, in view of the latest action in trying to change the subject on this important Y2K bill, I had no alternative but to fill up the tree. I know there will be comments by Senator DASCHLE and Senator MCCAIN and Senator KENNEDY with the idea that we still hope to be able to bring these issues to a conclusion and get an agreement on Y2K, and, if that can be worked out in terms of available amendments, or final vote, we will work through that, hopefully, by tomorrow.

GUIDANCE FOR THE DESIGNATION OF EMERGENCIES AS A PART OF THE BUDGET PROCESS

Mr. LOTT. Mr. President, I call for regular order with respect to S. 557, and send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 557) to provide guidance for the designation of emergencies as a part of the budget process.

The Senate resumed consideration of the bill.

Pending:

Lott (for Abraham) amendment No. 254, to preserve and protect the surpluses of the social security trust funds by reaffirming the exclusion of receipts and disbursement from the budget, by setting a limit on the debt held by the public, and by amending the Congressional Budget Act of 1974 to provide a process to reduce the limit on the debt held by the public.

Abraham amendment No. 255 (to amendment No. 254), in the nature of a substitute.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the pending amendment to Calendar No. 89, S. 577, a bill to provide guidance for the designation of emergencies as a part of the budget process.

Trent Lott, Pete Domenici, Ben Nighthorse Campbell, Jeff Sessions, Kay Bailey Hutchison, Craig Thomas, Slade Gorton, Chuck Hagel, Spence Abraham, Pat Roberts, Thad Cochran, Conrad Burns, Christopher Bond, John Ashcroft, Jon Kyl, and Mike DeWine.

Mr. LOTT. Mr. President, for the information of all Senators, this cloture vote will occur on Friday of this week. The time will be announced after consultation with the Democratic leader, unless it is vitiated because of intervening agreements or decisions that are made. All Senators will be notified of that exact time.

CALL OF THE ROLL

In the meantime, I ask consent that the mandatory call for the quorum under rule XXII be waived.

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

MOTION TO RECOMMIT

Mr. LOTT. I move to recommit the bill with instructions to report back forthwith, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 296

Mr. LOTT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 296 to the instructions of the LOTT motion to recommit.

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

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

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

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 297 TO AMENDMENT NO. 296

Mr. LOTT. Mr. President, I send a second-degree amendment to the motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 297 to amendment No. 296.

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

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

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

ORDER OF BUSINESS AND THE Y2K ACT

Mr. LOTT. Mr. President, I regret that we have to use this procedure. But we are hoping that we can see an agreement reached with regard to Y2K. I know there is a bipartisan effort underway on this important issue. It is timely. I hope that Members will work together this afternoon and tonight, and that we can find a way to come to a conclusion on it.

The Social Security lockbox also is an issue that we think is very important which we need to be talking about and find a way to actually achieve that goal. This will give us an opportunity to discuss that some more.

I want to say to Senator DASCHLE publicly what I have been saying to him privately. It is not my intent, and I will not be used to prevent a discussion in a reasonable period of time—we talked about week after next—with regard to school violence, how you deal with that. I think it is appropriate after a reasonable period of time to have a debate and have votes on amendments. I suggest that we would do it on the Justice bill. If for some reason that bill is a problem, we will find some other vehicle, and I am sure there will be amendments with a lot of different ideas of how we try to deal with this problem.

I am not sure we can solve what has happened in Colorado here. But we will have a chance to have a discussion and have a debate and have amendments.

I said to Senator DASCHLE that we are going to do that, and he and I will work together to find a way to do it and to have amendments dealing with school violence.

I don't want this to become a laundry list of all kinds of other issues. But the Senate needs to be heard, and needs to have an opportunity to debate and vote on those issues dealing with school violence. How we try to address that—we will find a way to get that done.

I yield the floor.

Mr. DASCHLE. Mr. President, just for a question for the leader to clarify, yesterday I think the understanding was that it would be his intent to bring this bill to the Senate floor 2 weeks from yesterday.

Is that the current intention?

Mr. LOTT. That is my intention. To give you an example of what might happen, though, it is possible that the supplemental appropriations bill would be ready that day. It depends on when the House acts and when the Senate is able to get to it. If we have to do it a day earlier, or a day later, I don't want the Democratic leader to think it would have to be something he and I agree on. Barring something that might happen, we will do it on that Tuesday.

Mr. DASCHLE. I thank the majority leader.

Mr. LOTT. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The minority leader is recognized.

Mr. DASCHLE. Mr. President, I want to comment on developments over the last couple of days in particular, and the vote that we just had specifically. There are two issues here. I want to touch on both of them.

The first issue has to do with our desire to reach some accommodation, some agreement on Y2K. I have said it publicly and privately, I think this is a serious issue. I believe there is a way with which to resolve this matter. But I don't think it does any of us any good, or the industry any good, or our country any good to pass a bill out of the Senate knowing it will be vetoed. I don't know why we would do that.

I have heard the argument, ''Well, we can clean it up in conference.'' Mr. President, I don't know why we don't clean it up here. We have as clear a letter as any I have ever seen from this administration which says the current draft will be vetoed. I don't know how you get any more definitive than this.

If we were serious—and I really believe that there are a number of serious and well-intentioned Senators who want to see this resolved—I think this is the test of seriousness, because I believe that the Senators who truly want to see an accomplishment rather than an issue will take this letter seriously.

I am very hopeful that in the not too distant future we will see some final agreement that will allow us to vote on an overwhelming basis on this issue. I want to support it. Most of us will support it.

Mr. WYDEN. Mr. President, will the minority leader yield for a quick moment?

Mr. DASCHLE. I am happy to yield to the Senator from Oregon.

Mr. WYDEN. Mr. President, I thank the leader for yielding. I want to thank him for his patience in an effort to try to make this legislation responsible and fair to prevent damage to our economy.

I also want to tell him that we have made exceptional progress in the last couple of hours, particularly in dealing

with the number of those issues that were raised in the administration's letter.

I really commend Senator DODD for all of his efforts. As you know, he is the senior Democrat on the Y2K Committee. He has done yeoman's work over the last couple of hours, particularly on the issue of punitive damages, which is the issue raised by this administration, and also on evidence standards to make sure that you are fair to the consumer and to the plaintiff. Senator DODD has worked very closely with the chairman of the Commerce Committee and myself, Senator HATCH, Senator FEINSTEIN. It is a bipartisan group.

We are going to continue to work in the spirit that the leader has talked about. As a result of the progress in the last few hours, I think we have gone a considerable distance toward meeting the leader's objective.

I thank the leader for yielding me the time, and also for his patience in this effort.

Mr. DASCHLE. I thank the Senator from Oregon.

Mr. President, there are a number of people—Senator WYDEN, Senator MCCAIN, Senator HOLLINGS, Senator EDWARDS, Senator DODD, Senator KERRY, Senator ROBB—as the Senator has noted, who deserve great credit for moving this process along. There are a number of Senators who are actively engaged in an effort to bring this matter to closure. I am very hopeful we can do that.

Let me talk about the second matter, the procedural question. Senator KENNEDY offered an amendment, as is his right, through the recommittal motion simply because he has no other recourse. This is illustrative of an array of frustrations the Democratic Caucus has about the procedure used in each and every instance in which a bill has come to the floor this session of Congress. This is the 28th of April and we have yet to have one amendable vehicle on the Senate floor.

I have a great deal of affection for the majority leader, but I must say, I think he should have run for Speaker because I really believe he would be more comfortable as Speaker. I have said that to him, and I think he would acknowledge he would much rather have a Rules Committee in the Senate than the current rules. When I become majority leader, maybe I will have that same feeling.

However, in the Senate, we have always prided ourselves on open, free debate. We lay a bill down, offer amendments, have tabling motions, have second-degree amendments, and we have a debate. We call ourselves the most deliberative body in the United States, if not in the world, and I believe we have a right to that distinction. How can we be deliberative when every time we bring a bill to the floor, we fill the parliamentary tree, denying anybody a right to offer an amendment?

There is a pent-up frustration and a pent-up pressure to have the opportunity to vote, to have the opportunity to offer amendments on key questions. This happened to be the minimum wage. The distinguished senior Senator from Massachusetts said he will pull the amendment if we can reach some agreement, if we can get some final solution here in solving the problem of Y2K. If we can solve it and if we can reach agreement, he will pull this amendment. He made that request and that offer. That is more than I get on many occasions. I have to thank the Senator for that.

However, we will continue to see as many challenges and as many significant breakdowns in the effort to reach, with some comity, a solution procedurally and a solution substantively of the issues we want to address in the Senate as long as we fill the tree on each and every occasion.

We just did the Social Security lockbox. What happened? The majority leader filled the tree and, in filling the tree, once again denied the minority the right to offer even a single amendment.

I am very hopeful we can resolve this matter, but the way to resolve it is to do what we are supposed to do, to do what we are paid to do around here. We come to the Senate with ideas. We come to the Senate with a bona fide appreciation of the differences of opinion that exist in the Chamber, even within our own caucuses. I am exasperated, frustrated, mystified that here in the Senate we are not allowed an opportunity to have a free and open debate. If amendments are undesirable, table the amendments; if the amendments can be improved, improve them with a second-degree. But to deny Democratic Senators—and even Republican Senators, for that matter—the chance to amend a bill is not acceptable.

I am hopeful we can find a way to resolve this. If we can't, I will put the Senate on notice that we will use other recourses if we have to. I don't want to have to do that. However, there are ways to respond, to reciprocate, if we are going to be gagged. Committees are meeting with our approval; we don't have to do that. There is an array of other tools we can use to demonstrate our frustration, and we will resort to those if we have to.

I hope we can come to a point where we don't have to do this. We can take up issues that are offered in good faith, debate them, amend them, dispose of them. We can do that on Y2K as we are doing today. We can do that on a lot of other issues, and we must.

Mr. REID. Mr. President, will the Senator yield?

Mr. DASCHLE. I am happy to yield to the Senator.

Mr. REID. I can speak only of your predecessor, the Democratic leader, Senator Mitchell. I know during one Congress he used this procedure one time during a 2-year period. This has been used, to my knowledge, on every bill that has been brought up this session; is that true?

Mr. DASCHLE. Unless there is a unanimous consent agreement, it has been used on virtually every occasion.

Mr. REID. My understanding is this procedure, when the Democrats were in the majority, was used rarely; is that true?

Mr. DASCHLE. I do not have the statistics the majority leader referred to. The majority leader showed me the list of occasions when filling the tree was something that Democrats resorted to when we were in the majority. We go back to 1977 to find the first time, and we have only used it, according to his own list, on a handful of occasions since 1977. Over the last 20 years, Democrats may have used this procedure 5 times—5 times in 20 years.

This procedure has been used five times in 1999. We will have a lot more to say about the extraordinary utilization of this concept of filling the tree and how undemocratic and unfair it is to the process and to the institution itself. We have to find a way to fix it.

Mr. SCHUMER. Will the majority leader yield? Pardon me; wishful thinking on my part. Will the minority leader yield?

Mr. DASCHLE. I am happy to yield to the Senator.

Mr. SCHUMER. I recently ran for the Senate. One of the main reasons I ran was the ability of Members to amend bills. I have always admired the Senate for this. The House has become nasty and partisan. It has basically shut down.

I want to thank the minority leader for voicing the frustration that so many Members have. During the impeachment proceeding, we worked together. Since then, it seems to me that comity is gone. There is no ability for Members on either side of the aisle who have ideas to offer them. We may lose them.

The frustration that so many felt in the wake of Littleton—we had ideas which we thought wouldn't solve the problem but might ameliorate or reduce the chances of future Littletons—of not being able to offer those amendments was enormous.

Has the process thus far this year evolved so we are virtually no different from the House?

Mr. DASCHLE. We have created a Rules Committee of one. I think it is unfortunate. They have a Rules Committee in the House. Constitutionally, the House was designed differently than we are. We don't need a Rules Committee in the Senate. Somebody made the comment, I think it was the distinguished assistant Democratic leader, the reason our Senate is so family friendly is that we are not doing anything. If we did something, maybe we would not be so family friendly.

I think it is time we do something, we try to resolve these matters. Let's move on and allow Senators the opportunity to express themselves in amendments.

Mrs. BOXER. Will the Senator yield?

Mr. DASCHLE. I will be happy to yield to the Senator from California.

Mrs. BOXER. This is for a question. I appreciate the Democratic leader taking to the floor. I want to use this opportunity to ask him a particular question.

The Democratic leader and the Democratic caucus have an agenda of issues. The Republican leader and the Republican caucus, they have their agenda of issues. This is good. This shows the people our vision for this country. One of the things that occurred when the Senator from Massachusetts offered the minimum wage increase as an amendment here, or asked the bill be recommitted so we could vote for it, was that the majority leader was very unhappy with this and said something to the effect—I am not quoting verbatim, but something to the effect—he even used the word ''tragedy''—it was a tragedy this was occurring on this bill and that this is not a time for one party to put forward its political agenda.

I ask my leader this question: Isn't it totally appropriate that each side here, Republicans and Democrats, has a chance to put forward their political agenda? The Senator from New York talked about his race. I had a race that was very difficult. I can assure my friends on both sides of the aisle, it was based on real issues. It was not some theoretical race. It was about the minimum wage, it was about the Patients' Bill of Rights, it was about equal pay for equal work, it was about the environment, yes, and schools and education.

So the question is, I would love to ask my leader what he thinks about our agenda, whether it is pressing? I think the majority leader said this bill is timely. It is; that is true. But is our agenda not timely as well?

Mr. DASCHLE. The Senator from California raises a very good question. Absolutely, our purpose is to present our agenda. That is why we are here.

That does not mean to the exclusion of the Republican agenda. Obviously, we ought to have a good debate about both agendas. But you need that debate. You need that opportunity. How do you have that debate? Not just by talking but by offering legislative proposals: the minimum wages, Patients' Bill of Rights, school construction, Social Security, Medicare reform. Those are the things we are here to vote on and work on, and we need the opportunity to do that.

We can do it the easy way or the hard way. We can do it by allowing amendments and having a good debate, by having some agreement about what the schedule will be, or we can force these issues by offering amendments and by having to defeat cloture and by doing all the procedural things we have had to do now for so long. By the time we set aside all the procedural time we have spent, we could have had a good debate on the minimum wage or the Patients' Bill of Rights.

The majority leader has said we will bring up the Patients' Bill of Rights. He just said we will bring up minimum wage. He has now said we will bring up juvenile justice. So we are making progress. But I think the time has come to drop this procedural stampede that we find every time on the part of the majority when we want to offer amendments. We have to quit trying to steamroll these bills without offering due opportunity to all Members to offer amendments.

I know the Senators from Massachusetts and Arizona are waiting to speak, and I yield the floor.

Several Senators addressed the Chair.

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

Mr. MCCAIN. Mr. President, I would like to first comment on the remarks by the Democratic leader, who is a very old and dear friend of mine going back many years. I appreciate his frustration and concern. I think he made a very eloquent point here.

I point out to my good friend, there is a bit of frustration on this side, too. There is no better example than what is happening right now. We have this bill on Y2K, which is time sensitive if there ever was one, if there was ever a definition of a time-sensitive piece of legislation. We have had it on the floor for 4 days and we cannot get a single amendment, not one single amendment up on your side of the aisle for debate and voting. I say to the Senator, the distinguished Democrat leader, that is what also breeds frustration on this side. Then the majority leader has to file a cloture motion.

The Senator hearkened back to previous years when his party was in the majority. I have to tell you, most of the bills we took up, we put up amendments. Those amendments were either tabled or agreed to or modified, and we went forward. On this bill right here, we have not had a single amendment. I begged for the last 4 days: Please come forward with an amendment. In all candor, on that side of the aisle the leader has said: On this bill, all I want to do is kill the bill. All I want to do is kill the bill. Then we are forced to go ahead with a cloture motion and a cloture vote.

My point to the distinguished Democratic leader is, maybe we ought to all draw back a little bit, go back to a period of time where perhaps we were proposing amendments on both sides and they were allowed. I agree with the distinguished Democratic leader that we should have these issues raised, I hope in a timely fashion, such as the distinguished Democratic leader has sought to do.

I know what the staff is now whispering in the Senator's ear: ''We filled up the tree.'' We filled up the tree because we did not want to take up minimum wage. We wanted to move forward with this bill.

I understand and appreciate the passion the Senator from Massachusetts has about minimum wage. I do not mind debating the bill. But I would also like to get this bill done, which is time sensitive on January 1 of the year 2000. Why there would not be a single amendment—as soon as we filled up the tree I said I would be glad to agree by unanimous consent we take up any amendment that is germane to this bill. I think that would be appropriate.

In 4 days, there has not been a single amendment. I am not saying the responsibility is all on that side of the aisle or on this side of the aisle. I hope we can work out an orderly process. But it frustrates me and the people, the small-, medium- and large-size business people all over America who are facing this crisis, when we seem to be stuck without even considering a single amendment on the bill.

So I hope the Democratic leader in his frustration, which is understandable, would also understand that occasionally there is frustration on this side of the aisle as well. Having been in both the minority and the majority, I understand, I think, the frustrations that are felt there on that side of the aisle.

I would like to make one additional comment. I want to express my appreciation to Senator DODD for his efforts on this bill; Senator HATCH, Senator FEINSTEIN, Senator WYDEN, and Senator BENNETT. As we know, Senator DODD and Senator BENNETT chaired a very important special committee on the Y2K issue. They have done a tremendous job. So they have been heavily involved in this legislation.

Senator FEINSTEIN and Senator HATCH have had a longstanding involvement, and I am very grateful to them for their constructive contributions to this bill. We have had many hours of meetings trying to work out very difficult aspects of this issue. Thanks to Senator DODD's leadership, along with that of Senators HATCH and FEINSTEIN, WYDEN and BENNETT, I think we have an agreement that we will be able to move this issue forward.

So I ask again if we could agree on amendments. I understand there are about 20 pending, about 10 of them by the distinguished ranking member of the Commerce Committee. If we could narrow down those amendments, agree to them and agree to have votes, then we could vitiate the cloture vote tomorrow and get this thing done.

Unfortunately, so far there has been no agreement, there has been no amendment brought up, and there has been no time agreement. I again plead with the other side, if we are really interested in passing this legislation, let's go ahead, agree we stand ready to agree to the amendments and the time agreements on all of those amendments.

Mr. President, again I want to make clearly understood the great respect and affection I have especially for the distinguished Democratic leader. I understand his frustrations. We felt them when we were in the minority, and I hope all of us together can have more comity in this entire process so we can do the people's business.

Mr. WYDEN. Will the Senator yield?

Mr. MCCAIN. Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

Mr. WYDEN. Mr. President, does the Senator from Arizona still have the floor?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know others have been here, but I have been here for 2½ hours waiting to speak on the amendment which I offered. While I see my friend from Oregon, I do not intend to take a very long time, but I would like to be able to speak about that issue.

First of all, just to review where we are, I want to identify myself with the good remarks of my friend from South Dakota, Senator DASCHLE.

Mr. President, I ask unanimous consent that we have printed in the RECORD the majority leader's schedule for April and for May.

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

The following is a list of legislative items the Senate may consider between now and the Memorial Day recess. As always, this is not an exclusive list and is in no particular order.

Supplemental Conference Report
Kosovo Funding
Y2K
Ed-Flex Conference Report
Safe Deposit Lockbox
Budget Reform
FAA
Commerce/Justice/State Appropriations
Financial Modernization
Flag Burning
Bankruptcy
Satellite Users
Water Resources
State Dept. Authorization
Dod Authorization

Mr. KENNEDY. In April and May, we have the supplemental conference report, Kosovo funding, Y2K, Ed-Flex, safe-deposit lockbox, budget reform, FAA, Commerce-Justice-State appropriations; financial modernization, flag burning, bankruptcy, satellite users, water resources, State Department authorization, DOD authorization.

Mr. President, do you know what is not on that? Any possible opportunity to debate an increase in the minimum wage.

We were effectively shut out from any opportunity last year.

We raised the issue, and we had to follow a similar process to bring that issue before the Senate. We were denied that opportunity. It is a very simple and fundamental issue of fairness and equity to those who are some of the hardest workers in America—11 million hard-working Americans, who go to work every single day, who work 40 hours a week, 52 weeks a year, and at the end of the year bring home what is less than a poverty wage in the United States of America.

Forty-five Members of the Senate have asked this body for an opportunity to address this issue so that we can have economic justice for the workers of this country, and what has been the response? Is there any opportunity to look down the road and say, ''In another week, or 2 weeks, or 3 weeks, you will have that opportunity''? No. The answer is no, you cannot have an opportunity to raise the minimum wage. You cannot even bring that to floor of the Senate.

I have heard a lot of talk about courtesy and about how bills are made here. What about courtesy toward the hard-working men and women who are making a minimum wage, who cannot put bread on the table or pay their rent? Or, courtesy toward the proud working woman we heard from just yesterday who said that she has been unable to go to see her two daughters in the last 3 years because when you make the minimum wage, you cannot afford to take a bus across the country to see them. How about courtesy to them, Mr. Leader, how about courtesy to them? Don't they count? Shouldn't they be on the agenda?

Mr. President, I find these arguments rather empty in trying to establish priorities here. I am sympathetic to trying to reach out with legislative solutions to the problems we have before us, but we have been denied any opportunity to do anything about these 11 million Americans earning the minimum wage.

And it is not only on the issue of the minimum wage. Last year we brought up an issue that is on the minds of every working family in this country, and that is the Patients' Bill of Rights—a very fundamental idea—that the medical profession, and not an accountant in the insurance companies, ought to be making the decision affecting families. That is the heart of the Patients' Bill of Rights. And we were denied the opportunity to consider it on the basis of the merits. We were denied the opportunity to even have a hearing.

I hope all of those voices that were out here talking about ''undermining the spirit of the Senate'' will go back and talk to the chairmen of those various committees and say: Give them a hearing, report a bill out, get it to the floor of the Senate, so we can make sure that we are going to have clinical trials available to women who have breast cancer or to children who have other dreaded diseases; to make sure people are going to have a specialist when they need it; to make sure people are going to be able to get treated at the nearest emergency room; to make sure, if someone has some particular illness or sickness, they are going to get the right prescription drugs, not just what is on an ordinary formulary.

It is not very complicated, not very revolutionary, not very dramatic. It is not our agenda, not the Democratic agenda. It is the agenda of 100 agencies of doctors, nurses, and consumers of this country who say this is what we need to protect your children, to protect your wives, and to protect your loved ones.

But where is it on this agenda? Where do we have the opportunity to debate these issues? Where do we even have the opportunity to say that we will be willing to enter into a time agreement, say, 3 days? We take days and weeks on some issues around here, but are not even given the opportunity to have time-limited debate on these issues, which are of such vital importance to the men, women, and children of this country.

Just tell us, majority leader, when we can debate these issues. Give us Mondays and Fridays when we are not voting. Give us those days when the Senate has not been working. We will take any time. We will take Mondays and Fridays. We will take nighttimes. We will take any time. But give us the time, and put these issues on the agenda, because they are on the agenda of every family.

But no. We are denied the opportunity to debate these issues: ''It is not on our agenda, Senator. Don't insult us on our side by trying to bring this measure up on the floor of the Senate this afternoon. Don't inconvenience the majority that have an agenda here this afternoon. No, you cannot speak, Senator; you cannot speak here this afternoon on your particular amendment. No, no, we are not going to let you do that.''

Mr. President, it is the best reason I know why we ought to change this body, why we need men and women in this body who are going to say that an increase in the minimum wage is deserved. An increase in the minimum wage is a women's issue—Sixty percent of those recipients of the minimum wage are women. It is a minority issue—nearly 4 million African-American and Hispanic workers would benefit from an increase in the minimum wage.

Mr. President, this is something that cries out for fairness. The American people support it. But, no, we cannot even debate the issue.

I am beginning to believe that the majority refuses to bring it up because they do not want to vote. We know what is going on, all the whispers: ''Don't let them bring up the minimum wage on the basis of the merits because it's going to be painful for us.''

But how much pain does it cause those individuals who are trying to provide for their families tonight? How much pain are they going through?

Still, we heard words on the floor this afternoon about courtesy to the body. We were told about this is not the way of doing business, this is not how laws are made. I was reminded by another Republican leader, we ought to be showing good faith, that this is a tragedy but that it is irrelevant material.

You tell the 11 million people who are trying to survive on the minimum wage that this is what has happened to their purchasing power.

We have heard in the wake of the Littleton tragedy about the importance of parents spending time with

families. When you are working two or three jobs at the minimum wage, how much time do you have to spend with your children? That is the testimony these people are giving. They do not have the time to spend with their children.

Do you know what the payroll for the United States of America is a year? It is $4.3 trillion. Do you know what the impact of this increase in the minimum wage would be? It would be three-tenths of 1 percent of that, and we hear that it is going to add to the problems of inflation, that we are going to throw a lot of people out of work. Mr. President, $4.3 trillion, and we are talking about 50 cents a year for more than 11 million people. Come on.

If you do not want to vote for it, do not vote for it. Let's take it to the American people and see who they want to represent them. But no. Just read the schedule. No matter how much we try, Senator DASCHLE has not been able to bring those measures before the Senate.

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

Mr. KENNEDY. Let me make a final comment, and then I will be glad to yield.

Mr. President, I underscore my support for Senator DASCHLE. I mentioned very briefly yesterday in our Democratic caucus that just before I came to the Senate, you did not get a vote in the Senate unless you got the nod from the majority leader.

But something took place in the 1960s. We had a movement within this Nation to strike down the walls of discrimination. People said, ''This is an important issue.'' The two places these issues were debated and considered were the federal court—the 5th Circuit—and the Senate. The debate on the war also took place in the Senate—and later, on the environment, disability rights, and other issues of crucial importance to our country. The Senate has been the repository for debate about the Nation's concerns.

One thing that every Senator understands is that everyone is equal in this body. So I cannot accept what the majority leader is saying: ''I make the decisions on this agenda. And no one else.'' That isn't what this body is about.

The Senate Democratic leader, Senator DASCHLE, indicated in a very positive and constructive way his willingness to try to work with the majority. This is the way it has been for 36 of the 37 and a half years I have been here—when Democrats have been in the majority and when Republicans have been in the majority. But never in that time have we had the leadership saying that one Senator is a lesser Member of this body than another. And that is what is being said, when a Member is denied the opportunity to raise important issues of conscience or of concern to their constituency.

They may be able to deny that opportunity on a particular measure. They may be able to prevent someone from speaking for 2½ hours, as they did today. They may eat up another hour of time, as they did this afternoon by having a live quorum. That is all part of this process. You can play this nice or you can play it rough.

I like to believe, as someone who takes a sense of pride in being able to work together with Members on both sides of the aisle, that we have been able to make a difference. That is what the Senate should be about. But if they are going to play it the other way, let them just understand that we can play it that way too.

I suggest my colleagues go back and read the little book by Jim Allen. Senator Allen had this place tied up for 7 months—an individual Member of the Senate. If they are not going to work this out in a way that respects individual Members, they cannot expect Members to respond in the positive tradition of this great institution.

Every Member on both sides of the aisle wants to honor that tradition. That is what I want to see. Hopefully we can, through the leadership of Senator DASCHLE and Senator LOTT, proceed in that way for the remainder of this session.

I am glad to yield.

Mr. REID. I ask the Senator: You have talked about minimum wage. It is true, is it not, as you have said, that 60 percent of the people who draw minimum wage are women? Is that true?

Mr. KENNEDY. The Senator is correct. Sixty percent.

Mr. REID. For 40 percent of all of these women who draw minimum wage, that is the only money they get for themselves and their families; is that true?

Mr. KENNEDY. That is correct.

Mr. REID. The Y2K problem is something you and I acknowledge we should resolve; is that true?

Mr. KENNEDY. Absolutely.

Mr. REID. But tell me, isn't it true—you have been the lead Democrat on the Judiciary Committee; you have been on that committee for many years that is looking to litigation which will transpire as a result of computers not working properly after the year 2000 hits? Is that true?

Mr. KENNEDY. The Senator is correct again.

Mr. REID. Even though we both acknowledge it is more important legislation, would the Senator tell me why it is important in April of 1999 that that legislation be completed prior to a bill that would give the 12 million people who are desperately in need of a minimum wage increase?

Mr. KENNEDY. I know there may be some who differ, but I think we could pass the minimum wage and the Patients' Bill of Rights and the Y2K in a relatively short period of time and do the country's business. As it is we cannot do the country's business, as the Senator has pointed out, if we can never even reach the minimum wage or the Patients' Bill of Rights.

In the meantime, we are told by my good friend from Arizona—I wish he were here—that he is frustrated because we have not had an amendment all week. Well, you know what he is saying? ''We haven't had an amendment that the majority can agree to all week.'' He said right here on the floor, ''We haven't had an amendment all week.'' Well, the rest of that sentence is: ''that he will permit, to be offered.''

That is not what this place is about. I really am quite surprised that a Member of the Senate would interpret the rules that way.

Mr. REID. Will the Senator yield for another question?

Mr. KENNEDY. Yes.

Mr. REID. The Senator outlined graphically the Patients' Bill of Rights. And it is important that we do something about that. But is it not also true, in relation to the Patients' Bill of Rights, that all over this country managed care entities are dropping senior citizens?

Mr. KENNEDY. The Senator is absolutely correct.

Mr. REID. There are senior citizens now who have chosen to go off Medicare, who are now without any managed care, without any ability to get health care; is that right?

Mr. KENNEDY. That is right.

Mr. REID. There are some who say, once you go off Medicare, then you can't go back on for a certain period of time.

And now there are hundreds of thousands of them in the country who have been dropped from the managed care entities. Don't you think our doing the Patients' Bill of Rights is important to the senior citizens of this country?

Mr. KENNEDY. The Senator is correct. An opportunity to debate the prescription drug issue is also important to our senior citizens. I know the Senator is home just about every weekend, and I am sure that when he meets with senior citizens they raise, in an almost unanimous chorus, their concerns about prescription drugs. I daresay they think we ought to be addressing that issue in the Senate.

When I go home and meet with workers, they are concerned about the minimum wage, they are concerned about the Patients' Bill of Rights, they are concerned about prescription drugs. Sure, the legislation before us is important, but then I look at this agenda and wonder, where are the issues the people at home care about?

It is important that we have the opportunity to debate and discuss these issues. We are denied that opportunity now.

Mr. REID. One last question I will ask the Senator.

Based on your experience and my experience, is it a fair statement to say that on our agenda items we may not win every one of them, we may not prevail on every one of them, but wouldn't it be nice, I ask the Senator, to be able to debate the issue of the minimum wage, the Patients' Bill of Rights, the

other things we believe are important? Win or lose, wouldn't it be great if we could have the opportunity to explain to the American people and the Members of this Senate why we feel strongly about an issue?

Mr. KENNEDY. I could not agree with you more, Senator. And, tragically—tragically—the Republican leaders were able to kill the effort to consider the minimum wage here today. I do not know why they will not even give us an opportunity to debate and vote on the merits of the issue.

I hope that we are able, through the efforts of our leader working with the majority leader, to agree on a process that gives these issues, and others that are important to our colleagues, their day on the floor of the Senate.

Mrs. BOXER. Would the Senator yield for a brief moment?

Mr. KENNEDY. I will be glad to yield.

Mrs. BOXER. I will be very brief.

I have been on the floor with the Senator for 2 and a half hours.

Mr. KENNEDY. I know the Senator has.

Mrs. BOXER. And I am proud that I was able to take that time to do it, because by my presence I wanted to show the support I feel for what he is trying to do. I am a person who represents the Silicon Valley, the high-tech people. I want to solve the Y2K problem. I know my friend is a leader on technology in his State.

We want to do the right thing. I have praise for his colleague, Senator KERRY, who I think is doing a terrific job, working to come up with a solution some of us would prefer and, by the way, the administration prefers.

I want to pick up on this notion of time sensitive, because it is time sensitive that we do this. It doesn't have to be done today or next week, but it is time sensitive. Certainly, we have to do it in time to resolve the problem.

But there are a lot of things that are time sensitive. Isn't it time sensitive when a family can't pay the bill? Isn't it time sensitive when, as the Senator says, a woman can't afford to take a Greyhound bus to see her children? Isn't it time sensitive that under current law a 12-year-old can walk into a gun show and buy, essentially, a semi-automatic assault weapon? There are a lot of things that are time sensitive.

In many ways, it is as if the majority leader has the corner on what is time sensitive. As my friend says, it depends on who you talk to.

Frankly, the people I am talking to must be similar to the people you are talking to. These are bread-and-butter issues. It is safety in schools. It is a Patients' Bill of Rights, the quality of health care, many, many issues, Medicare, Social Security, that we want to take up, in addition to the business issues that the majority leader wants to take up.

I ask my friend, isn't time sensitive a term that we could apply to all of the issues that are on the agenda of the Democrats here in the Senate under the leadership of Leader DASCHLE?

Mr. KENNEDY. Let me answer very specifically on the time-sensitive aspect. If we do not increase the minimum wage now to 50 cents this year and 50 cents next year, next year the real value of the $5.15 minimum wage will be $4.90. So they are going to be worse off. Even with the 50 cent increase, as the Senator can tell from this chart, we are still below what we were during the 1960s, all during the 1970s, and up through the 1980s, in terms of purchasing power. This last increase was supported by Republicans and Democrats alike.

Yes, this is time sensitive, because the people who are living on the minimum wage are not just holding where they are, they are going down. This is at a time when our nation is experiencing the greatest economic prosperity in the history of the world. But we evidently don't have time to debate and act on this.

I yield to the Senator from Illinois.

Mr. DURBIN. If the Senator will yield for a question, after I voted, I left the floor before the rollcall was announced on the Senator's efforts to bring the minimum wage issue to the floor. Does the Senator recall the vote total that was announced?

Mr. KENNEDY. We were 55 in favor to 44.

Mr. DURBIN. So it was 55——

Mr. KENNEDY. Senator MOYNIHAN is necessarily absent. It would have been 55 tabling and 45 against tabling. Every Member of the other side of the aisle was for denying the opportunity to consider this and everyone on this side of the aisle thought we ought to at least consider it.

Mr. DURBIN. So it was a straight party-line vote——

Mr. KENNEDY. The Senator is correct.

Mr. DURBIN. Against considering an increase in the minimum wage.

Mr. KENNEDY. The Senator is correct.

Mr. DURBIN. Well, I want to ask the Senator: We are considering on the floor S. 96, the so-called Y2K bill, which is designed to protect businesses. And good, compelling arguments can be made about protecting businesses. But doesn't this vote suggest that the majority party feels that we should not be discussing help for working families, those in the lower income categories who are falling behind even as they go to work every single day trying to raise their families? That is how I read that vote. It is loud and clear.

Mr. KENNEDY. As mentioned earlier, it is not just today that we have been refused an opportunity to debate it. I have in my hand what the leadership has provided as the schedule for all of April and all of May. We are coming to the end of April now, but there are still several items that haven't been finished in April, and all of May. And nowhere on this do we have any indication that we will have the opportunity to debate either a minimum wage increase or a Patients' Bill of Rights.

If the Senator remembers, we were denied the opportunity to debate both of those issues at the end of last year as well, and we received assurances from the majority leader that the Patients' Bill of Rights would be considered in an early part of this session. We have had the markup in our Health and Education Committee, but still there is no priority on that particular issue.

So the Senator is right. Not only can we not consider that today, but it doesn't seem that it will be possible for consideration at any time in the foreseeable future.

Mr. DURBIN. If the Senator will yield, yesterday we were prepared on the floor to offer an amendment relative to school violence, to try to prevent a repeat of the tragedy that we saw in Littleton, CO, and in Jonesboro, AR, Pearl, MS, West Paducah, KY, and so many other places. I believe the Senator and I came away with the understanding from the majority leader, Senator LOTT, that, yes, within 2 weeks we would have our opportunity to consider those issues and some legislation to deal with them.

I ask the Senator from Massachusetts, there is a concern as well about teachers and the President's proposal to try to have more classroom teachers and a smaller student/teacher ratio in grades kindergarten, 1, 2, and 3; is that scheduled to be considered under any schedule that the Senator from Massachusetts has seen?

Mr. KENNEDY. No, it is not, Senator. You have identified something which is enormously important and that is the increasing evidence that the smaller the schools—schools where every schoolteacher knows the name of every child in the school, and knows the parents—and the smaller the classrooms, the greater the reduction in incidences of hall rage, and other types of school violence. This, it seems to me, would be worthy of debate and discussion. If we spent some time, knowing that we will debate that, went back to our States and listened to schoolteachers and parents for a few days and then came back and talked about these types of issues, perhaps we could do something that might be useful.

Mr. DURBIN. One last question to the Senator—and I thank him for his patience in responding—all of us are concerned about Littleton, CO, and what happened there and school violence in general. There isn't a parent in America who isn't sensitive to that today.

The suggestion of a smaller classroom and more personal attention to children in the early stages of their development suggests to me the possibility of spotting a child's problem at an early stage and perhaps dealing with it successfully rather than having this child pushed through the mill, ignored, perhaps not given the personal attention they need.

It strikes me that there are so many different pieces to this, whether it is the guns that make these troubled kids so dangerous to so many other people, or the fact that there are troubled children who are not getting the personal attention they need.

I join with the Senator from Massachusetts. I hope we can return to an agenda that really identifies the priorities of America's families. It is important to talk about Ed-Flex. It is important to talk about Y2K. But for goodness sake, before we leave at the end of the year, shouldn't we talk about the issues that families talk about when they are sitting around the table or around the family room watching television?

I salute the Senator. I hope he will continue with his efforts.

Mr. KENNEDY. I thank the Senator.

Mr. President, I yield the floor.

Mr. WYDEN addressed the Chair.

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

Mr. WYDEN. Mr. President, I will be brief. I know my friend from North Carolina wants to speak as well.

First, as one who strongly supports Senator KENNEDY on this matter of raising the minimum wage, I think he knows that I have worked since my days as codirector of the Gray Panthers to make sure that senior citizens would get prescription drug coverage.

I want him to know that I look forward to working closely with him on these issues. I will, before the Senator leaves the floor, talk about why this Y2K issue is so important to those low-income seniors, and on a point that the Senator from Massachusetts has led the fight on. I want to do this briefly.

Mr. KENNEDY. If the Senator will yield, I am quite familiar with what he is talking about—health care and some of the other issues that make a difference. I represent a State that is proudly one of the leaders in this area, and I look forward to hearing what the Senator has to say.

Mr. WYDEN. I thank my colleague. I will make this point very briefly. One of the key concerns that senior citizens now have is the problem of taking prescription drugs in the proper way. We have learned a great deal, for example, about how billions of dollars are wasted as a result of seniors not being in a position to get good information about drug interactions.

One of the ways that we are best able to tackle that problem, and save billions of dollars, in order to make sure that seniors have their needs met in terms of prescriptions is to get some of this information online. This is now just beginning to be done. I submit that it is a perfect example of how we should not be pitting the issues relating to Y2K against those affecting low-income citizens.

I think the Senator from Massachusetts is absolutely right with respect to minimum wage, and I just say that on the basis of even the example I have given with respect to drug interactions among the elderly, and the billions of dollars that are wasted as a result of people not being in a position to take their medicine in a proper fashion. That is an example of how this Y2K issue really does affect all citizens—even on the question of pay. If the computers break down, it is going to be hard for folks to get their paychecks early next year.

So I think the Senator from Massachusetts is absolutely right with respect to the need to raise the minimum wage. And I share his view on the need to help seniors with respect to their prescriptions. But I do think that this question of addressing the Y2K issue in a responsible kind of way is beneficial to all Americans, regardless of their income, in our country.

I appreciate the courtesy of the Senator from North Carolina. I want to wrap up with a couple of comments with respect to issues that Members of my party may have about the Y2K legislation. For example, there are a number of Senators on the Democratic side of the aisle who have been concerned about the question of punitive damages. Well, in the last few hours, we have made substantial progress on this issue. I happen to believe that it is critically important that when you engage in egregious conduct, you be in a position to send a very powerful message with respect to punitive damages on these questions of fraudulent activity.

In the last couple of hours, a great deal of progress has been made with respect to this issue. Senator DODD, in particular, deserves a great deal of credit. These changes that have been made in the last couple of hours with respect to punitive damages respond directly to what a number of Democratic colleagues have gotten from the administration this morning.

The other issue I would like to touch on that was mentioned as well by a number of our colleagues on the Democratic side deals with the question of evidentiary standards. I think it is clear that we do need evidentiary standards that are fair to consumers and are fair to plaintiffs. In the last couple of hours, again, for Democrats looking at this issue, a substantial amount of progress has been made, largely due to the efforts of the Senator from Connecticut. I am very pleased to be able to report that those changes have been made as well. Democratic Senators, I think, will be pleased with some of the other changes as well. I know that early on—and I think this was a concern that the Senator from North Carolina, who has been such a valuable addition to the Senate, had raised—the bill that came out of committee talked about a very ill-defined defense for defendants, essentially saying if they engage in a reasonable effort, that would in some way provide them with a defense from wrongful conduct. That, too, has been eliminated.

So I am very hopeful that Members on this side of the aisle will look at the progress that has been made in the last couple of hours. I want it understood that I very much want to work with the Senator from North Carolina on the points that he, I know, is going to raise in connection with this legislation. I want to see this bill go forward. I believe there is a coalition on both sides of the aisle that is now prepared to continue to work in a constructive kind of way to get this legislation done.

As one who feels strongly about an increase in the minimum wage, as one who feels that this Y2K legislation, properly done, has the opportunity in it for us to help lower health care costs and make sure seniors don't have these drug interactions that hurt them and waste billions of dollars, I hope that in the name of trying to address both of those issues the Senate will move forward in a bipartisan way.

I will just wrap up, Mr. President, by asking unanimous consent to have printed a letter from the American Bar Association on this legislation.

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

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, April 28, 1999.

Senator RON WYDEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR WYDEN: In listening to yesterday's Y2K debate on the Senate floor, we at the American Bar Association were surprised to hear that you and Senator Sessions believe the ABA has issued a report saying, among other things, that the Y2K litigation could affect billions and billions of dollars of our economy. I can assure you that the ABA has not issued a report estimating litigation costs of the Y2K problem and has not taken any position on the pending Y2K legislation. I understand that your misunderstanding comes from the reading of a Backgrounder prepared by the Progressive Policy Institute which cites in turn from an article in the *Newark Star-Ledger*.

The ABA had several programs on the Y2K issue at our 1998 Annual Meeting in Toronto and we had speakers at those programs representing all sites of the Y2K debate. In one program, presented by the ABA Section of Business Law's Committee on Corporate Counsel, there were seven speakers. One of the speakers, Jeff Jinnett, said that ''there has been considerable speculation in the legal and public press that the year 2000 computer problem will generate considerable amounts of litigation.'' He summarizes some of the speculation, including the views of one commentator, who had provided the estimate cited in the *Newark Star-Ledger*. Mr. Jinnett concluded in his speech that ''we can only speculate as to the actual litigation which will result from the Year 2000 computer problem and the cost of the ultimate litigation, since (a) no substantial litigation (other than the Produce Palace, Software Business Technologies, Symantec, Macola, and Intuit lawsuits, discussed below) has been reported to have occurred as of the date of this article based on the Year 2000 problem and (b) we do not know how much necessary Year 2000 corrective work will ultimately not be completed on time.'' In any event, the views he expressed are not those of the American Bar Association and should not be referred to as either our policy position or as coming from an ABA ''study'' ''report.''

We would appreciate it if you would do what you can to correct the record on this matter. If you have any questions, please let me know.

I will be sending a similar letter to Senator Sessions to let him know our views as well.

Thank you for any assistance you can provide on this matter.

Sincerely,

ROBERT D. EVANS,
Director.

Mr. EDWARDS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, let me say to my friend, the Senator from Oregon, that I have great respect for him. He knows that. He has spent a tremendous amount of time and work on this project, along with Senator MCCAIN, for whom I also have tremendous respect, along with my great and dear friend, Senator DODD from Connecticut. All three have spent a tremendous amount of time on this issue.

I will say at the outset that, from my perspective, I do believe we need to provide the kind of support and help for the high-tech community in this country that it so richly deserves. It is a critical issue not only in Oregon but also in North Carolina. We take great pride in our high-tech community, particularly in the Research Triangle area of North Carolina. My problem is that I don't think this bill strikes a proper balance. I think it fails to do so in a number of ways. I will candidly admit that I am not fully familiar with some of the discussions and negotiations going on right now. We will have to see the final product. I only have the bill as it is before us now to discuss.

First, I think there is an enormous problem in doing at least one of the things that this bill does, which is to relieve, in some ways, businesses and corporations from accountability or responsibility, particularly in a day and age when we as Americans are saying to our children, to our families, that they need to be responsible for what they do. We need to be personally responsible and accountable for everything we do.

How do we say to the children and families of America that they are accountable and responsible, fully, for everything they do, while at the same time passing legislation in the Congress of the United States saying that a particular slice of corporate America is not fully accountable and responsible for what it does? I think the reality is that it sends a terrible message to our children and to our families. I think what they want to hear from us is that every American, every child, woman, family, parent and every business is, in fact, fully accountable and responsible for what they do, because we as Americans believe in personal responsibility and accountability.

Now, I want to talk about a couple of things by way of background. First, we are tinkering here with a civil jury system that has existed in this country for over 200 years. Whenever you tinker around the margins with a system with checks and balances, which has been at work for a long period of time, you create an enormous potential for trouble. That is exactly what this bill does.

The argument is made on behalf of this bill that it will decrease litigation, that it will help with this anticipated but still fictional litigation explosion.

The reality is that bill creates a morass of potential litigation. It creates new terminology. It creates new definitions, and it has descriptions of legal avenues that can be pursued that have not existed heretofore.

The jury system that we have in this country has been developed over a long period of time. There are many trial and appellate decisions that we can rely on and depend on.

This bill creates a whole new genre of litigation and appellate decisions. There will be enormous fights over some of the language in this bill. More importantly, one of the things this bill does is it dilutes the jury system. The reality is, if you believe in democracy, you believe in the jury system, because the jury system is nothing but a microcosm of democracy.

Speaking for myself, and I think speaking for most Americans, I have tremendous faith—in fact, I would go so far as to say I have a boundless faith—in the Americans who sit on juries all over this country every day who render justice and render fair decisions, fair to both sides, in any litigation. This bill dilutes the responsibility that we give those Americans.

I personally have more confidence in regular Americans, North Carolinians, farmers, bankers, people who work in stores, people who are engaged in all walks of life, who come in and sit on the jury, hear cases, and do what they think is right. I have more confidence in them than I do in us as a body trying to impose upon them what we think is fair and just across the board. Those juries hear the facts; they hear the circumstances from both sides, and they render justice. They do what they think is fair and right.

Anybody, as I said earlier, who believes and has confidence in Americans who sit on those juries, knows that the decisionmaking should stay right where it is—with the jury.

Let me talk for just a minute about this Y2K problem, because this is not a new problem. The history of this problem is, I think, greatly educational in terms of where we are.

If I could look at a chart, the title of this chart is ''Y2K. Why do today what you can put off 'til tomorrow?''

This is not a new problem.

I might add that, along with Senators DODD and BENNETT, I also serve on the Y2K committee. We have learned a great deal through the hearings that have taken place on that committee.

For example, in 1960, Robert Bemer, who was a pioneer in computer sciences, advocated the use of a four-digit rather than a two-digit date format. This is now 39 years ago—almost 40 years ago. One of the pioneers of American computer science said it is an enormous mistake to go to a two-digit system instead of a four-digit system.

In 1979, he wrote again, the same Robert Bemer, in a computer publication about the inevitable Y2K problems, unless this defect is remedied. He warned, ''Don't drop the first two digits. The program may well fail from an ambiguity in the year 2000.''

We have known about it for 40 years.

In 1979, 20 years ago, he is telling the industry you have to do something about this, and you have to do something about it now.

In 1983, an early Y2K-fix software was marketed and sold in this country which dealt with the Y2K problem. How many copies of that software were sold? Two copies of this software that addressed this problem were sold.

In 1984, just 1 year later, ''Computerworld'' magazine said, ''The problem you may not know you have,'' and they warned companies to start making modifications now—in 1984, 15 years ago.

In 1986, there was a publication by another computer magazine where IBM asserted:

> ''IBM and other vendors have known about this problem for many years. This problem is fully understood by IBM software developers who anticipate no difficulty in programming around it.''

Then in 1988, the National Institute of Standards and Technology said, ''NIST highly recommends that four-digit year elements be used''—11 years ago.

In 1989, the Social Security Administration's computer experts found that the overpayment recoupment systems did not work for dates after 2000, and realized that 35 million lines of code had to be reviewed.

Finally, in 1996, Senator MOYNIHAN requested the Congressional Research Service report on Y2K. It predicted widespread massive failures. He introduced legislation to create a special office for Y2K problems and to establish compliance deadlines. It died in committee.

Finally, in 1999, this year, Bill Gates blamed Y2K on those who ''love to tell tales of fear.'' At the same time, Microsoft was still shipping products that were not Y2K compliant.

My point is a simple one. This Y2K problem has been around for 40 years. Those folks who are involved in this business have known about it. The truth is that many of the people involved in the computer industry have worked hard at correcting this problem. They have addressed it in a very responsible way. Those people will have no liability and no responsibility from any failures that occur.

The people who I think make up a great deal of the high-tech industry, who have acted responsibly, who have recognized that this is a problem, who have gone out to the people who they

have sold their products to, and done everything in their power to correct this problem, those people have no responsibility. Under the current legal system, they have absolutely no responsibility. They can't be held responsible.

The people who can be held responsible are those who have known about this problem for 40 years and have done nothing to correct it, and, in fact, over the course of the last few years have continued to sell products that are not Y2K compliant, and are not concerned about the result. They have their product sold. They have their money in, and they have let the people who bought the product worry about the problem, or it would be dealt with later.

We have no business in this Senate providing protection for people who have engaged in that kind of behavior. That is exactly what this bill does.

It has a number of problems in it. Let me just talk about a few of them briefly.

First, my friend, the Senator from Oregon, mentioned a few minutes ago that he thought it was important for punitive damages that we be able to send a powerful message to those who had acted irresponsibly and recklessly.

This bill places enormous limits on punitive damages that can be awarded, punitive damages that under existing law—if this bill never goes anywhere, never passes, never becomes law, as I stand here today, businesses can only be held accountable for punitive damages if they have engaged in reckless, egregious, willful, sometimes criminal, conduct. It is the only circumstance in which a business can be held liable for punitive damages.

My friend, the Senator from South Carolina, who just joined us, is fully aware of that. We have an existing law that provides that protection.

''Joint and several liability'' are terms that lawyers use regularly. But they are critically important terms. The terminology that we hear used by my friend, Senator DODD, and Senator WYDEN, is ''proportionate liability.'' It is very important for the American people to understand what this bill will do to them if it passes.

Let me give an example. A small business man—say a grocery store owner—buys a computer system that is necessary to run his business on a day-to-day basis. This is a family business. The system fails. As a result of the system failing, he is unable to keep his doors open over a period of 2, 3, or 4 months. All of these businesses operate on very short-term cash flow. They need money, and they need it on a daily basis. If they don't have it because the computer fails, they get run out of the business.

So we have this family-owned grocery store that has been run out of business because their computer system didn't work. Keep in mind, we are talking about a regular American who runs a business. These are not computer experts. They are not experts in lawsuits and litigation. They don't know what they are supposed to do.

In my example, they discover that three different companies participated in making their computer system. So they bring an action against those three companies to recover for the cost of what happened with their system and for the fact they have now been put out of business. Any fair-minded American would say if these companies knew about the problem, knew they had sold them a product that was defective, they ought to be held responsible for that.

Joint and several liability says each one of those companies can be held liable and responsible for what happened to this family grocery store. This bill says if for some reason one of those three companies is out of business, you can't collect against the other two. Maybe one of the three is an offshore company—which will be true on many occasions with respect to this kind of case—and you can't reach it. Then, because of this bill, you can't reach the other two. This bill says the innocent grocery store owner bears that share of the responsibility.

Joint and several liability, which has existed in this country for 200 years, exists for a very simple reason: It is just, and it is fair. We have a choice: Somebody is going to suffer this damage. Should the cost of this damage be paid by the absolutely innocent grocery store owner? Or should it be paid and shared by the defendants who were guilty? It is that simple. It is the guilty on one side, the innocent on the other.

The question is, Who is going to share in paying for the damage that has been done? Joint and several liability says that responsibility is borne by the guilty and is never to be borne by the innocent. That is the reason that system has existed.

This bill, first of all, essentially eliminates joint and several liability as a starting place. Then it sets up a complex—I am a lawyer and I can barely understand what it says—exception which creates certain circumstances where this grocery store owner can make an effort to collect some of his money from the other defendants if, in fact, there is an uncollectible defendant. But he has to jump through lots of hoops and he has to do it in 6 months, which is the time limitation. Having been in the trenches for 20 years doing these cases, it is almost an impossible task to finish the process of trying to collect in 6 months.

The bottom line is, it creates a very narrow exception and puts the burden entirely on the innocent party to jump through these hoops. It makes absolutely no sense. The system that exists in America and has existed for 200 years exists for a good reason. It has been fair and just for 200 years. It is fair and just now. There is absolutely no reason to change it. It makes no sense to change it.

Let me use the chart that my friend, Senator LEAHY, referred to earlier—and he did a beautiful job of that. Across the top of this chart is the present justice system. I want to emphasize for Americans who are listening that no computer company or high-tech company can be held responsible under existing law unless they have acted negligently or irresponsibly.

Under this jury system that we have in this country today, we have a very simple process. We go through the process of making a claim and seeing if they respond to the claim. If they don't, a lawsuit is filed, the case is eventually heard, and there is a result. Or, on the other hand, as happens in almost 99 percent of the cases, if the company recognizes that the problem was their responsibility, they pay for it. They settle the case, because they know they have a responsibility to pay for what they caused. So we have a quick, fair settlement or we have a fair trial. We have a system that is in place and has existed for 200 years and systems that work State by State.

I have to add to this, I don't know why we as a Senate and as a Congress think we are so much smarter than our State legislatures that have passed laws over many years and have court systems that deal with these problems. They are fully capable of addressing this problem. I personally believe if this were an issue, it could easily be addressed at the State level.

The reality is, the existing system that we have will work. It is simple. It is streamlined. And it will get a fair result for everyone concerned.

On the other hand, if we enact this morass that I have in my hand right now, what we will have is the biggest mess anybody has ever seen in the court system. First of all, all the cases are going to go to Federal court instead of State court. The National Judicial Conference has said the Federal judicial system is already overburdened before they ever get these cases. They don't have enough resources; they don't have enough judges. What we are about to do is dump an enormous pile of new cases in the Federal judicial system which they don't want and which they don't have the resources to handle.

We start this complicated process, and without going through all the details—Senator LEAHY has outlined it beautifully—it is one roadblock after another to the innocent party, the grocery store owner, the guy who was put out of business because his computer system wouldn't work and he had nothing to do with it. Every time he moves, he runs into another roadblock. He doesn't have the resources to fight this battle. It is a long and tortuous process that ultimately makes no sense.

We have a system that works. There is no reason to do this.

Let me give an example of problems we create in a bill like this. There is a provision in this bill that says in any lawsuit a defendant can raise Y2K as a

defense. If you have one business suing another business for a contract—no matter what the claim is about; it could be about anything—and the defendant says, wait a minute, this is a Y2K computer problem, all of a sudden you have triggered enormous, procedural, bureaucratic hurdles that have to be jumped through. The case goes into Federal court. We have this big mess. A tool has been created to complicate a simple lawsuit that could be over and resolved in very simple fashion.

I don't suggest for a minute that the people who crafted this bill don't have the very best intentions. I believe they do. I myself—and I only speak for myself—have no problem with the idea that we ought to try to provide incentives for people who are engaged in disputes to resolve those disputes. Alternative dispute resolution, I think, is fine. A cooling off, some period when these folks can talk to each other and try to work it out is fine. I think, if there is a problem, we want to promote discussion between the innocent person who bought the computer system and the people who make it. I think we want to do all of those things. Those are laudable goals. The problem is what we have here is an extremist version of a bill that takes away rights of the innocent party and creates enormous hurdles to that innocent party ultimately recovering.

I might add, I think this is unintentional. But the proposal makes the recovery of economic losses virtually impossible. Here is the reason. When I say economic losses, for example in my grocery store story, the recovery of the cost of the computer would not be considered an economic loss. But the fact that these folks have been put out of business and their grocery store is not in business anymore and they have lost the profits they would have made in their grocery store for X number of years, all because of an irresponsible computer maker that would be an economic loss. Well, in order to recover those economic losses that they had nothing to do with—they are totally innocent—in order to recover for those injuries, they have to have a written contract, or a contract that says they can recover under the terms of this bill.

Think about that. Use a little common sense here. How many Americans, small business men, who go out and buy a computer system have been thinking about: Well, I better make sure I have a written contract that says if my computer system fails I can recover my losses, my economic losses—my lost sales, my lost profits as a result? The reality is, to the extent there is any contract other than a handshake or walking in the store and buying the computer system, the contracts are drafted by the manufacturers, because they are the ones with the lawyers, a big team of lawyers. They draft these contracts. If anything, they are only signed by the purchasers. So the likelihood that these contracts are going to have any provision in them for the recovery of economic losses is almost nonexistent.

The bottom line is this. I think the intention of my colleagues, Senator MCCAIN, Senator WYDEN, Senator DODD—I have absolutely no doubt their intentions are only the best. They want to do exactly what they say they want to do, which is to create incentives for these high-tech companies to correct these problems and not to create, from their perspective, a morass of litigation.

The problem is this bill does not do that. I spent many years in the trenches, in courtrooms, fighting these battles. I can respectfully say that I have read the entire bill. It has numerous problems, including some of the ones I have described today. But I do believe we could fashion a bill, I say to Senator MCCAIN, who has just arrived—fashion a bill that would accomplish some of the things they want to accomplish, which is instead of going straight to litigation, have folks talking to one another, working out the problem, curing the problems with the computers. That is in everybody's best interests. I want that. I think all of us here in the Senate want that.

But it is my belief, having studied this bill and having studied it carefully—and I will concede I have not seen the most recent discussions because I don't think they have been put in writing yet—but the version we have before us now is completely unacceptable and creates many more problems than it cures. Instead of reducing litigation, I think in fact it creates a vehicle for not only trial litigation but appellate litigation that will go on for many years to come.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. EDWARDS. Yes.

Mr. HOLLINGS. Mr. President, the Senator has come to the Senate not just as a practitioner, but as a brilliant one, as you can tell from his comments here on the floor of the Senate this afternoon.

Is it not a fact that what this really does is create disincentives to produce a good Y2K-compliant product—isn't that correct? If companies know they do not have to worry about making their products competitive and reliable, they have no incentive to make a good product. In fact, removing any threat of litigation will remove any need for technology companies and businesses to ensure that their products and systems are ready to handle the Y2K problem. I have been asked by none other than Jerry Yang, the head of the Internet company Yahoo, to oppose this bill, because Mr. Yang said he will use the fact that companies do not have Y2K-compliant computers when he competes with them.

So, isn't it the fact that when you get this kind of obstacle course of legalities companies will say: We do not have to worry about the quality of the product or whether or not it is Y2K compliant, because by the time they can finally get to me, and everything else like that, on a cost/benefit basis it is better for me to get rid of all these old noncompliant models. I don't mind paying a few lawyers to protect me on these hurdles here. Isn't that the case?

Mr. EDWARDS. I believe that is the case for that small number of companies this is all about.

Mr. HOLLINGS. Right.

Mr. EDWARDS. I do believe, and I know my colleague will agree with me, that the vast majority of these companies are totally responsible. They want to cure these problems. And in fact, they will cure them, and as a result will never be involved in any of this process.

Mr. HOLLINGS. That is what ''Business Week'' just put out a month ago in its March 1 issue. The marketplace was taking care of what problems could ensue come January 1 of the year 2000. All of the blue chip corporations—grocery, manufacturers, automotive dealers—everybody is really concerned if they don't perform and have Y2K compliance, they are going to lose the business. The blue-chippers have come around and told their suppliers and distributors and everything else: Unless you become Y2K compliant, we are going to find a new sales force and distributors and otherwise to handle our product.

Really, that is the conclusion to which the ''Business Week'' article came. In fact, the Y2K problem is going to clean out the laggards and bring out nothing but good, quality producers. It is not going to be a problem come January 1, because the market is behaving effectively. We get extremes like this legislation because the Chamber of Commerce gets down there and starts talking about a trillion dollars' worth of lawsuits, and we see entities coming in not knowing really what is at issue.

The fact is, then having said that, they are way off base in the whole thing with respect to the market itself. And as the Senator indicates, the responsible producers in America, they are the best of the best because they are competing internationally with the Japanese and everything else. So we have the best producers and they will comply. They want to comply because that is good business. They don't want to get bogged down with lawyers and everything else like that.

But a few companies want to have the political crowd in Washington throw up an obstacle course for consumers and small businesses, so that those companies do not have to worry about making good, reliable, Y2K-compliant products.

Mr. EDWARDS. I agree with that, and I would add, based on my conversations with the high-tech companies that do business in North Carolina, I am totally convinced they will act responsibly, they will do what they are supposed to do, and I do not think those are the companies that this bill

addresses or that we are concerned about, in any event.

Mr. HOLLINGS. Isn't that the case? That is why you find the extremes of tort law provision in here, and joint and several? The drive really is not to take care of the Y2K problem but to take care of what they call the lawyer problem in business. It has brought about the most responsible production in the entire world. We have quality production. We have safe articles on the market. On product liability and everything else, they have been coming after us for 20 years. Now they have all joined together, of all people not to hurt, just injured individuals with bad back cases like you and I have handled, but on the contrary, little small businesses, individual doctors who have to have a computer and have to keep up with their surgery and everything else of that kind.

I cite that because that is the testimony we had before the Commerce Committee. An individual doctor, in 1996, bought a computer. They bragged how it was going to last for 10 years and be Y2K compliant. And instead of being Y2K compliant, it was not. He asked for it to be repaired. He went twice to do it. They told him, you might have bought it for $16,000, but it is going to cost you $25,000. He didn't have the $25,000 to make it compliant. He finally brought a lawsuit, and the computer industry on the Internet picked it up and before long he had $17,000 against this particular supplier. They came around immediately and said: We will do it for free for everybody and pay the lawyers' fees.

That is what we are trying to avoid. But I do congratulate the Senator on his very cogent analysis and commonsensical approach and experienced judgment that he has rendered here this afternoon on this particular issue.

Mr. EDWARDS. Mr. President, I yield the floor.

Mr. HOLLINGS. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I paid attention to the exchange. The Senator from North Carolina was not here. The Senator from South Carolina was here when we fought for 10 years on a little item called aircraft product liability. I know the Senator from South Carolina fought viciously against that. The whole world was going to collapse if we gave an 18-year period of repose to aircraft manufacturers for products they built and manufactured.

Now there are 9,000, at least, new employees, and we are building the best piston driven aircraft in the world, thanks to that legislation.

Ask any of the owners of those aircraft companies and those people who are working there. It is because we finally passed that bill over the objections of the American Trial Lawyers Association which fought it for 10 years.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. MCCAIN. I will not.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, April 27, 1999, the federal debt stood at $5,596,529,776,391.98 (Five trillion, five hundred ninety-six billion, five hundred twenty-nine million, seven hundred seventy-six thousand, three hundred ninety-one dollars and ninety-eight cents).

One year ago, April 27, 1998, the federal debt stood at $5,507,607,000,000 (Five trillion, five hundred seven billion, six hundred seven million).

Five years ago, April 27, 1994, the federal debt stood at $4,562,363,000,000 (Four trillion, five hundred sixty-two billion, three hundred sixty-three million).

Ten years ago, April 27, 1989, the federal debt stood at $2,754,734,000,000 (Two trillion, seven hundred fifty-four billion, seven hundred thirty-four million).

Fifteen years ago, April 27, 1984, the federal debt stood at $1,485,189,000,000 (One trillion, four hundred eighty-five billion, one hundred eighty-nine million) which reflects a debt increase of more than $4 trillion—$4,111,340,776,391.98 (Four trillion, one hundred eleven billion, three hundred forty million, seven hundred seventy-six thousand, three hundred ninety-one dollars and ninety-eight cents) during the past 15 years.

THE NORTHEASTERN DAIRY COMPACT

Mr. SESSIONS. Mr. President, I wish to express my support for a bill that was introduced yesterday by Senator JEFFORDS—the Northeastern and Southern Dairy Compact. This bill would reauthorize the Northeastern Dairy Compact and grant the consent of Congress for a Southern Dairy Compact. The Southern Dairy Compact, which has been passed by Alabama and 10 other southeastern States, authorizes an interstate Compact Commission to take whatever measures are necessary to assure customers of an adequate local supply of fresh fluid milk while encouraging the continued viability of dairy farming within the region encompassing the compact States.

The current milk marketing order pricing system does not adequately account for regional differences in the costs of producing milk; furthermore, the Federal milk marketing order system establishes only minimum prices for milk. Due to these inconsistencies in milk prices, surplus milk is flooding the southeast and shutting down the family dairy farmer. By design, the Federal program relies on State regulation to account for regional differences. However, milk usually crosses State lines, so courts have ruled that individual States do not have the authority to regulate milk prices under the interstate commerce clause of the U.S. Constitution. To account for these regional price differences, states can gain regulatory authority by entering into a compact. States are now joining these compacts to maintain their dairy industry and are asking us to approve of the legislation they have already passed in their respective states. The support at the State level has been overwhelming and unanimous and I am hopeful this body will adopt these compacts unanimously as well.

The compact benefits everyone. Farmers are assured of more stable milk prices, thereby affording them the opportunity for better planning and recovery of production costs. Consumers will benefit as prices for fluid milk stabilize in the supermarket. According to the USDA and GAO accounting figures, there was a 40 percent increase in the market price of fluid milk between 1985 and 1997. According to the Office of Management and Budget, the compact established in the Northeast in 1996 increased the income of dairy farmers by 6 percent while maintaining prices to the consumer at 5 cents/gallon below the national average price for milk. In addition, OMB found no adverse effect on states outside of the compact. The compact is a win-win piece of legislation.

Dairy farming is an important industry in my State of Alabama, and I am a strong supporter of the family farmer. Their hard work and dedication is at the heart of the greatness of this nation. In Alabama, there are more than 2,000 employees in the dairy industry supporting a $48 million payroll. Last year, the dairy industry in Alabama generated a total of $204 million in economic activity. However, recent production capacity has deteriorated and further decreases may push production past the point of no return. From 1995 to 1998, milk production in Alabama decreased by 26 million pounds. The establishment of the dairy compact will ensure fair prices to farmers so that they can maintain a profitable level of milk production. The creation of a compact will bring stability to an important industry in Alabama and all over the Southeast. Consumers will be assured of fair prices and farmers will be confident in their production decisions.

The States have voiced their concerns. The States have developed a solution. It is now our responsibility to stamp our approval onto the compacts which have been passed in States throughout the Northeast and Southeast.

FUELS REGULATORY RELIEF ACT

Mr. BURNS. Mr. President, I stand in support of S. 880, Fuels Regulatory Relief Act, to provide relief for small businesses and to increase security of information from potential terrorists. This bill will specifically exclude toxic flammable fuels from Section 112 of the Clean Air Act which requires businesses provide public information on stored flammable fuels and how they would respond to emergencies should a disaster occur.

When the Clean Air Act was amended in 1990, Congress required the Environmental Protection Agency, under Section 112, to provide public information on a list of 100 substances which might cause injury or death to humans or adverse effects to the environment in an accident. EPA added flammable fuels to this list of 100 substances. This means that people who store and distribute flammable fuels are required to provide public information about their operations and how they would respond to an accident. These Risk Management Plans provide information on hazards associated with the fuels, safety measures and maintenance, and a worst-case scenario with an emergency response plan. This detailed information, although intended to provide citizens near a fuel facility knowledge about their local risks, also provide dangerous information to potential terrorists. The worst-case scenario information especially could provide potential terrorists with valuable information about how to destroy a flammable fuel facility.

I recognize the constant struggle between providing public access to and security protections of information about flammable fuels. However, given that public safety is adequately protected through existing federal laws and state building and fire codes, I believe no further requirements are needed. Also people who store flammable fuels are very safety conscious given the unstable nature of the product they work with. The safety record on the storage of flammable fuels is good and demonstrates that current regulatory requirements are adequate. Without any clear problem of the existing framework of protections, I do not see why these substances should be further regulated under Section 112 of the Clean Air Act.

By regulating flammable fuels under this provision of the Clean Air Act, fuel distributors might be hurt. For example, distributors might reduce their storage capacity of flammable fuels affecting their ability to meet local customer demands. Also if businesses and farmers reduce their stored levels of flammable fuels, fuel switching might be encouraged further adversely affecting distributors. This could limit the flexibility and health of these small businesses and farmers. Basically, it would ensure that the ''Hank Hills'' of the world (a character on the Fox network who is a propane small businessman) are not put out of business.

Thus, I trust my colleagues will rise with me to support this bill to provide relief for small businesses and farmers struggling to survive while ensuring security against disclosure of explosive information to potential terrorists.

MESSAGES FROM THE HOUSE

At 3:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1034. An act to declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States.

H.R. 1554. An act to amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

The message also announced that pursuant to the provisions of section 801(b) of the Public Law 100–696, the Speaker appoints the following Members of the House to the United States Capitol Preservation Commission: Mr. TAYLOR of North Carolina and Mr. FRANKS of New Jersey.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1034. An act to declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable water of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

S.J. Res. 22. Joint resolution to reauthorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact.

The following bill was read the first and second times and placed on the calendar:

H.R. 1554. An act to amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2713. A communication from the Assistant Secretary of Defense for Health Affairs, transmitting, pursuant to law, a report relative to Gulf War veterans; to the Committee on Armed Services.

EC–2714. A communication from the Secretary of Defense, transmitting, pursuant to law, the Report on Theater Missile Defense Architecture Options in the Asia-Pacific Region; to the Committee on Armed Services.

EC–2715. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on Federally Sponsored Research on Gulf War Veterans' Illnesses for calendar year 1997; to the Committee on Armed Services.

EC–2716. A communication from the Chairman, Federal Energy Regulatory Commission transmitting, pursuant to law, the report of a rule entitled ''Standards for Business Practices of Interstate Natural Gas Pipelines'' (Docket No. RM96–1–011; Order No. 587–K) received on April 22, 1999; to the Committee on Energy and Natural Resources.

EC–2717. A communication from the Acting Assistant General Counsel for Regulatory Law, Office of Science, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Safety of Accelerator Facilities'' (O 420.2) received on April 7, 1999; to the Committee on Energy and Natural Resources.

EC–2718. A communication from the Acting Assistant General Counsel for Regulatory Law, Office of Environment, Safety and Health, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Quality Assurance'' (O 414.1) received on April 7, 1999; to the Committee on Energy and Natural Resources.

EC–2719. A communication from the Acting Assistant General Counsel for Regulatory Law, Office of Field Management, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Life Cycle Asset Management'' (O 430.1A) received on April 7, 1999; to the Committee on Energy and Natural Resources.

EC–2720. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Clean Coal Technology Demonstration Program, Program Update 1998'' for the period July 1, 1997, through September 30, 1998; to the Committee on Energy and Natural Resources.

EC–2721. A communication from the Secretary of Energy, transmitting, proposed legislation entitled ''Comprehensive Electricity Competition Act''; to the Committee on Energy and Natural Resources.

EC–2722. A communication from the Administrator, United States Environmental Protection Agency, transmitting, pursuant to law, a report on the Agency's implementation of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act for fiscal year 1998; to the Committee on Energy and Natural Resources.

EC–2723. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Office of the Secretary, Department of the Interior, transmitting, proposed legislation relative to the Home of Franklin Delano Roosevelt National Historic Site; to the Committee on Energy and Natural Resources.

EC–2724. A communication from the Acting Assistant General Counsel for Regulatory Law, Office of Safeguards and Security, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Firearms Qualification Courses Manual'' [M 473.2–1) received on March 1, 1999; to the Committee on Energy and Natural Resources.

EC–2725. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Multiple State Abandoned Mine Land Reclamation Plans and Regulatory Programs—Technical Amendment'' [MCRCC–01); to the Committee on Energy and Natural Resources.

EC–2726. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of the summary of proposed and enacted rescissions for fiscal years 1974 through 1998; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, and to the Committee on the Budget.

EC–2727. A communication from the Assistant Secretary, Bureau of Indian Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''25

CFR Part 61, Preparation of Rolls of Indians'' (RIN 1076–AD89) received on April 20, 1999; to the Committee on Indian Affairs.

EC–2728. A communication from the National Treasurer, Navy Wives Clubs of America transmitting, pursuant to law, the report of the audit for the period September 1, 1997 through August 31, 1998; to the Committee on the Judiciary.

EC–2729. A communication from the Executive Director, Federal Labor Relations Authority, transmitting, pursuant to law, a rule entitled ''Revision of Freedom of Information Act Regulations'' received on April 22, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–2730. A communication from the Chief Justice of the Supreme Court, transmitting, pursuant to law, the report of amendments to the Federal Rules of Civil Procedure; to the Committee on the Judiciary.

EC–2731. A communication from the Chief Justice of the Supreme Court, transmitting, pursuant to law, the report of amendments to the Federal Rules of Bankruptcy Procedure; to the Committee on the Judiciary.

EC–2732. A communication from the Chief Justice of the Supreme Court, transmitting, pursuant to law, the report of amendments to the Federal Rules of Criminal Procedure; to the Committee on the Judiciary.

EC–2733. A communication from the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a rule entitled ''Regulations concerning the Convention Against Torture'', INS No. 1976–99 (RIN1115–AF39); to the Committee on the Judiciary.

EC–2734. A communication from the Director, Office of Regulations Management. Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Medical Care Collection or Recovery'' (RIN2900–AJ30) received April 22, 1999; to the Committee on Veterans Affairs.

EC–2735. A communication from the Director, Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans'' (RIN2900–AI92) received April 20, 1999; to the Committee on Veterans Affairs.

EC–2736. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the annual report under the Chemical and Biological Weapons and Warfare Elimination Act of 1991 for the period February 1, 1998 through January 31, 1999; to the Committee on Foreign Relations.

EC–2737. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report concerning amendments to Parts 121, 123, 124 and 126 of the International Traffic in Arms Regulations received April 7, 1999; to the Committee on Foreign Relations.

EC–2738. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–2739. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of an export license to various countries; to the Committee on Foreign Relations.

EC–2740. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of two Accountability Review Boards; to the Committee on Foreign Relations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–61. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Appropriations.

HOUSE JOINT MEMORIAL 4004

Whereas, Prostate cancer is the second most common form of cancer in men; and

Whereas, The American Cancer Society estimates that, in 1998, in the United States, approximately two hundred ten thousand new cases of prostate cancer were diagnosed and approximately forty-two thousand American men died of prostate cancer; and

Whereas, With an estimated nine million American men currently afflicted, prostate cancer amounts to an epidemic in the United States; and

Whereas, African-American men have the highest incidence of prostate cancer of any population of men in the world today; and

Whereas, The number of prostate cancer cases successfully diagnosed has increased significantly over the past thirty-five years, partly as a result of the widespread use of improved screening techniques, including screening for the prostate cancer antigen; and

Whereas, Awareness needs to be strengthened, to alert men of ages fifty and above to the risk of and treatments for prostate cancer; and

Whereas, Significantly more research is needed to determine the causes and most effective treatments for prostate cancer; and

Whereas, The National Prostate Cancer Coalition, a network of prostate cancer patients' advocates and support organizations, has presented five hundred thousand signatures to the United States Congress and the President, urging increased research funding for prostate cancer: Now, therefore

Your Memorialists respectively pray that the United States support increased federal funding for prostate cancer research; be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–62. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Appropriations.

HOUSE JOINT MEMORIAL 4014

Whereas, Strokes are the leading cause of death in the United States of America; and

Whereas, Strokes are also the leading cause of disability in the United States; and

Whereas, The American Heart Association estimates that in this year alone in the United States approximately six hundred thousand strokes will occur, and that approximately two hundred thousand deaths will ensue as a result of these strokes; and

Whereas, The incidence of stroke in young people is increasing in the United States; and

Whereas, African-Americans have the highest incidence of stroke of any segment of the population in the United States; and

Whereas, While the ability to treat strokes in the last decade has increased significantly in the United States, a great deal of work must still be done, especially in the areas of diagnosis, emergency treatment, and prevention; and

Whereas, Awareness of stroke risk and symptoms needs to be heightened among all Americans so that we will be alert to this risk; and

Whereas, Although it is the third leading cause of death in the United States, stroke risk in 1998 received the least amount of federal research funds of the five major diseases; and

Whereas, The American Heart Association is launching a nine-month, concerted effort to alert members of Congress about the urgent need and responsibility for more funding for stroke research; Now therefore

Your Memorialists respectfully pray that the members of Congress increase federal funding for stroke research; be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable William j. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–63. A resolution adopted by the Legislature of the State of Nebraska; to the Committee on Appropriations.

LEGISLATIVE RESOLUTION 27

Whereas, the Wood River Flood Control Project will divert Wood River flood water around the southern edge of Grand Island and carry the flood water from the Wood River to the Platte River; and

Whereas, $11,800,000 was authorized for the Wood River Flood Control Project through the 1996 Water Resources Development Act, which was to include $6,040,000 in federal funds; and

Whereas, in 1998, the Omaha District of the Army Corps of Engineers revised its estimates for the project to $17,353,000, including $9,969,000 to be contributed by the federal government. Since the cost increase is greater than twenty percent, congressional legislation to reauthorize the project is required; and

Whereas, an estimated 1,755 home and business structures in southern Grand Island, with a total value of $219 million, would be protected by the flood control project; and

Whereas, the flood control project would also protect 5,385 acres of irrigated farmland and 7,000 to 8,000 acres of grassland; and

Whereas, the Nebraska Legislature proposes to the Congress of the United States that procedures be instituted for congressional legislation to include appropriate authorization for the Wood River Flood Control Project in Grand Island, Nebraska; and

Whereas, prompt action is essential to decrease future flooding risks, the Nebraska Legislature requests the support and assistance of Congress in permitting this flood control project to move forward in a timely manner: Now therefore, be it

Resolved by the Members of the Ninety-Sixth Legislature of Nebraska, First Session:

1. That the Nebraska Legislature requests that the Congress of the United States appropriate the necessary funds to complete the Wood River Flood Control Project.

2. That the Clerk of the Legislature shall send copies of this resolution to the Secretary of State, to the Nebraska Congressional Delegation, to the Clerk of the United States House of Representatives, and to the Secretary of the United States Senate.

POM–64. A joint resolution by the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

HOUSE JOINT MEMORIAL 4011

Whereas, The Federal Communications Commission, pursuant to the Telecommunications Act of 1996, has implemented a universal service fund program to provide discounts on the cost of telecommunications services to schools and libraries; and

Whereas, On May 8, 1997, the Commission determined that schools and libraries that join consortia that include entities other than ''public sector (governmental) entities'' may not take advantage of the universal service fund program unless the services purchased by the consortia are based on tariffed rates; and

Whereas, This requirement effectively prevents schools and libraries from participating in consortia with nonprofit independent baccalaureate institutions without losing the advantages of the leveraged purchasing, economies of scale, and efficiencies that are the very rationale for such consortia; and

Whereas, Washington state has sought to leverage the state's purchasing power in its procurements of telecommunications and information services, and obtain the lowest prices for telecommunications services for universities, colleges, schools, and libraries;

Whereas, The Washington Legislature in 1996 authorized and funded the development of the K–20 Educational Telecommunications Network, a sixty-two million dollar statewide backbone network intended to link K–12 school districts, educational service districts, public and private baccalaureate institutions, public libraries, and community and technical colleges; and

Whereas, This network will provide the consortium of Washington colleges, schools, and libraries with enhanced function and increased efficiencies in their use of telecommunications services; and

Whereas, Washington state is home to several outstanding nonprofit independent baccalaureate institutions, including Antioch University, Cornish College of the Arts, Gonzaga University, Heritage College, Northwest College, Pacific Lutheran University, St. Martin's College, Seattle University, Seattle Pacific University, University of Puget Sound, Walla Walla College, Whitman College, and Whitworth College, that are not ''public sector (governmental) entities''; and

Whereas, These institutions each year prepare thousands of students for jobs in Washington state, and their graduates comprise more than twenty-five percent of the state's school teachers; and

Whereas, The Washington Legislature has recognized the important public service that these institutions perform; and

Whereas, The Washington Legislature has recognized that the public interest would be served by their inclusion in the K–20 Educational Telecommunications Network; and

Whereas, On July 16, 1997, the Washington Department of Information Services petitioned the Federal Communications Commission to clarify universal service program eligibility for schools and libraries that participate in telecommunications consortia with nonprofit independent colleges; and

Whereas, The Commission has not responded to that petition in more than eighteen months; and

Whereas, The state continues to delay the inclusion of nonprofit independent baccalaureate institutions in the K–20 Educational Telecommunications Network out of concern that doing so may render the network services provided to schools and libraries ineligible for universal service discounts; and

Whereas, Such continued delay is detrimental to the interests of the state; Now, therefore

Your Memorialists respectfully pray that the members of the Committee on Commerce, Science, and Transportation of the United States Senate; and members of the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, United States House of Representatives, urge the Federal Communications Commission to address promptly the matters raised in the Department of Information Service's Petition for Reconsideration, and find that schools and libraries may participate with independent colleges in consortia to procure telecommunications services at below-tariffed rates without losing their eligibility for universal service discounts; be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the members of the Committee on Commerce, Science, and Transportation of the United States Senate, and members of the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, United States House of Representatives, the President of the United States Senate, the Speaker of the House of Representatives, each member of Congress from the State of Washington, and the members of the Federal Communications Commission.

POM–65. A concurrent resolution adopted by the Legislature of the State of New Jersey; to the Committee on Finance.

CONCURRENT RESOLUTION 107

Whereas, New Jersey and 45 other states, as well as Puerto Rico and the District of Columbia, are scheduled to receive some $206 billion from the nation's five largest cigarette manufacturers as a result of the settlement, which was formally agreed to on November 23, 1998, between these tobacco companies and the plaintiff states of their respective actions against these companies to recover the costs incurred by the states in connection with tobacco-related diseases, in addition to the states of Florida, Minnesota, Mississippi and Texas that will receive monies from these companies as a result of individual settlements which they reached with the companies of their respective actions; and

Whereas, The monies received by New Jersey and the other plaintiff states from the tobacco companies constitute a return of their state taxpayer dollars, which was the result of their own efforts and expense, and which should not be siphoned off by the federal government through a reduction in federal Medicare payments to the states or by any other means; and

Whereas, The monies recovered by the states from the tobacco companies should be available for the states to use as they deem to be in the interest of their own citizens and according to their own needs, and in keeping with the terms of the national tobacco settlement or individual state settlements reached with the tobacco companies; and

Whereas, The federal government should not be able to recover its Medicaid costs associated with tobacco-related diseases without pursuing its own action against the tobacco companies and expending its own resources for that purpose; and

Whereas, Legislation is currently pending in the Congress of the United States as H.R. 351, sponsored by Representative Bilirakis (R–Florida), which would preclude action by the Secretary of Health and Human Services to recoup any portion of the tobacco settlement funds received by the various states as an overpayment under the Medicaid program: Now, therefore, be it

Resolved by the Senate of the State of New Jersey (the General Assembly concurring):

1. The Legislature respectfully memorializes the Congress of the United States to pass, and the President of the United States to sign into law. H.R. 351 or similar legislation which would ensure that the federal government will not seek to recoup any monies recovered by the states from the tobacco companies a as result of the national tobacco settlement or individual state settlements.

2. Duly authenticated copies of this resolution, signed by the President of the Senate and the Speaker of the General Assembly and attested by the Secretary of the Senate and the Clerk of the General Assembly, shall be transmitted to the United States Secretary of Health and Human Services, the presiding officers of the United States Senate and House of Representatives, and each of the members of the United States Congress elected from the State of New Jersey.

POM–66. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE CONCURRENT RESOLUTION NO. 5017

Whereas, The agricultural heritage and economy of the State of Kansas is dependent upon the harvest, storage and transportation of grain; and

Whereas, There are 785 grain elevators in Kansas and 65,000 farms in Kansas, many of which are family-owned operations; and

Whereas, Kansas grain elevators are valued neighbors to and located in close proximity to homes, schools, farms and businesses in most of all Kansas' communities; and

Whereas, Kansas grain elevators, feed mills, processors and growers are committed to protecting the health and safety of applicators and workers and the wellbeing of the public; and

Whereas, Grain elevators are located in Kansas communities near railroads and highways to facilitate the transportation of grain; and

Whereas, Kansas is a leader in the Nation and in the World in grain production; and

Whereas, Kansas grain elevators, feed mills, processors and growers are committed to producing an adequate safe and high quality food supply for domestic and world consumers; and

Whereas, Treaties and established trade relations may require pest-controlled grain before grain can be exported; and

Whereas, Insect pests in grain without fumigation treatment could create health risks and reduce the quality of the grain marketed from Kansas; and

Whereas, Aluminum and magnesium phosphide are cost-effective fumigants used both by commercial elevators and farmers in the storage of grain in Kansas; and

Whereas, The Environmental Protection Agency (EPA) acknowledged few, if any, viable alternatives to the use of aluminum and magnesium phosphide exist for fumigation to control pests in stored grain; and

Whereas, The current label restrictions for aluminum and magnesium phosphide provide for the safe and effective use of the product; and

Whereas, The State of Kansas practices rigorous enforcement of the label restrictions on fumigants, ensures adequate training of certified applicators and conducts a fumigation and grain storage project to inspect the use of fumigants; and

Whereas, Restrictions in the use of fumigations in grain storage and transportation should be based only on sound scientific reasoning, available technology and accurate analysis of risk level and avoid raising undue public alarm over unsubstantiated or inconsequential risk: Now, therefore, be it

Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein, That the Congress of the United

States direct the EPA to curtail implementation of new restrictions from its reregistration eligibility decision (RED) on phosphine gas that would require a 500-foot buffer zone and other restrictions that effectively preclude the use of aluminum or magnesium phosphide in most Kansas grain storage facilities and grain transportation; and be it further

Resolved, That Congress direct the EPA to ensure that risk mitigation allowances for aluminum and magnesium phosphides are clearly demonstrated as necessary to protect human health, are based upon sound science and reliable information, are economically and operationally reasonable and will permit the continued use of these products in accordance with the label; and

Whereas, The Food Quality Protection Act of 1996 (FQPA) was signed into law on August 3, 1996; and

Whereas, The FQPA institutes changes in the types of information the Environmental Protection Agency (EPA) is required to evaluate in the risk assessment process for establishing tolerances for pesticide residues in food and feed; and

Whereas, The FQPA was to assure that pesticide tolerances and policies are formulated in an open and transparent manner; and

Whereas, The FQPA further emphasizes the need for reliable information about the volume and types of pesticides being applied to individual crops and what residues can be anticipated on these crops; and

Whereas, Risk estimates based on sound science and reliable real-world data are essential to avoid misguided decisions, and the best way for the EPA to obtain this data is to require its development and submission by the registrant through the data call-in process; and

Whereas, The implementation of FQPA by the EPA could have a profound negative impact on domestic agriculture production and on consumer food prices and availability; and

Whereas, The possibility of elimination of these products will result in fewer pest control options for the United States and Kansas and significant disruption of successful integrated pest management programs which would be devastating to the economy of our state and jeopardize the very livelihood of many of our agricultural producers; and

Whereas, The absence of reliable information will result in fewer pest control options for urban and suburban uses, with potential losses of personal property and increased costs for human health concerns: Now, therefore, be it

Resolved by the Senate of the State of Kansas, the House of Representatives concurring therein, That the EPA should be directed by Congress to immediately initiate appropriate administrative rulemaking to ensure that the policies and standards it intends to apply in evaluating pesticide tolerances are subject to thorough public notice and comment prior to final tolerance determinations being made by the agency; and

Be it further resolved, That the EPA use sound science and real-world data from the data call-in process in establishing realistic models for evaluating risks; and

Be it further resolved, That the United States Department of Agriculture (USDA) establish FQPA as a priority and that EPA be required to have reliable pesticide residue data and other FQPA data on the specific crop affected by any proposed restriction, before, EPA imposes restriction of a pesticide under FQPA; and

Be it further resolved, That the EPA should be directed by Congress to implement the FQPA in a manner that will not disrupt agricultural production nor negatively impact the availability, diversity and affordability of food; and be it further

Resolved, That Congress should immediately conduct oversight hearings to ensure that actions by EPA are consistent with FQPA provisions and Congressional intent; and

Be it further resolved, That the Secretary of State be directed to send enrolled copies of this resolution to the President of the United States, the administrator of the Environmental Protection Agency, the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Agriculture and to each member of the Kansas Congressional Delegation.

POM–67. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Foreign Relations.

JOINT RESOLUTION NO. 1373

Whereas, children's rights require special protection and continuous improvement all over the world, as well as calling for the development and education of children in conditions of peace and security; and

Whereas, the United Nations has proclaimed that the period of childhood is entitled to special care and assistance; and

Whereas, the child should grow up in a family environment with happiness, love and understanding; and

Whereas, the child should be fully prepared to live the life of an individual in society; and

Whereas, the child should be brought up with dignity in a spirit of peace, tolerance, freedom, equality and solidarity; and

Whereas, in all countries of the world, there are children living in exceptionally difficult conditions; and

Whereas, it is important to have international cooperation in order to improve the living conditions of children in every country, in particular in the developing countries; and

Whereas, the United Nations Convention on the Rights of the Child has broken all records as the most widely ratified human rights treaty in history; and

Whereas, the convention is the most rapidly and widely adopted human rights treaty in history with 191 States Parties; and

Whereas, only 2 countries have not ratified this agreement, Somalia and the United States; and

Whereas, the uniqueness of the treaty is that it is the first legally binding international instrument to incorporate the full range of children's human rights, which include civil and political rights as well as their economic, social and cultural rights, thus giving all rights equal emphasis; now, therefore, be it

Resolved, That We, your Memorialists, request the President of the United States and the United States Congress to ratify the United Nations Convention on the Rights of the Child; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States; the President of the United States Senate; the Speaker of the House of Representatives of the United States; the United Nations Secretary-General Kofi Annan; each Member of the Maine Congressional Delegation; the Speaker of the House or the equivalent officer in the 49 other states; and the President of the Senate or the equivalent officer in the 49 other states.

POM–68. A resolution adopted by the Senate of the Legislature of the State of Georgia; to the Committee on Banking, Housing, and Urban Affairs.

SENATE RESOLUTION NO. 1241

Whereas, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller General, and the Office of Thrift Supervision proposed a ''Know Your Customer'' section of the Bank Secrecy Act on December 7, 1998, which seeks to determine the banking characteristics of its customers; and

Whereas, the ''Know Your Customer'' regulations will require banks to learn and recognize a customer's normal and expected transactions; and

Whereas, the ''Know Your Customer'' regulations will require banks to obtain knowledge regarding the legitimate activities of their customers; and

Whereas, the ''Know Your Customer'' regulations will require banks to report any unusual or suspicious transactions to as yet to be determined FDIC agencies existing suspicious activity reporting regulation; and

Whereas, there are already sufficient regulations in place to ensure that financial crimes are detected, and the ''Know Your Customer'' regulations are not needed and are in fact dangerous to a society where privacy is valued; and

Whereas, the ''Know Your Customer'' regulations constitute a clear violation of banking patrons privacy and therefore, must not be allowed to pass in any form. Now, therefore, be it

Resolved by the Senate, That the members of this body encourage the Congress of the United States to act swiftly to prevent the passage of any such legislation under the ''Know Your Customer'' designation; and be it further

Resolved, That the Secretary of the Senate is authorized and directed to transmit appropriate copies of this resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the directors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller General, the Office of Thrift Supervision, and all members of the Georgia Congressional Delegation.

SENATE RESOLUTION NO. 128

Whereas, the Food Quality Protection Act of 1996 (FQPA) was signed into law on August 3, 1996, by President Clinton; and

Whereas, the FQPA establishes new safety standards that pesticides must meet to be newly registered or to remain on the market; and

Whereas, the FQPA requires the Environmental Protection Agency (EPA) to ensure that all pesticide tolerances meet these new FQPA standards by reassessing one-third of the 9,700 existing pesticide tolerances by August, 1999, and all existing tolerances within ten years; and

Whereas, the FQPA institutes changes in the types of information the EPA is required to evaluate in the risk assessment process for establishing tolerances for pesticide residues in food and feed; and

Whereas, the FQPA was designed to ensure that pesticide tolerances and policies are formulated in an open and public manner; and

Whereas, the FQPA further emphasizes the need for reliable information about the volume and types of pesticides being applied to individual crops and what residues can be anticipated on these crops; and

Whereas, risk estimates based on sound science and reliable, real-world data are essential to avoid misguided decisions, and the best way for the EPA to obtain this data is to require development and submission of such data by the registrant through the data call-in process; and

Whereas, the ill considered implementation of FQPA by the EPA could have a profound negative impact on domestic agricultural production and on consumer food prices and availability; and

Whereas, the possibility of elimination of these products will result in fewer pest control options for the United States and Georgia and significant disruption of successful integrated pest management programs which would in turn be devastating to the economy of our state and jeopardize the very livelihood of many of our agricultural producers; and

Whereas, the absence of reliable information is expected to result in fewer pest control options for urban and suburban uses, with potential losses of personal property, damage to valuable recreational areas and managed green space, and increased human health concerns. Now therefore be it

Resolved by the Senate, That the members of this body urge Congress to direct the EPA to immediately initiate appropriate public administrative guidance or rule-making to ensure that the policies, standards, and procedures it intends to apply in reassessing existing pesticide tolerances are subject to thorough public notice and comment prior to final tolerance determinations being made by the agency; and be it further

Resolved, That Congress should direct the EPA to use sound science and real-world data from the data call-in process in establishing realistic models for evaluating risks; and be it further

Resolved, That Congress should direct the EPA to implement the FQPA in a manner that will not disrupt agricultural production nor negatively impact the availability, diversity, and affordability of food, threaten public health, nor diminish the quality of valuable recreational areas and managed green spaces; and be it further

Resolved, That Congress should immediately conduct oversight hearings to ensure that actions by EPA are consistent with FQPA provisions and congressional intent; and be it further

Resolved, That the Secretary of the Senate is authorized and directed to transmit appropriate copies of this resolution to the Georgia congressional delegation, the EPA Administrator, Vice President Al Gore, and the Secretary of Agriculture.

POM–69. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Environment and Public Works.

SENATE JOINT RESOLUTION NO. 407

Whereas, Virginia ranks second in the nation in the amount of municipal waste imported from other states, and the tonnage imported is likely to increase as other states close landfills; and

Whereas, the negative impacts of truck, rail, and barge traffic and litter, odors, and noise associated with waste imports occur not just at the location of final disposal but also along waste transportation routes; and

Whereas, current landfill technology has the potential to fail, leading to long-term cleanup and other associated costs; and

Whereas, the importation of waste runs counter to the repeatedly expressed strong desire of Virginia's citizens for clean air, land, and water and for the preservation of Virginia's unique historic and cultural character, and it is essential to promote and preserve these attributes; and

Whereas, the Commonwealth has demonstrated the ability to attract good jobs and to promote sound economic development without relying on the importation of garbage; and

Whereas, in 1995, 23 state governors wrote to the Commerce Committee of the United States House of Representatives urging passage of legislation allowing states and localities the power to regulate waste entering their jurisdictions; and

Whereas, legislation is pending before the Commerce Committee of the United States House of Representatives that would provide states and localities with the authority to control the importation of waste, a power that is essential to the public health, safety, and welfare of all citizens of Virginia; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Congress of the United States be urged to enact legislation giving states and localities the power to control waste imports into their jurisdictions, including the following provisions: (i) a ban on waste imports in the absence of specific approval from the disposal site host community and governor of the host state; (ii) authorization for governors to freeze solid waste imports at 1993 levels; (iii) authorization for states to consider whether a disposal facility is needed locally when deciding whether to grant a permit; and (iv) authorization for states to limit the percentage of a disposal facility's capacity that can be filled with waste from other states; and, be it

Resolved further, That the Clerk of the Senate transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation in order that they may be apprised of the sense of the Virginia General Assembly in this matter.

REPORTS OF COMMITTEES

The following reports of committees were submitted on April 27, 1999:

By Mr. HELMS, from the Committee on Foreign Relations, without amendment:

S. 886: An original bill to authorize appropriations for the Department of State for fiscal years 2000 and 2001; to provide for enhanced security at United States diplomatic facilities; to provide for certain arms control, nonproliferation, and other national security measures; to provide for the reform of the United Nations; and for other purposes (Rept. No. 106–43).

The following reports of committees were submitted on April 28, 1999:

By Mr. GRAMM, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 900: An original bill to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes (Rept. No. 106–44).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CLELAND:

S. 894. A bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LIEBERMAN (for himself, Mr. SANTORUM, Mr. DURBIN, Mr. ABRAHAM, Mr. ROBB, and Mr. KERREY):

S. 895. A bill to provide for the establishment of Individual Development Accounts (IDAs) that will allow individuals and families with limited means an opportunity to accumulate assets, to access education, to own their own homes and businesses, and ultimately to achieve economic self-sufficiency, and for other purposes; to the Committee on Finance.

By Mr. GRAMS (for himself, Mr. ABRAHAM, and Mr. KYL):

S. 896. A bill to abolish the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS (for himself and Mr. HAGEL):

S. 897. A bill to provide matching grants for the construction, renovation and repair of school facilities in areas affected by Federal activities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COVERDELL:

S. 898. A bill to amend the Internal Revenue Code of 1986 to provide taxpayers with greater notice of any unlawful inspection or disclosure of their return or return information; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. THURMOND, Mr. SPECTER, Mr. DEWINE, Mr. ASHCROFT, Mr. ABRAHAM, Mr. SESSIONS, and Mr. GRAMS):

S. 899. A bill to reduce crime and protect the public in the 21st Century by strengthening Federal assistance to State and local law enforcement, combating illegal drugs and preventing drug use, attacking the criminal use of guns, promoting accountability and rehabilitation of juvenile criminals, protecting the rights of victims in the criminal justice system, and improving criminal justice rules and procedures, and for other purposes; to the Committee on the Judiciary.

By Mr. GRAMM:

S. 900. An original bill to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes; from the Committee on Banking, Housing, and Urban Affairs; placed on the calendar.

By Mr. BINGAMAN:

S. 901. A bill to provide disadvantaged children with access to dental services; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TORRICELLI (for himself, Mr. KERRY, Mrs. MURRAY, and Mrs. BOXER):

S. 902. A bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV; to the Committee on Finance.

By Mr. KOHL (for himself and Mr. DEWINE):

S. 903. A bill to facilitate the exchange by law enforcement agencies of DNA identification information relating to violent offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. BUNNING (for himself and Mr. MCCONNELL):

S. 904. A bill to provide that certain costs of private foundations in removing hazardous substances shall be treated as qualifying distributions; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 905. A bill to establish the Lackawanna Valley American Heritage Area; to the Committee on Energy and Natural Resources.

By Mr. ABRAHAM:

S. 906. A bill to establish a grant program to enable States to establish and maintain pilot drug testing and drug treatment programs for welfare recipients engaging in illegal drug use, and for other purposes; to the Committee on Finance.

By Mr. SMITH of New Hampshire:

S. 907. A bill to protect the right to life of each born and preborn human person in existence at fertilization; to the Committee on the Judiciary.

By Mr. DORGAN:

S. 908. A bill to establish a comprehensive program to ensure the safety of food products intended for human consumption that are regulated by the Food and Drug Administration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HAGEL (for himself and Mr. KERREY):

S. Res. 88. A resolution relative to the death of the Honorable Roman L. Hruska, formerly a Senator from the State of Nebraska; considered and agreed to.

By Mr. MCCONNELL:

S. Res. 89. A resolution designating the Henry Clay Desk in the Senate Chamber for assignment to the senior Senator from Kentucky at that Senator's request; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CLELAND:

S. 894. A bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL CIVILIAN AND UNIFORMED SERVICES LONG-TERM CARE INSURANCE ACT OF 1999

Mr. CLELAND. Mr. President, in support of the need for an initiative to help address the growing long-term care needs of Americans, I am pleased to introduce the Federal Civilian and Uniformed Services Long-Term Care Insurance Act of 1999 in the Senate.

The Administration proposed a plan to offer long-term health care insurance to federal civilian employees. Under my bill, the administration's proposal is expanded to include federal civilian and uniformed services employees, as well as foreign service employees. This non-subsidized, quality private long-term care insurance option can then be offered at an affordable group rate. It is anticipated that 300,000 Federal employees and 200,000 uniformed services employees would voluntarily participate in such a long-term insurance plan. With such participation, the Federal government could truly serve as the model for employers for long-term care insurance.

The bill would make the following groups eligible for the long-term care insurance: Civilian employees after continuously working for the federal government for 6 months, Foreign Service employees, civilian annuitants upon retirement, members of the Armed Services, retired members of the Armed Services, and designated relatives, like parents and parents-in-laws.

The bill also offers: (1) portability of this benefit regardless of future federal or military employment as long as the monthly premium is paid on a time, (2) a choice of plans to meet the insurer's needs from up to three insurance carriers, and (3) a choice of cash or service benefits (such as expense-incurred or indemnity method). Costs for this program are anticipated to be no more than $15 million for OPM administrative expenses.

The price of long-term care is very expensive both in terms of the financial and emotional burden to families. In 1997, Medicare and Medicaid spent $15.4 billion providing home health care to Americans. In that same year, nursing home care cost American taxpayers approximately $16.9 billion. What I am proposing is legislating the ability to maintain self-reliance. The Federal Civilian and Uniformed Services Long-Term Care Insurance Act of 1999 is an important step to providing ''affordable, high-quality long-term care.'' I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of my legislation be printed in the RECORD.

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

S. 894

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Civilian and Uniformed Services Long-Term Care Insurance Act of 1999''.

SEC. 2. LONG-TERM CARE INSURANCE.

Subpart G of part III of title 5, United States Code, is amended by adding after chapter 89 the following:

''Chapter 90—Long-Term Care Insurance

''Sec.
''9001. Definitions.
''9002. Eligibility to obtain coverage.
''9003. Contracting authority.
''9004. Long-term care benefits.
''9005. Financing.
''9006. Regulations.

''§ 9001. Definitions

''For purposes of this chapter, the term—

''(1) 'activities of daily living' includes—

''(A) eating;

''(B) toileting;

''(C) transferring;

''(D) bathing;

''(E) dressing; and

''(F) continence;

''(2) 'annuitant' has the meaning such term would have under section 8901(3) if, for purposes of such paragraph, the term 'employee' were considered to have the meaning under paragraph (7) of this section;

''(3) 'appropriate Secretary' means—

''(A) except as otherwise provided in this paragraph, the Secretary of Defense;

''(B) with respect to the United States Coast Guard when it is not operating as a service of the Navy, the Secretary of Transportation;

''(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce;

''(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services; and

''(E) with respect to members of the Foreign Service, the Secretary of State;

''(4) 'assisted living facility' has the meaning given such term under section 232 of the National Housing Act (12 U.S.C. 1715w);

''(5) 'carrier' means a voluntary association, corporation, partnership, or other nongovernmental organization that is lawfully engaged in providing, paying for, or reimbursing the cost of, qualified long-term care services under group insurance policies or contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier;

''(6) 'eligible individual' means—

''(A) an employee who has completed 6 months of continuous service as an employee under other than a temporary appointment limited to 6 months or less;

''(B) an annuitant;

''(C) a member of the uniformed services on active duty for a period of more than 30 days or full-time National Guard duty (as defined under section 101(d)(5) of title 10) who satisfies such eligibility requirements as the Office prescribes under section 9006(c);

''(D) a member of the uniformed services entitled to retired or retainer pay (other than under chapter 1223 of title 10) who satisfies such eligibility requirements as the Office prescribes under section 9006(c);

''(E) a member of the Foreign Service who—

''(i) is described under section 103(1), (2), (3), (4), or (5) of the Foreign Service Act of 1980 (22 U.S.C. 3903(1), (2), (3), (4), or (5); and

''(ii) satisfies such eligibility requirements as the Office prescribes under sanction 9006(c);

''(F) a member of the Foreign Service entitled to an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System who satisfies such eligibility requirements as the Office prescribes under section 9006(c); or

''(G) a qualified relative of a sponsoring individual;

''(7) 'employee' means—

''(A) an employee as defined under section 8901(1) (A) through (H); and

''(B) an individual described under section 2105(e);

''(8) 'home and community care' has the meaning given such term under section 1929 of the Social Security Act (42 U.S.C. 1396t(a));

''(9) 'long-term care benefits plan' means a group insurance policy or contract, or similar group arrangement, provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for qualified long-term care services;

''(10) 'nursing home' has the meaning given such term under section 1908 of the Social Security Act (42 U.S.C. 1396g(e)(1));

''(11) 'Office' means the Office of Personnel Management;

''(12) 'qualified long-term care services' has the meaning given such term under section 7702B of the Internal Revenue Code of 1986;

''(13) 'qualified relative', as used with respect to a sponsoring individual, means—

''(A) the spouse of such sponsoring individual;

''(B) a parent or parent-in-law of such sponsoring individual; and

''(C) any other person bearing a relationship to such sponsoring individual specified by the Office in regulations; and

''(14) 'sponsoring individual' refers to an individual described under paragraph (6)(A), (B), (C), or (D).

''§ 9002. Eligibility to obtain coverage

''(a) Any eligible individual may obtain long-term care insurance coverage under this chapter for such individual.

''(b)(1) As a condition for obtaining long-term care insurance coverage under this

chapter based on an individual's status as a qualified relative, certification from the applicant's sponsoring individual shall be required as to—

''(A) such sponsoring individual's status, as described under section 9001(6)(A), (B), (C), or (D) (as applicable), as of the time of the qualified relative's application for coverage; and

''(B) the existence of the claimed relationship as of that time.

''(2) Any certification under paragraph (1) shall be submitted at such time and in such form and manner as the Office shall by regulation prescribe.

''(c) Nothing in this chapter shall be considered to require that long-term care insurance coverage be made available in the case of any individual who would be immediately benefit eligible.

''§ 9003. Contracting authority

''(a) Without regard to section 3709 of the Revised Statutes or other statute requiring competitive bidding, the Office may contract with qualified carriers to provide group long-term care insurance under this chapter, except that the Office may not have contracts in effect under this section with more than 3 qualified carriers.

''(b) To be considered a qualified carrier under this chapter, a company shall be licensed to issue group long-term care insurance in all the States and the District of Columbia.

''(c)(1) Each contract under this section shall contain a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits), the rates charged (including any limitations or other conditions on any subsequent adjustment), and such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

''(2) The rates charged under any contract under this section shall reasonably reflect the cost of the benefits provided under such contract.

''(d) The benefits and coverage made available to individuals under any contract under this section shall be guaranteed to be renewable and may not be canceled by the carrier except for nonpayment of charges.

''(e) Each contract under this section shall require the carrier to agree to—

''(1) pay or provide benefits in an individual case if the Office (or a duly designated third-party administrator) finds that the individual involved is entitled to such payment or benefit under the contract; and

''(2) participate in administrative procedures designed to bring about the expeditious resolution of disputes arising under such contract, including, in appropriate circumstances, 1 or more alternative means of dispute resolution.

''(f)(1)(A) Subject to subparagraph (B), each contract under this section shall be for a term of 5 years, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

''(B) The rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under any such contract shall continue until the termination of coverage of the enrolled individual.

''(2) Group long-term care insurance coverage obtained by an individual under this chapter shall terminate only upon the occurrence of—

''(A) the death of the insured;

''(B) exhaustion of benefits, as determined under the contract;

''(C) insolvency of the insurer, as determined under the contract; or

''(D) any event justifying a cancellation under subsection (d).

''(3) Subject to paragraph (2), each contract under this section shall include such provisions as may be necessary to—

''(A) effectively preserve all parties' rights and responsibilities under such contract notwithstanding the termination of such contract (whether due to nonrenewal under paragraph (1) or otherwise); and

''(B) ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual under that enrollment shall not be terminated due to any change in status (as described under section 9001(6)), such as separation from Government service or the uniformed services, or ceasing to meet the requirements for being considered a qualified relative (whether due to divorce or otherwise).

''§ 9004. Long-term care benefits

''(a) Benefits under this chapter shall be provided under qualified long-term care insurance contracts, within the meaning of section 7702B of the Internal Revenue Code of 1986.

''(b) Each contract under section 9003, in addition to any matter otherwise required under this chapter, shall provide for—

''(1) adequate consumer protections (including through establishment of sufficient reserves or reinsurance);

''(2) adequate protections in the event of carrier bankruptcy (or other similar event);

''(3) availability of benefits upon appropriate certification as to an individual's—

''(A) inability (without substantial assistance from another individual) to perform at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity;

''(B) having a level of disability similar (as determined under regulations prescribed by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services) to the level of disability described in subparagraph (A); or

''(C) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment;

''(4) choice of cash or service benefits (such as the expense-incurred method or the indemnity method);

''(5) inflation protection (whether through simple or compounded adjustment of benefits); and

''(6) portability of benefits (consistent with section 9003 (d) and (f)).

''(c) To the maximum extent practicable, at least 1 of the policies being offered under this chapter shall, in addition to any matter otherwise required under this chapter, provide for—

''(1) length-of-benefit options;

''(2) options relating to the provision of coverage in a variety of settings, including nursing homes, assisted living facilities, and home and community care;

''(3) options relating to elimination periods;

''(4) options relating to nonforfeiture benefits; and

''(5) availability of benefits upon appropriate certification of medical necessity (as defined by the Office in consultation with the Secretary of Health and Human Services) not satisfying the requirements of subsection (b)(3).

''(d)(1) The Office shall take all practicable measures to ensure that, at least 1 of the long-term care benefits plans available under this chapter shall be a Governmentwide long-term care benefits plan.

''(2) Neither subsection (c)(5) nor the exception under subsection (e) shall apply with respect to any Governmentwide plan under this subsection.

''(e) Nothing in this chapter shall be considered to permit or require the inclusion, in any contract, of provisions inconsistent with section 7702B of the Internal Revenue Code of 1986 or any other provision of such Code (except to the extent necessary to carry out subsection (c)(5)).

''(f) If a State (or the District of Columbia) imposes any requirement which is more stringent than the requirement imposed by subsection (b)(1), the requirement imposed by subsection (b)(1) shall be treated as met if the more stringent requirement of the State (or the District of Columbia) is met.

''§ 9005. Financing

''(a) Except as provided in subsection (b)(2), each individual having long-term care insurance coverage under this chapter shall be responsible for 100 percent of the charges for such coverage.

''(b)(1) The amount necessary to pay the charges for enrollment shall—

''(A) in the case of an employee, be withheld from the pay of such employee;

''(B) in the case of an annuitant, be withheld from the annuity of such annuitant;

''(C) in the case of a member of the uniformed services described under section 9001(6)(C), be withheld from the basic pay of such member; and

''(D) in the case of a member of the uniformed services described in section 9001(6)(D), be withheld from the retired pay or retainer pay payable to such member.

''(2) Withholdings to pay the charges for enrollment of a qualified relative may, upon election of the sponsoring individual involved, be withheld under paragraph (1) in the same manner as if enrollment were for such sponsoring individual.

''(3) All amounts withheld under paragraph (1) or (2) shall be paid directly to the carrier.

''(c)(1) Any enrollee whose pay, annuity, or retired or retainer pay (as referred to in subsection (b)(1)) is insufficient to cover the withholding required for enrollment (or who is not receiving any regular amounts from the Government, as referred to in subsection (b)(1), from which any such withholdings may be made) shall pay an amount described under paragraph (2) (or, in the case of an enrollee not receiving any regular amounts, the full amount of those charges) directly to the carrier.

''(2) The amount referred to under paragraph (1) is the amount equal to the difference between the amount of withholding required for the enrollment and the amount actually withheld.

''(d) Each carrier participating under this chapter shall maintain all amounts received under this chapter separate from all other funds.

''(e) Contracts under this chapter shall include appropriate provisions under which each carrier shall reimburse the Office or other administering entity for the administrative costs incurred by the Office or such entity under this chapter (such as for dispute resolution) which are allocable to such carrier.

''§ 9006. Regulations

''(a) The Office shall prescribe regulations necessary to carry out this chapter.

''(b)(1) Subject to paragraph (2), the regulations of the Office shall prescribe the time at which and the manner and conditions under which an individual may obtain long-term care insurance under this chapter.

''(2) The regulations prescribed under this section shall provide for an open enrollment period at least once each year (similar to the open enrollment period provided under section 8905(f)).

''(c) Any regulations necessary to effect the application and operation of this chapter

with respect to an eligible individual or a qualified relative of such individual shall be prescribed by the Office in consultation with the appropriate Secretary.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of enactment of this Act, except that no coverage may become effective before the first calendar year beginning after the expiration of the 18-month period beginning on the date of enactment of this Act.

By Mr. LIEBERMAN (for himself, Mr. SANTORUM, Mr. DURBIN, Mr. ABRAHAM, Mr. ROBB, and Mr. KERREY):

S. 895. A bill to provide for the establishment of Individual Development Accounts (IDAs) that will allow individuals and families with limited means an opportunity to accumulate assets, to access education, to own their own homes and businesses, and ultimately to achieve economic self-sufficiency, and for other purposes; to the Committee on Finance.

SAVINGS FOR WORKING FAMILIES ACT

• Mr. LIEBERMAN. Mr. President, with the economy in its 9th year of record growth, unemployment the lowest its been in over 25 years, and the stock market at an all time high, the following is worth noting:

Fully a third of all American households have no financial assets to speak of.

Another 20 percent have only negligible financial assets.

Almost half of all American children live in households that have no financial assets.

Over 10 million Americans don't even have a bank account.

In our efforts to foster policies that encourage economic growth, we have not done enough for the group that needs it the most—hardworking low income Americans. We have established tax credits for retirement plans, for home mortgages, for college education, and so on, all of which make for good policy. The problem is that to take advantage of these policies, you must already have some wealth. You must already have some assets. To put it plainly, you cannot benefit from a home mortgage credit if you do not have the wealth to buy a home.

So the challenge becomes creating a policy that helps low-income Americans reach the point where they can take advantage of these benefits. Any such policy must start with encouraging saving. Saving is empowering. It allows families to weather the bad times, to live without aid, and to deal with emergencies. Saving is also the first step to building assets.

And having assets is a prerequisite for taking part in this economy. That is because assets offer a way up. Whether it is a home, an education, or a small business, assets can be leveraged to deal with the bad times and usher in the good. That is why I believe that our tax policies should provide more incentives for asset building.

So Mr. President today along with Senators SANTORUM, DURBIN, ABRAHAM, ROBB, and KERREY of Nebraska, I offer tax legislation aimed at building assets for low-income families. The Savings for Working Families Act is centered around Individual Development Accounts (IDAs), an idea of Dr. Michael Sherraden of Washington University: create a savings account for low income workers that can be used to acquire assets, and allow the saver to receive matching funds towards the purchase of those assets.

The Savings for Working Families Act allows for the creation by federally insured banks and credit unions of IDAs for U.S. citizens or legal residents aged 18 or over, with a household income of not more than 60 percent of area median income, and a household net worth that does not exceed $10,000 excluding home equity and the value of one car.

The federal government will provide tax credits of up to $300 per account to financial institutions to reimburse them for providing matching funds for IDAs. All other sources of matching funds are welcome as well, including employers, charitable organizations, and the banks themselves.

Before an individual can use money from an IDA, he or she must complete an economic literacy course that will be offered by participating banks and community organizations. The course will teach about saving, banking, investing, and IDAs. Two years from its establishment the Act requires the Secretary of the Treasury to review the program for its cost-effectiveness and make recommendations as necessary to the Congress. We expect a cost of $200–500 million per year.

This is not a handout. Because only earned income is matched, IDAs only help those who are already trying to help themselves. Small IDA programs already exist across the country and have been overwhelmingly successfully. IDAs change the outlook of the saver. When you have assets, you have a stake in the economy, and you act to protect that stake.

For example, in Stamford, Connecticut a receptionist named Scharlene is saving to start her own business through the CTE IDA program. She had always thought of her interest in jewelry as a hobby. But after working with CTE IDA program she has not only saved over $700, but has also learned the basics of running a business. I met Scharlene, and I can tell you that win or lose, she is on the path to success. I might also add that the Connecticut State Treasurer, Ms. Denise Nappier, is also investigating ways to set up a state-side IDA program, and I would like to commend her for her efforts.

In the Sierra Ridge, Texas IDA program describes the case of Charles, a 38 year old divorced father of two. He uses that IDA program to save money for his children's education. Charles says that since he entered the program he thinks more about where his money goes: ''Having to commit to a long term goal makes us more aware that our decisions today could have consequences for tomorrow.'' His oldest daughter is planning on attending college in two years.

Another example comes from a Bonneville, Kentucky IDA program. There, Pam, a 37 year old factory worker and mother of two, has been saving to start her own business. ''I want to start a business and I will,'' Pam said. Together with the matching funds she has saved over $1700 towards a combination dry cleaners/video store. Her reasons are simple: ''I want more for my children.''

IDAs are good for business too. Financial institutions like IDAs because they bring some of the 10 million ''unbanked'' Americans into the system, and because it allows them to support low-income communities in a way that will ultimately be profitable for them. This is an idea that gives the right incentives to a deserving group in an effective and efficient manner. It is an idea that represents at once both our support of equal opportunity and our emphasis on self reliance. It is an idea whose time has come.

Mr. President, with Senators SANTORUM, DURBIN, ABRAHAM, ROBB, and KERREY of Nebraska, I introduce the Savings for Working Families Act. I ask that the text of this bill be included in the RECORD.

The bill follows:

S. 895

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Savings for Working Families Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.

TITLE I—INDIVIDUAL DEVELOPMENT ACCOUNTS FOR LOW-INCOME WORKERS

Sec. 101. Structure and administration of individual development account programs.
Sec. 102. Procedures for opening an Individual Development Account and qualifying for matching funds.
Sec. 103. Contributions to Individual Development Accounts.
Sec. 104. Deposits by qualified financial institutions.
Sec. 105. Withdrawal procedures.
Sec. 106. Certification and termination of individual development account programs.
Sec. 107. Reporting and evaluation.
Sec. 108. Funds in parallel accounts of program participants disregarded for purposes of all means-tested Federal programs.

TITLE II—INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDITS

Sec. 201. Matching funds for Individual Development Accounts provided through a tax credit for qualified financial institutions.
Sec. 202. CRA credit provided for individual development account programs.
Sec. 203. Designation of earned income tax credit payments for deposit to Individual Development Account.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) One-third of all Americans have no assets available for investment, and another 20 percent have only negligible assets. The household savings rate of the United States lags far behind other industrial nations, presenting a barrier to national economic growth and preventing many Americans from entering the economic mainstream by buying a house, obtaining an adequate education, or starting a business.

(2) By building assets, Americans can improve their economic independence and stability, stimulate the development of human and other capital, and work toward a viable and hopeful future for themselves and their children. Thus, economic well-being does not come solely from income, spending, and consumption, but also requires savings, investment, and accumulation of assets.

(3) Traditional public assistance programs based on income and consumption have rarely been successful in promoting and supporting the transition to increased economic self-sufficiency. Income-based social policies that meet consumption needs (including food, child care, rent, clothing, and health care) should be complemented by asset-based policies that can provide the means to achieve long-term independence and economic well-being.

(4) Individual Development Accounts (IDAs) can provide working Americans with strong incentives to build assets, basic financial management training, and access to secure and relatively inexpensive banking services.

(5) There is reason to believe that Individual Development Accounts would also foster greater participation in electric fund transfers (EFT), generate financial returns, including increased income, tax revenue, and decreased welfare cash assistance, that will far exceed the cost of public investment in the program.

SEC. 3. PURPOSES.

The purposes of this Act are to provide for the establishment of individual development accounts projects that will—

(1) provide individuals and families with limited means an opportunity to accumulate assets and to enter the financial mainstream;

(2) promote education, homeownership, and the development of small businesses; and

(3) stabilize families and build communities.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) ELIGIBLE INDIVIDUAL.—

(A) IN GENERAL.—The term ''eligible individual'' means an individual who—

(i) has attained the age of 18 years;

(ii) is a citizen or legal resident of the United States; and

(iii) is a member of a household—

(I) which is eligible for the earned income tax credit under section 32 of the Internal Revenue Code of 1986,

(II) which is eligible for assistance under a State program funded under part A of title IV of the Social Security Act, or

(III) the gross income of which does not exceed 60 percent of the area median income (as determined by the Department of Housing and Urban Affairs) and the net worth of which does not exceed $10,000.

(B) HOUSEHOLD.—The term ''household'' means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

(C) DETERMINATION OF NET WORTH.—

(i) IN GENERAL.—For purposes of subparagraph (A)(iii)(II), the net worth of a household is the amount equal to—

(I) the aggregate fair market value of all assets that are owned in whole or in part by any member of a household, minus

(II) the obligations or debts of any member of the household.

(ii) CERTAIN ASSETS DISREGARDED.—For purposes of determining the net worth of a household, a household's assets shall not be considered to include the primary dwelling unit and 1 motor vehicle owned by the household.

(2) INDIVIDUAL DEVELOPMENT ACCOUNT.—The term ''Individual Development Account'' means a custodial account established for an eligible individual as part of an individual development account program established under section 101, but only if the written governing instrument creating the account meets the following requirements:

(A) No contribution will be accepted unless it is in cash, by check, or by electronic fund transfer.

(B) The custodian of the account is a qualified financial institution.

(C) The assets of the account will not be commingled with other property except in a common trust fund or common investment fund.

(D) Except as provided in section 105(b), any amount in the account may be paid out only for the purpose of paying the qualified expenses of the eligible individual.

(3) QUALIFIED FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term ''qualified financial institution'' means any federally insured financial institution, including any bank, trust company, savings bank, building and loan association, savings and loan company or credit union.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A) from collaborating with 1 or more community-based, not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code to carry out an individual development account program established under section 101, including serving as a custodian for any Individual Development Account.

(4) QUALIFIED EXPENSES.—The term ''qualified expenses'' means, with respect to an eligible individual, 1 or more of the following paid from an Individual Development Account and from a separate, parallel individual or pooled account, as provided by a qualified financial institution:

(A) POST-SECONDARY EDUCATIONAL EXPENSES.—Post-secondary educational expenses paid directly to an eligible educational institution. In this subparagraph:

(i) POST-SECONDARY EDUCATIONAL EXPENSES.—The term ''post-secondary educational expenses'' means the following:

(I) TUITION AND FEES.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

(II) FEES, BOOKS, SUPPLIES AND EQUIPMENT.—Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(ii) ELIGIBLE EDUCATIONAL INSTITUTION.—The term ''eligible educational institution'' means the following:

(I) INSTITUTION OF HIGHER EDUCATION.—An institution described in section 481(a) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections are in effect on the date of enactment of this Act.

(II) POST-SECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (c) or (d) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(a))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of enactment of this Act.

(B) FIRST-HOME PURCHASE.—Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid directly to the persons to whom the amounts are due. In this subparagraph:

(i) QUALIFIED ACQUISITION COSTS.—The term ''qualified acquisition costs'' means the cost of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(ii) QUALIFIED PRINCIPAL RESIDENCE.—The term ''qualified principal residence'' means a principal residence (within the meaning of section 121 of the Internal Revenue Code of 1986).

(iii) QUALIFIED FIRST-TIME HOME BUYER.—

(I) IN GENERAL.—The term ''qualified first-time home buyer'' means an individual participating in an individual development account program (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

(II) DATE OF ACQUISITION.—The term ''date of acquisition'' means the date on which a binding contract to acquire, construct or reconstruct the principal residence to which this subparagraph applies is entered into.

(C) BUSINESS CAPITALIZATION.—Amounts paid directly to a business capitalization account which is established in a qualified financial institution and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

(i) QUALIFIED BUSINESS CAPITALIZATION EXPENSES.—The term ''qualified business capitalization expense'' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(ii) QUALIFIED EXPENDITURES.—The term ''qualified expenditures'' means expenditures included in a qualified plan, including capital, plant, equipment, working capital and inventory expenses.

(iii) QUALIFIED BUSINESS.—The term ''qualified business'' means any business that does not contravene any law or public policy (to be determined by the Secretary).

(iv) QUALIFIED PLAN.—The term ''qualified plan'' means a business plan, or a plan to use a business asset purchased, which—

(I) is approved by a financial institution, a micro enterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(II) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

(D) QUALIFIED ROLLOVERS.—Amounts paid as qualified rollovers. In this subparagraph, the term ''qualified rollover'' means any amount paid directly—

(i) to another Individual Development Account established for the benefit of the eligible individual in another qualified financial institution, or

(ii) if such eligible individual dies, to an Individual Development Account established for the benefit of another eligible individual within 30 days of the date of death.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

TITLE I—INDIVIDUAL DEVELOPMENT ACCOUNTS FOR LOW-INCOME WORKERS

SEC. 101. STRUCTURE AND ADMINISTRATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) ESTABLISHMENT OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.—Any qualified financial institution may establish 1 or more individual development account programs which meet the requirements of this Act either on its own initiative or in partnership with community-based, not-for-profit organizations.

(b) BASIC PROGRAM STRUCTURE.—

(1) IN GENERAL.—All individual development account programs shall consist of the following 2 components:

(A) An Individual Development Account to which an eligible individual may contribute money in accordance with section 103.

(B) A separate, parallel individual or pooled account to which all matching funds shall be deposited in accordance with section 104.

(2) TAILORED IDA PROGRAMS.—A qualified financial institution may tailor its individual development account program to allow matching funds to be spent on 1 or more of the categories of qualified expenses.

(c) NUMBER OF ACCOUNTS.—

(1) IN GENERAL.—The average number of active Individual Development Accounts in an individual development account program at any 1 banking office of a qualified financial institution shall be limited to the applicable limit.

(2) APPLICABLE LIMIT.—For purposes of this title, the applicable limit shall be determined in accordance with the following table:

"Calendar year:	Applicable Limit:
2000	100
2001	200
2002	300
2003	400
2004 and thereafter	500.

(d) TAX TREATMENT OF ACCOUNTS.—Any account described in subparagraph (B) of subsection (b)(1) is exempt from taxation under the Internal Revenue Code of 1986 unless such account has ceased to be such an account by reason of section 105(c) or the termination of the individual development account program under section 106(b).

SEC. 102. PROCEDURES FOR OPENING AN INDIVIDUAL DEVELOPMENT ACCOUNT AND QUALIFYING FOR MATCHING FUNDS.

(a) OPENING AN ACCOUNT.—An eligible individual must open an Individual Development Account with a qualified financial institution and contribute money in accordance with section 103 to qualify for matching funds in a separate, parallel individual or pooled account.

(b) REQUIRED COMPLETION OF ECONOMIC LITERACY COURSE.—Before becoming eligible to withdraw matching funds to pay for qualified expenses, holders of Individual Development Accounts must complete an economic literacy course offered by the qualified financial institution, a nonprofit organization, or a government entity.

SEC. 103. CONTRIBUTIONS TO INDIVIDUAL DEVELOPMENT ACCOUNTS.

(a) IN GENERAL.—Except in the case of a qualified rollover, individual contributions to an Individual Development Account will not be accepted for the taxable year in excess of an amount equal to the compensation (as defined in section 219(f)(1) of the Internal Revenue Code of 1986) includible in the individual's gross income for such taxable year.

(b) PROOF OF COMPENSATION AND STATUS AS AN ELIGIBLE INDIVIDUAL.—Federal W–2 forms and other forms specified by the Secretary proving the eligible individual's wages and other compensation and the status of the individual as an eligible individual shall be presented to the custodian at the time of the establishment of the Individual Development Account and at least once annually thereafter.

(c) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an Individual Development Account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the Federal income tax return for such taxable year (not including extensions thereof).

(d) CROSS REFERENCE.—

For designation of earned income tax credit payments for deposit to an Individual Development Account, see section 32(o) of the Internal Revenue Code of 1986.

SEC. 104. DEPOSITS BY QUALIFIED FINANCIAL INSTITUTIONS.

(a) SEPARATE, PARALLEL INDIVIDUAL OR POOLED ACCOUNTS.—The qualified financial institution shall deposit all matching funds for each Individual Development Account into a separate, parallel individual or pooled account. The parallel account or accounts shall earn not less than the market rate of interest.

(b) REGULAR DEPOSITS OF MATCHING FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), the qualified financial institution shall deposit not less than quarterly into the separate, parallel account with respect to each eligible individual the following:

(A) A dollar-for-dollar match for the first $300 contributed by the eligible individual into an Individual Development Account with respect to any taxable year.

(B) Any matching funds provided by State, local, or private sources in accordance to the matching ratio set by those sources.

(2) CROSS REFERENCE.—

For allowance of tax credit to qualified financial institutions for Individual Development Account subsidies, including matching funds, see section 30B of the Internal Revenue Code of 1986.

(c) FORFEITURE OF MATCHING FUNDS.—Matching funds that are forfeited under section 105(b) shall be used by the qualified financial institution to pay matches for other Individual Development Account contributions by eligible individuals.

(d) EXCLUSION FROM INCOME.—Gross income of an eligible individual shall not include any matching fund deposited into a parallel account under subsection (b) on behalf of such individual.

(e) UNIFORM ACCOUNTING REGULATIONS.—The Secretary shall prescribe regulations with respect to accounting for matching funds from all possible sources in the parallel accounts.

(f) REGULAR REPORTING OF MATCHING DEPOSITS.—Any qualified financial institution shall report matching fund deposits to eligible individuals with Individual Development Accounts on not less than a quarterly basis.

SEC. 105. WITHDRAWAL PROCEDURES.

(a) WITHDRAWALS FOR QUALIFIED EXPENSES.—

(1) REQUEST FOR WITHDRAWAL.—To withdraw money from an eligible individual's Individual Development Account to pay qualified expenses of such individual or such individual's spouse or dependents, an eligible individual shall obtain permission from the custodian of the individual development account program. Such permission may include a request to withdraw matching funds from the applicable parallel account.

(2) DISBURSEMENT OF FUNDS.—Once permission to withdraw funds is granted under paragraph (1), the qualified financial institution shall directly transfer such funds from the Individual Development Account, and, if applicable, from the parallel account electronically to the vendor or other Individual Development Account. If the vendor is not equipped to receive funds electronically, the qualified financial institution may issue such funds by paper check to the vendor.

(3) RESOLUTION OF DISPUTES.—The qualified financial institution shall establish a grievance procedure to hear, review, and decide in writing any grievance made by an Individual Development Account holder who disputes a decision of the operating organization that a withdrawal is not for qualified expenses.

(b) WITHDRAWALS FOR NONQUALIFIED EXPENSES.—An Individual Development Account holder may unilaterally withdraw funds from the Individual Development Account for purposes other than to pay qualified expenses, but shall forfeit the corresponding matching funds and interest earned on the matching funds by doing so, unless such withdrawn funds are recontributed to such Account within 1 year of withdrawal.

(c) DEEMED WITHDRAWALS FROM ACCOUNTS OF NONELIGIBLE INDIVIDUALS.—If, during any taxable year of the individual for whose benefit an Individual Development Account is established, such individual ceases to be an eligible individual, such account shall cease to be an Individual Development Account as of the first day of such taxable year and any balance in such account shall be deemed to have been withdrawn on such first day by such individual for purposes other than to pay qualified expenses.

(d) TAX TREATMENT OF WITHDRAWN AMOUNTS.—Any amount withdrawn from an Individual Development Account or any matching funds withdrawn from a parallel account shall be includible in gross income to the extent such amount has not previously been so includible.

SEC. 106. CERTIFICATION AND TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) CERTIFICATION PROCEDURES.—Upon establishing an individual development account program under section 101, a qualified financial institution shall certify to the Secretary on forms prescribed by the Secretary and accompanied by any documentation required by the Secretary, that—

(1) the accounts described in subparagraphs (A) and (B) of section 101(b)(1) are operating pursuant to all the provisions of this Act; and

(2) the qualified financial institution agrees to implement an information system necessary to permit the Secretary to evaluate the cost and effectiveness of the individual development account program.

(b) AUTHORITY TO TERMINATE IDA PROGRAM.—If the Secretary determines that a qualified financial institution under this Act is not operating an individual development account program in accordance with the requirements of this Act (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such institution's authority to conduct the program. If the Secretary is unable to identify a qualified financial institution to assume the authority to conduct such program, then any account established for the benefit of any eligible individual under such program shall cease to be an Individual Development Account as of the first day of such termination and any balance in such account shall be deemed to have been withdrawn on such first day by such individual for purposes other than to pay qualified expenses.

SEC. 107. REPORTING AND EVALUATION.

(a) RESPONSIBILITIES OF QUALIFIED FINANCIAL INSTITUTIONS.—Each qualified financial institution that establishes an individual development account program under section 101 shall report annually to the Secretary within 90 days after the end of each calendar year on—

(1) the number of eligible individuals making contributions into Individual Development Accounts;

(2) the amounts contributed into Individual Development Accounts and deposited into the separate, parallel accounts for matching funds;

(3) the amounts withdrawn from Individual Development Accounts and the separate, parallel accounts, and the purposes for which such amounts were withdrawn;

(4) the balances remaining in Individual Development Accounts and separate, parallel accounts; and

(5) such other information needed to help the Secretary evaluate the cost and effectiveness of the individual development account program.

(b) RESPONSIBILITIES OF THE SECRETARY.—

(1) TWO-YEAR EVALUATION.—Not later than 24 months after the date of enactment of this Act, the Secretary shall evaluate the cost and effectiveness of the individual development account programs established under section 101. In addition, the Secretary shall evaluate the effect of the account limitation under section 101(c) on each banking office of a qualified financial institution and make recommendations for its adjustment or removal.

(2) FOUR-YEAR EVALUATION.—Not later than 48 months after the date of enactment of this Act, the Secretary shall evaluate the effect of the individual development account programs established under section 101 on the eligible individuals.

(3) SUBSEQUENT ANNUAL EVALUATIONS.—In each subsequent year after the first evaluation under paragraph (1) or (2), the Secretary shall issue an update on the status of such individual development account programs.

(4) APPROPRIATIONS FOR EVALUATIONS.—There is authorized to be appropriated $5,000,000 for the purposes of evaluating individual development account programs established under section 101, to remain available until expended.

SEC. 108. FUNDS IN PARALLEL ACCOUNTS OF PROGRAM PARTICIPANTS DISREGARDED FOR PURPOSES OF ALL MEANS-TESTED FEDERAL PROGRAMS.

Notwithstanding any other provision of law that requires consideration of 1 or more financial circumstances of an individual, for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in any parallel account shall be disregarded for such purpose with respect to any period during which the individual participates in an individual development account program established under section 101.

TITLE II—INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDITS

SEC. 201. MATCHING FUNDS FOR INDIVIDUAL DEVELOPMENT ACCOUNTS PROVIDED THROUGH A TAX CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to other credits) is amended by inserting after section 30A the following:

"SEC. 30B. INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

"(a) DETERMINATION OF AMOUNT.—There shall be allowed as a credit against the applicable tax for the taxable year an amount equal to the individual development account investment provided by a qualified financial institution during the taxable year under an individual development account program established under section 101 of the Savings for Working Families Act.

"(b) APPLICABLE TAX.—For the purposes of this section, the term 'applicable tax' means the excess (if any) of—

"(1) the sum of—

"(A) the tax imposed under this chapter (other than the taxes imposed under the provisions described in subparagraphs (C) through (Q) of section 26(b)(1)), plus

"(B) the tax imposed under section 3111, over

"(2) the credits allowable under subparts B and D of this part.

"(c) INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT.—For purposes of this section, the term 'individual development account investment' means, with respect to an individual development account program of a qualified financial institution in any taxable year, an amount equal to the sum of—

"(1) the aggregate amount of dollar-for-dollar matches under such program by such institution under section 104 of the Savings for Working Families Act for such taxable year, plus

"(2) an amount equal to the lesser of—

"(A) 50 percent of the aggregate costs paid or incurred under such program by such institution during such taxable year—

"(i) to provide economic literacy training to Individual Development Account holders under section 102(b) of such Act, either directly or indirectly through nonprofit organizations or government entities, and

"(ii) to underwrite the activities of collaborating community-based, not-for-profit organizations (within the meaning of section 4(3)(B) of such Act), or

"(B) $100, times the total number of Individual Development Accounts maintained by such institution under such program during such taxable year.

"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'Individual Development Account' and 'qualified financial institution' have the meanings given such terms by section 4 of the Savings for Workings Families Act.

"(e) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a forfeiture under section 105(b) of the Savings for Workings Families Act in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit."

(b) TRANSFER TO TRUST FUNDS.—The Secretary of the Treasury shall transfer from the general fund of the United States Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund amounts equivalent to the amount of the reduction in taxes imposed by section 3111 of the Internal Revenue Code of 1986 by reason of the credit determined under section 30B (relating to the individual development account investment credit for qualified financial institutions). Any such transfer shall be made at the same time that the reduced taxes would have been deposited in such Trust Funds.

(c) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 30A the following:

"Sec. 30B. Individual development account investment credit for qualified financial institutions."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 202. CRA CREDIT PROVIDED FOR INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

Qualified financial institutions which establish individual development account programs under section 101 shall receive credit for funding, administration, and education expenses under the services test contained in regulations for the Community Reinvestment Act of 1977 for those activities related to Individual Development Accounts.

SEC. 203. DESIGNATION OF EARNED INCOME TAX CREDIT PAYMENTS FOR DEPOSIT TO INDIVIDUAL DEVELOPMENT ACCOUNT.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) is amended by adding at the end the following:

"(o) DESIGNATION OF CREDIT FOR DEPOSIT TO INDIVIDUAL DEVELOPMENT ACCOUNT.—

"(1) IN GENERAL.—With respect to the return of any eligible individual (as defined in section 4(1) of the Savings for Working Families Act) for the taxable year of the tax imposed by this chapter, such individual may designate that a specified portion (not less than $1) of any overpayment of tax for such taxable year which is attributable to the credit allowed under this section shall be deposited by the Secretary into an Individual Development Account (as defined in section 4(2) of such Act) of such individual. The Secretary shall so deposit such portion designated under this paragraph.

"(2) MANNER AND TIME OF DESIGNATION.—A designation under paragraph (1) may be made with respect to any taxable year—

"(A) at the time of filing the return of the tax imposed by this chapter for such taxable year, or

"(B) at any other time (after the time of filing the return of the tax imposed by this chapter for such taxable year) specified in regulations prescribed by the Secretary.

Such designation shall be made in such manner as the Secretary prescribes by regulations.

"(3) PORTION ATTRIBUTABLE TO EARNED INCOME TAX CREDIT.—For purposes of paragraph (1), an overpayment for any taxable year shall be treated as attributable to the credit allowed under this section for such taxable year to the extent that such overpayment does not exceed the credit so allowed.

"(4) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any portion of an overpayment of tax designated under paragraph (1) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by this chapter (determined without regard to extensions) or, if later, the date the return is filed.

"(5) TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 2006."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1999.●

By Mr. GRAMS (for himself, Mr. ABRAHAM, and Mr. KYL):

S. 896. A bill to abolish the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

THE DEPARTMENT OF ENERGY ABOLISHMENT ACT OF 1999

Mr. GRAMS. Mr. President, I rise to introduce The Department of Energy Abolishment Act of 1999. I am pleased to include as original cosponsors Senator SPENCER ABRAHAM and Senator JON KYL and want to thank them for their support both this year and in past Congresses.

I would also like to say that Congressman TODD TIAHRT will be introducing his DOE elimination bill today in the House of Representatives and I thank him for his continued leadership and cooperation on this issue.

As many of my colleagues are aware, the effort to eliminate the DOE is not a new endeavor. In fact, since its inception, experts have been clamoring to eliminate the Department and to move its programs back to the agencies from which they were taken—agencies better suited to achieving specific programmatic goals.

When we began to look into the specifics of DOE elimination in the 104th Congress, we considered three main issues. First, we examined the fact that the Department of Energy no longer has a mission—a situation clearly reflected by the fact that nearly 85 percent of its budget is expended upon ''non-energy'' programs.

The Department was created to develop a long-term energy strategy with an ultimate goal of energy indepedence. Sadly, we are now far more reliant upon foreign energy sources than we were when the Department was created.

During the long oil lines of the 1970s, we were about 35 percent dependent on foreign oil. Today, it is more than 60 percent. So our foreign oil dependency has grown, and a lack of an energy strategy is a result of the failure of the DOE.

I recall at one point Secretary Hazel O'Leary commented that we should consider taking the word ''energy'' out of the Department's name because it was such a small portion of its overall activity. Next, we studied those programs charged to the DOE and reviewed its ability to meet the related job requirements.

And finally, we looked at the DOE's ever-increasing budget in light of the first two criterion—determining whether the taxpayers should be forced to expend nearly $18 billion annually on this bureacratic hodgepodge.

Now, I want to be up front and say for the record that I acknowledge the difficulties inherent in eliminating a cabinet-level agency. I am keenly aware that the chances of passing this bill into law in this Congress, with this Administration, and in a presidential election year are difficult.

Those chances may be exactly as they were in 1996 when I first introduced this legislation and when we held our first hearing on the matter, but unfortunately, the reasons for offering the bill haven't changed.

In 1996, the opponents of this legislation charged that it was unnecessary. They claimed that the Department was headed in the right direction and making the changes necessary to both justify its mission and reduce its bloated budget.

The call of many Members of Congress to eliminate the Department encouraged a group of DOE supporters to back a hastily arranged set of objectives in defense of the DOE's record of mismanagement.

At the time of the 1996 hearings on this legislation, the backers of the Department relied largely on the DOE's Strategic Alignment and Downsizing Initiative as a defense against charges that the Department wasted too much money and that the Department was involved in a two-decades old scavenger hunt for new missions.

The Strategic Alignment and Downsizing Initiative, its proponents claimed, would save taxpayers over $14 billion in 5 years and change the way the DOE conducted business. Regrettably, those projections were never met and the Initiative was never taken seriously—even by the same people who touted its promise.

In fact, while they have continued their reluctance to reduce their budget—they have continuously sought billions of dollars in budget increase to fund their on-going mission creep. So I think its worthwhile to look back on the great hopes those opposed to my bill placed on this proposal.

While speaking about this legislation on September 4, 1996, in the Energy and Natural Resources Committee, Senator Bennett Johnston said, ''Maybe all of this would be worth doing if we were going to save the taxpayers a lot of money. But the operational savings claimed by S. 1678 by the Heritage Foundation are actually less than the operational savings that would be realized by the Department's on-going strategic realignment initiative, savings that the GAO has testified are real.''

In other words, the Senator was saying that the Department of Energy would save more money for the taxpayers by doing a better job than we could by eliminating the department.

As I stated earlier, Mr. President, the Strategic Alignment and Downsizing Initiative—the great hope of DOE's defenders in 1996—hasn't achieved one red cent of budgetary savings over the last 4 years, and it doesn't appear that anything is going to change anytime soon. Regrettably, the Strategic Alignment and Downsizing Initiative isn't the only improvement the Department has failed to make over the past four years.

Today, commercial nuclear waste still sits at 73 sites in 34 states despite both legal and contractual obligations that mandated the removal of the waste by January 31, 1998, more than a year ago.

Since my election to the Senate in 1994, I have listened to a parade of DOE witnesses tell the Energy and Natural Resources Committee that they are committed to resolving this conflict and living up to their responsibilities. Every nominee I have questioned has told me how important this issue is to them and how they are going to work with Congress. But not one of them—not one—in any substantive way, has taken actions which generate faith in Congress that the DOE is capable of fulfilling its promises. Again—not one—nominee has delivered on their promises—instead, of what they need to say to get confirmed and then return to business as usual.

They don't keep their promises. They say what they need to say, what Congress wants to hear to get confirmed, and then they go on with business as usual.

Today, the Government Performance and Results Act paints a clear picture of how difficult it is to get a grip on the size of problems at the Department of Energy. The Department's final strategic plan, which took four years of preparation, scored a pathetic 43.5 points out of a possible 100. That is how good this is.

And the DOE's FY99 annual performance plan was ranked fourth from last of all government agencies—scoring 30 out of a possible 100. No business, no college student, no family, could consistently perform so miserably and yet maintain a cushy existence of even larger and larger budgets.

But thanks to an indifferent Administration, and a Congress that places too little importance on its oversight role, the DOE continues along with the knowledge that its protectors will keep the lights on and the funding flowing without any regard for the American taxpayer.

And today, as this nation continues to grow increasingly dependent upon foreign oil—in total contrast to the DOE's core mission. Even in light of this Administration's focus on alternative energy, the DOE expends less than one-sixth of its budget on ''energy'' related programs—a trend that clearly will continue well into the future.

Let me be the first to state that the proposals contained within this bill are not all of my own. The idea to eliminate the Department of Energy is not a new one—since its creation in 1978, experts have been clamoring to abolish this ''agency in search of a mission.'' This bill represents the comments and input of many who have worked in these fields for decades, but, I consider it a work in progress.

Under the Department of Energy Abolishment Act of 1999, we dismantle the patchwork quilt of government initiatives—reassembling them into agencies better equipped to accomplish their basic goals; we refocus and increase federal funding towards basic research by eliminating corporate welfare; and, we abolish the bloated, duplicative upper management bureaucracy.

First, we begin by eliminating Energy's cabinet-level status and establishing a three-year Resolution Agency

to oversee the transition. This is critical to ensuring progress continues to be made on the core programs.

Under Title I, the Federal Energy Regulatory Commission (FERC) is spun off to become an independent agency, as it was prior to the creation of the DOE. The division which oversees hearings and appeals is eliminated, with all pending cases transferred to the Department of Justice for resolution within 1 year. The functions of the Energy Information Administration are transferred to the Department of Interior with the instruction to privatize as many as possible. And with the exception of research being conducted by the DOE labs, basic science and energy research functions are transferred to Interior for determination on which are basic research, and which can be privatized. Those deemed as core research will be transferred to the National Science Foundation and reviewed by an independent commission. Those that are more commercial in nature will be subject to disposition recommendations by the Secretary of Interior.

The main reasoning behind this is to ensure the original mission of the DOE—to develop this nation's energy independence—is carried out.

With scarce taxpayer dollars currently competing against defense and cleanup programs within the DOE, it's no surprise that little progress has been made. However, by refocusing dollars into competitive alternative energy research, we will maximize the potential for areas such as solar, wind, biomass, etc.

For states like Minnesota, where the desire for renewable energy technologies is high, growth in these areas could help fend off our growing dependence upon foreign oil while protecting our environment.

Under Title II, the laboratory structure within the DOE is revamped.

First, the three ''defense labs'' are transferred to the Defense Department. They include Sandia, Los Alamos and Lawrence Livermore. The remaining labs are studied by a ''Non-defense Energy Laboratory Commission''.

This independent commission operates much like the Base Closure Commission and can recommend restructuring, privatization or a transfer to the DOD as alternatives to closure. Congress is granted fast-track authority to adopt the Commission's recommendations.

Title III directs the General Accounting Office to assess an inventory of the Power Marketing Administration's assets, liabilities, etc. This inventory is aimed at ensuring fair treatment of current customers and a fair return to the taxpayers. All issues, including payments by current customers, must be included in the GAO audit.

Petroleum Reserves are the focus of Title IV. The Naval Petroleum Reserve is targeted for immediate sale. Any of the reserves that are unable to be disposed of within the three-year window will be sold transitionally from the Interior Department.

The Strategic Petroleum Reserve is transferred to the Defense Department and an audit on value and maintenance costs is conducted by the GAO. Then, the DOD is charged with determining how much oil to maintain for national security purposes after reviewing the GAO report.

Under Titles V and VI, all of the national security and environmental restoration/management activities are sent to the Department of Defense.

Therefore, all defense-related activities are transferred back to Defense, but are placed in a new civilian controlled agency (the Defense Nuclear Programs Agency) to ensure budget firewalls and civilian control over sensitive activities such as arms control and nonproliferation activities.

And the program which has received much criticism as of late, the Civilian Nuclear Waste Program, is transferred to the Corps of Engineers. This section dovetails legislation adopted by the Senate last Congress. A key element is that the interim storage site is designated at Nevada's Test Site Area 25.

As I mentioned in the beginning of my statement, while I believe we should eliminate the Department as cabinet-level agency, I appreciate the difficulty involved in accomplishing this goal now and realize the opposition to this among many of my colleagues. For that reason, I believe it is important to point out that the reasons I have outlined for eliminating the Department have a dual purpose—they can also serve as reasons for improving the Department.

Toward that end, I am willing to work with any Member of the Senate and House to improve, downsize, or restructure the DOE. I have long advocated positions which are consistent with my beliefs.

I am an original co-sponsor of The Nuclear Waste Policy Act of 1999—legislation I believe is essential to fulfilling the DOE's promises to America's ratepayers and taxpayers. I have been a strong supporter of legislation and efforts which are aimed at improving our nation's energy security by promoting domestically produced alternative and renewable fuels. Those efforts have included support for extending the ethanol tax credit, including biodiesel as an alternative fuel under the Energy Policy Act, cosponsoring the Wind Energy Tax Credit, cosponsoring the Poultry Litter Tax Credit legislation, and cosponsoring legislation to reform the hydropower relicensing process.

Briefly, I believe those efforts strengthen the original mission of the Department of Energy. My bottom line is, I want America's taxpayers to be assured they are receiving a proper return on their investment.

The taxpayers need to have confidence they are receiving the services they deserve. Unfortunately, the record of the Department of Energy is evidence in part of our reliance upon foreign oil, by the nuclear waste program debacle and by the low ratings it receives under the Government Performance and Results Act, and is a record of failure the taxpayers should no longer be forced to bear.

I patiently awaited the reforms and savings promised by the Department and its advocates, but the waiting continues and the savings never developed. As long as this is the case, I will continue to offer my legislation to dismantle the Department of Energy and shift its responsibilities elsewhere.

I send the bill to the desk and ask it be referred to the proper committees.

The PRESIDING OFFICER. The bill will be received.

By Mr. BAUCUS (for himself and Mr. HAGEL):

S. 897. A bill to provide matching grants for the construction, renovation and repair of school facilities in areas affected by Federal activities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

FEDERALLY IMPACTED SCHOOL IMPROVEMENT ACT

Mr. HAGEL. Mr. President, I join the senior Senator from Montana, Senator BAUCUS, in introducing the Federally Impacted School Improvement Act. This bipartisan legislation is designed to renew and enhance the partnership between the federal government and schools located on or around Indian reservations and military bases.

For almost fifty years Congress has provided financial assistance to school districts impacted by a federal presence. Up until 1994, Congress also provided funding to help these communities defray the cost of building and repairing their schools.

The loss of this particular revenue over the last five years, combined with the continued under-funding for almost 15 years of the impact aid program in general, has left school districts that serve military and Indian children scrambling to finance their routine costs. As a result, many of these schools now have buildings that are antiquated, overcrowded and compromise the health and safety of their students.

The Federally Impacted School Improvement Act takes a step toward correcting this situation by providing matching grants that impacted schools can use to address their most pressing modernization needs. This Act authorizes a federal appropriation of $50 million for each of the next five fiscal years for impact aid school construction and repair.

Forty-five percent of the funds appropriated under the bill go to Indian lands. Another forty-five percent is dedicated to military schools. The final ten percent will be reserved for emergency situations.

In order to make limited federal funds go farther, our bill calls for local communities to contribute their share to this effort. Schools and communities will have to match the federal grants

on all but the 10% appropriated for emergencies. This is done to ensure that all—or at least more—impacted schools will have the opportunity to use these new grants to improve their facilities.

The federal government cannot and should not be all things to all people. However, Congress has a responsibility to ensure that highly impacted school districts, such as Bellevue and Santee, Nebraska, are not shortchanged.

The hardships faced by our military personnel, their families and individuals living on Indian reservations are well known. Their children deserve no less than the best educational facilities.

The Federally Impacted School Improvement Act helps to meet our commitment to schools and children impacted by a federal presence. It makes good use of our limited federal resources. It embodies what we should be doing more of—building partnerships between local communities, taxpayers and government in order to strengthen our schools.

I urge my colleagues to support this legislation. I also request unanimous consent that the bill and a letter sent to me by the Northern Nebraska Native American Consortium be placed in the RECORD.

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

S. 897

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Federally Impacted School Improvement Act''.

(b) FINDINGS.—Congress makes the following findings:

(1) In 1950 Congress recognized its obligation, through the passage of Public Law 81–815, to provide school construction funding for local educational agencies impacted by the presence of Federal activities.

(2) The conditions of federally impacted school facilities providing educational programs to children in areas where the Federal Government is present have deteriorated to such an extent that the health and safety of the children served by such agencies is being compromised, and the school conditions have not kept pace with the increase in student population causing classrooms to become severely overcrowded and children to be educated in trailers.

(3) Local educational agencies in areas where there exists a significant Federal presence have little if any capacity to raise local funds for purposes of capital construction, renovation and repair due to the nontaxable status of Federal land.

(4) The need for renewed support by the Federal Government to help federally connected local educational agencies modernize their school facilities is far greater in 2000 than at any time since 1950.

(5) Federally connected local educational agencies and the communities the agencies serve are willing to commit local resources when available to modernize and replace existing facilities, but do not always have the resources available to meet their total facility needs due to the nontaxable presence of the Federal Government.

(6) Due to the conditions described in paragraphs (1) through (5) there is in 1999, as there was in 1950, a need for Congress to renew its obligation to assist federally connected local educational agencies with their facility needs.

(c) PURPOSE.—The purpose of this Act is to provide matching grants to local educational agencies for the modernization of minimum school facilities that are urgently needed because—

(1) the existing school facilities of the agency are in such disrepair that the health and safety of the students served by the agency is threatened; and

(2) increased enrollment results in a need for additional classroom space.

SEC. 2. DEFINITIONS.

In this Act:

(1) MODERNIZATION.—The term ''modernization'' means the repair, renovation, alteration, or construction of a facility, including—

(A) the concurrent installation of equipment; and

(B) the complete or partial replacement of an existing facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the facility.

(2) FACILITY.—The term ''facility'' means a public structure suitable for use as a classroom, laboratory, library, media center, or related facility, the primary purpose of which is the instruction of public elementary school or secondary school students.

(3) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965.

(4) SECRETARY.—The term ''Secretary'' means—

(A) with respect to funds made available under paragraph (1) or (3) of section 4(a) for grants under section 6 or 8, respectively, the Secretary of Education; and

(B) with respect to funds made available under paragraph (2) of section (4)(a) for grants under section 6, the Secretary of Defense.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Education to carry out this Act $50,000,000 for fiscal year 2001 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(b) PROHIBITION.—None of the funds authorized to be appropriated under subsection (a) shall be available to a local educational agency to pay the cost of administration of the activities assisted under this Act.

SEC. 4. FEDERAL DISTRIBUTION OF FUNDING.

(a) IN GENERAL.—From amounts appropriated under section 3(a) for a fiscal year the Secretary of Education—

(1) shall use 45 percent to award grants under section 6 to local educational agencies—

(A) that are eligible for assistance under section 8002(a); and

(B) for which the number of children determined under section 8003(a)(1)(C) of the Elementary and Secondary Education Act of 1965 constitutes at least 25 percent of the number of children who were in average daily attendance in the schools of such local educational agency during the school year preceding the school year for which the determination is made;

(2) shall make available to the Secretary of Defense 45 percent to enable the Secretary of Defense to award grants under section 6 to local educational agencies for which the number of children determined under subparagraphs (A), (B), and (D) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 constitutes at least 25 percent of the number of children who were in average daily attendance in the schools of such local educational agency during the school year preceding the school year for which the determination is made; and

(3) shall use 10 percent to award grants under section 8.

(b) DEPARTMENT OF DEFENSE FUNDING.—

(1) IN GENERAL.—Not later than 30 days after the date the Secretary of Education receives funds appropriated under section 3(a) for a fiscal year, the Secretary of Education shall make available to the Secretary of Defense from such funds the portion of such funds described in subsection (a)(2) for the fiscal year. The Secretary of Defense shall use the portion to award grants under section 6 through the Office of Economic Adjustment of the Department of Defense.

(2) LIMITATIONS.—

(A) ADMINISTRATIVE EXPENSES.—No funds made available under subsection (a)(2) shall be used by the Secretary of Defense to pay the costs of administration of the activities assisted under this Act.

(B) SPECIAL RATE.—No funds made available under subsection (a)(2) shall be used to replace Federal funds provided to enhance the quality of life of dependents of members of the Armed Forces as determined by the Secretary of Defense.

SEC. 5. ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—A local educational agency shall be eligible to receive funds under this Act if—

(1) the local educational agency is described in paragraph (1) or (2) of section 4(a); and

(2) the local educational agency—

(A) received a payment under section 8002 of the Elementary and Secondary Education Act of 1965 during the fiscal year preceding the fiscal year for which the determination is made, and the assessed value of taxable property per student in the school district of the local educational agency is less than the average of the assessed value of taxable property per student in the State in which the local educational agency is located; or

(B) received a basic payment under section 8003(b) of the Elementary and Secondary Education Act of 1965 during the fiscal year preceding the fiscal year for which the determination is made, and for which the number of children determined under subparagraphs (A), (B), (C), and (D) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 constituted at least 25 percent of the number of children who were in average daily attendance in the schools of such local educational agency during the school year preceding the school year for which the determination is made.

(b) SPECIAL RULE.—Any local educational agency described in subsection (a)(2)(B) may apply for funds under this section for the modernization of a facility located on Federal property (as defined in section 8013 of the Elementary and Secondary Education Act of 1965) only if the Secretary determines that the number of children determined under section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 who were in average daily attendance in such facility constituted at least 50 percent of the number of children who were in average daily attendance in the facilities of the local educational agency during the school year preceding the school year for which the determination is made.

SEC. 6. BASIC GRANTS.

(a) AWARD BASIS.—From the amounts made available under paragraphs (1) and (2) of section 4(a) the Secretary shall award grants to local educational agencies on such basis as

the Secretary determines appropriate, including—

(1) in the case of a local educational agency described in section 5(a)(2)(A), a high percentage of the property in the school district of the local educational agency is nontaxable due to the presence of the Federal Government;

(2) in the case of a local educational agency described in section 5(a)(2)(B), a high number or percentage of children determined under subparagraphs (A), (B), (C), and (D) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965;

(3) the extent to which the local educational agency lacks the fiscal capacity, including the ability to raise funds through the full use of the local educational agency's bonding capacity and otherwise, to undertake the modernization project without Federal assistance;

(4) the need for modernization to meet—

(A) the threat the condition of the facility poses to the safety and well-being of students;

(B) the requirements of the Americans with Disabilities Act of 1990;

(C) the costs associated with asbestos removal, energy conservation, and technology upgrading; and

(D) overcrowding conditions as evidenced by the use of trailers and portable buildings and the potential for future overcrowding because of increased enrollment;

(5) the facility needs of the local educational agency resulting from the acquisition or construction of military family housing under subchapter IV of chapter 169 of title 10, United Sates Code, and other actions of the Federal Government that cause an adverse impact on the facility needs of the local educational agency; and

(6) the age of the facility to be modernized regardless of whether the facility was originally constructed with funds authorized under Public Law 81–815.

(b) GRANT AMOUNT.—In determining the amount of a grant the Secretary shall—

(1) consider the relative costs of the modernization;

(2) determine the cost of a project based on the local prevailing cost of the project;

(3) require that the Federal share of the cost of the project shall not exceed 50 percent of the total cost of the project;

(4) not provide a grant in an amount greater than $3,000,000 over any 5-year period; and

(5) take into consideration the amount of cash available to the local educational agency.

(c) ADMINISTRATION OF GRANTS.—In awarding grants under this section the Secretary shall—

(1) establish by regulation the date by which all applications are to be received;

(2) consider in-kind contributions when calculating the 50 percent matching funds requirement described in subsection (b)(3); and

(3) subject all applications to a review process.

(d) SECTION 8007 FUNDING.—In awarding grants under this section, the Secretary shall not take into consideration any funds received under section 8007 of the Elementary and Secondary Education Act of 1965.

SEC. 7. APPLICATIONS REQUIRED.

(a) IN GENERAL.—Each local educational agency desiring a grant under this Act shall submit an application to the Secretary.

(b) CONTENTS.—Each application shall contain—

(1) a listing of the school facilities to be modernized, including the number and percentage of children determined under section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 in average daily attendance in each facility;

(2) a description of the ownership of the property on which the current facility is located or on which the planned facility will be located;

(3) a description of each architectural, civil, structural, mechanical, or electrical deficiency to be corrected with funds provided under this Act, including the priority for the repair of the deficiency;

(4) a description of any facility deficiency that poses a health or safety hazard to the occupants of the facility and a description of how that deficiency will be repaired;

(5) a description of the criteria used by the local educational agency to determine the type of corrective action necessary to meet the purposes of this Act;

(6) a description of the modernization to be supported with funds provided under this Act;

(7) a cost estimate of the proposed modernization;

(8) an identification of other resources (such as unused bonding capacity), if applicable, that are available to carry out the modernization, and an assurance that such resources will be used for the modernization;

(9) a description of how activities assisted with funds provided under this Act will promote energy conservation; and

(10) such other information and assurances as the Secretary may reasonably require.

(c) CONTINUING CONSIDERATION.—A local educational agency that applies for assistance under this Act (other than section 8) for any fiscal year and does not receive the assistance shall have the application for the assistance considered for the following 5 fiscal years.

SEC. 8. EMERGENCY GRANTS.

(a) WAIVER OF MATCHING REQUIREMENT.—From the amount made available under section 4(a)(3) the Secretary shall award grants to any local educational agency for which the number of children determined under section 8003(a)(1)(C) constituted at least 50 percent of the number of children who were in average daily attendance in the schools of such agency during the school year preceding the school year for which the determination is made, if the Secretary determines a facility emergency exists that poses a health or safety hazard to the students and school personnel assigned to the facility.

(b) CERTIFICATION OF EMERGENCY.—In addition to meeting the requirements of section 7, a local educational agency desiring funds under this section shall include in the application submitted under section 7 a signed statement from a State official certifying that a health or safety deficiency exists.

(c) GRANT AMOUNT; PRIORITIZATION RULES; CONTINUING CONSIDERATION.—

(1) GRANT AMOUNT.—In determining the amount of grant awards under this section, the Secretary shall make every effort to fully meet the facility needs of the local educational agencies applying for funds under this section.

(2) PRIORITIZATION RULE.—If the Secretary receives more than 1 application under this section for any fiscal year, the Secretary shall prioritize the applications based on when an application was received and the severity of the emergency as determined by the Secretary.

(3) CONTINUING CONSIDERATION.—A local educational agency that applies for assistance under this section for any fiscal year and does not receive the assistance shall have the application for the assistance considered for the following fiscal year, subject to the prioritization requirement described in paragraph (2).

SEC. 9. REQUIREMENTS.

(a) MAINTENANCE OF EFFORT.—A local educational agency may receive a grant under this Act for any fiscal year only if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by such local educational agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the fiscal year for which the determination is made.

(b) SUPPLEMENT NOT SUPPLANT.—An eligible local educational agency shall use funds received under this subsection only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the modernization of school facilities used for educational purposes, and not to supplant such funds.

SEC. 10. GENERAL LIMITATIONS.

(a) REAL PROPERTY.—No part of any grant funds awarded under this Act shall be used for the acquisition of any interest in real property.

(b) MAINTENANCE.—Nothing in this Act shall be construed to authorize the payment of maintenance costs in connection with any facilities modernized in whole or in part with Federal funds provided under this Act.

(c) ENVIRONMENTAL SAFEGUARDS.—All projects carried out with Federal funds provided under this Act shall comply with all relevant Federal, State, and local environmental laws and regulations.

(d) ATHLETIC AND SIMILAR FACILITIES.—No funds received under this Act shall be used for outdoor stadiums or other facilities that are primarily used for athletic contests or exhibitions, or other events, for which admission is charged to the general public.

NORTHERN NEBRASKA
NATIVE AMERICAN CONSORTIUM,
Niobrara, NE, March 29, 1999.

Hon CHUCK HAGEL,
U.S. Senator, Russell Office Building, Washington, DC.

DEAR SENATOR HAGEL: The member schools of the Northern Nebraska Native American Consortium have gone on record in support of National Association of Federally Impacted Schools (NAFIS) construction funding in the ESEA reauthorization proposals. We would be receptive to any federal options for funding the viable construction needs of the Native American students being served by member schools.

These Nebraska schools currently educate 98% if all Indian students living on reservation land. The NAC schools currently have significant construction needs ranging from meeting ADA requirements to updating firm alarm systems. Several Nebraska school districts are, or have, passed bond issues for construction of new schools or modernizing old ones. Our school districts only option is Impact Aid or other federally connected funding for construction purposes. The State of Nebraska statutorily exclude state aid as a construction funding mechanism, such aid can only be used for general fund purposes.

Please consider the importance of meeting federal treaty obligations. Such treaties mandate the education of the Native American students on reservation land. If state and federal education standards are to be met, a positive learning environment must be met. We thank you for your attention to this matter.

Kindest Regards,

FLORENCE PARKER,
Board President, Omaha Nations Public School.

MARCIA ROSS,
Board Member, Walthill Public School.

C. TODD CHESSMORE,
Supt., Omaha Nations Public School.
DR. TONY GARCIA,
Supt., Walthill Public School.
MARLENE WHITE,
Board President, Santee Community School.
TERRY MEDINA,
Board President, Winnebago Public School.
CHARLES D. SQUIER,
Supt., Santee Community School.
DR. VIRGIL LIKNESS,
Supt., Winnebago Public School.

By Mr. COVERDELL:

S. 898. A bill to amend the Internal Revenue Code of 1986 to provide taxpayers with greater notice of any unlawful inspection or disclosure of their return or return information; to the Committee on Finance.

TAXPAYER PRIVACY PROTECTION IMPROVEMENT ACT OF 1999

Mr. COVERDELL. Mr. President, I rise today to report on the implementation of the Taxpayer Browsing Protection Act of 1997. Two years ago, the Congress passed and the President signed into law, legislation I proposed with Senator John Glenn that sought to end the egregious protection of unauthorized inspections of taxpayer files. Something I prefer to call ''file snooping.''

I am pleased to report that, according to a GAO report my office is releasing today, it appears that the Taxpayer Browsing Protection Act is working. But, we still have work to do. The report demonstrates that file snooping still occurs, but the incidents have become fewer. I believe this is good news for taxpayers.

At the same time, as I stated previously, our work is not done. The GAO found that sixteen confirmed cases of file snooping occurred since the enactment of the Taxpayer Browsing Protection Act, each of which had been appropriately referred for prosecution. Unfortunately, 15 cases were declined for prosecution meaning there was only one case in which taxpayers were notified that their privacy had been violated. In those 15 cases, the affected taxpayers were not assured the opportunity to seek the civil recourse available under the law.

I believe we have a duty to correct this loophole. Taxpayers not only have a right to know their privacy, entrusted by them to the Federal Government, has been violated, that we let them down, but that the opportunity to seek the relief provided under the law is ensured.

Legislation I introduce today, the Taxpayer Privacy Protection Improvement Act of 1999, will ensure taxpayers' right to know. In short, it triggers the notification of taxpayers that their files have been snooped to the point where a case is referred for prosecution following the conclusion of a thorough internal investigation.

This proposal builds on our previous progress, and I encourage my colleagues to join me in this effort.

By Mr. HATCH (for himself, Mr. THURMOND, Mr. SPECTER, Mr. DEWINE, Mr. ASHCROFT, Mr. ABRAHAM, Mr. SESSIONS, and Mr. GRAMS):

S. 899. A bill to reduce crime and protect the public in the 21st Century by strengthening Federal assistance to State and local law enforcement, combating illegal drugs and preventing drug use, attacking the criminal use of guns, promoting accountability and rehabilitation of juvenile criminals, protecting the rights of victims in the criminal justice system, and improving criminal justice rules and procedures, and for other purposes; to the Committee on the Judiciary.

TWENTY-FIRST CENTURY JUSTICE ACT

Mr. HATCH. Mr. President, today I am proud to introduce the Twenty-first Century Justice Act. Last month, when I announced this initiative, along with my colleagues Senator THURMOND, Senator DEWINE, Senator ASHCROFT, Senator SESSIONS, Senator ABRAHAM, and Senator GRAMS, I noted that despite some modest gains in the fight against crime, violent crime still touched far too many Americans. Sadly, this has been borne out in the weeks since.

As the recent tragedies in Littleton, CO, and in my own hometown of Salt Lake City, UT, remind us, crime in America is still too prevalent and violent. The tragic cost imposed on law-abiding citizens requires reasoned and thoughtful action to deter these heinous crimes. We must come together as a society to address this problem.

Furthermore, we should recognize that there is little the Federal Government could have done directly to have prevented the tragedies in Littleton and elsewhere. There are, however, important steps we can take to address this issue. Our crime bill takes such steps.

Now, let me describe for my colleagues how this bill, which is a balanced, comprehensive, and focused plan to fight crime, will expand current successful law enforcement practices. It is based on what we know reduces crime. Be it increased methamphetamine abuse in Utah and other Western states, further increases in juvenile crime, or the threat of international crime, we know that our plan will make a significant difference.

Our plan maintains and strengthens the current federal assistance to States that has proven invaluable in reducing crime nationally, and it adds new initiatives that will further reduce crime at the federal, state, and local levels. I am proud of our plan, and I look forward to working with the administration and my Senate colleagues to enact it.

America witnessed an unprecedented growth in crime during the 20th century. Our plan ensures that we will become the 21st century with decreasing crime rates. Our plan contains four central elements:

First, it continues and improves Federal assistance to State and local law enforcement. Second, it reinvigorates our commitment to winning the war on drugs. Third, it emphasizes holding violent offenders accountable by vigorously prosecuting gun crimes. And fourth, it includes needed judicial and criminal procedure reforms and protections for the rights of crime victims.

Notwithstanding the leadership we have seen here in Congress and by many of our nation's governors, crime in America is still unacceptably high by historical standards. For example, for 1997—the most recent year for which national crime rate statistics are available—the murder rate was 33 percent higher than it was in 1960, and the rape rate was 413 percent higher than in 1960. In 1997, the aggravated assault rate was 526 percent higher than it was in 1960. Even with the modest declines in recent years, America still has more violent crime than any industrialized nation in the world. The first obligation of government is to protect its citizens from crime. Obviously, despite the recent declines, we have a long way to go in reducing crime in America.

Despite the recent progress—much of it in partnership with Governors like Mike Leavitt of Utah, George Allen and Jim Gilmore of Virginia, and George W. Bush of Texas—we cannot become complacent. The most troubling aspect of the Clinton Justice Department's budget is its elimination of block grants that have proven so successful in helping state and local authorities reduce crime. We simply cannot become indifferent. Remember the war on drugs? During the Reagan and Bush administrations, our nation began a national, long-term commitment to fight drug abuse. Due to these efforts, drug use began to decline. However, drug use, especially among teenagers, has exploded since 1992. Unless we remain vigilant, the same will happen with violent crime.

Permit me to review each of the four main parts to our legislative crime plan in greater detail.

CONTINUING AND IMPROVING FEDERAL ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT

Combined with our ongoing commitment to prevention and treatment, our bill extends the authorization for the highly successful partnership we have created with local law enforcement—the Local Law Enforcement Block Grant Program, which the Republican Congress created in the Contract with America. Since fiscal year 1996, this program has provided more than $2 billion in funding for equipment and technology, such as radios and scanners, directly to state and local law enforcement. The authorization for this program will be between $600–700 million per year. Although the block grant has been extremely effective in assisting state and local law enforcement, the

Clinton administration budget eliminates funding for this program.

Our bill also reauthorizes the truth-in-sentencing prison grants at approximately $700 million per year. These truth-in-sentencing grants, which provide funds to States to build prisons, have been instrumental in lowering crime by encouraging States to incarcerate violent and repeat offenders for at least 85 percent of their sentence. In January, the Justice Department reported that 70 percent of prison admissions in 1997 were in States requiring criminals to serve at least 85 percent of their sentence. More significantly, the average time served by violent criminals nationally has increased 12.2 percent since 1993. Perhaps the biggest reason for recent declines in violent crime is due to these truth-in-sentencing prison grants. Simply put, violent criminals cannot commit crimes against innocent victims while in prison. Our bill continues this successful program and makes the program more flexible by allowing States to use the funds for jails and juvenile facilities, in addition to prison construction.

Despite this success, the Clinton administration eliminates funding for the Truth-in-Sentencing program—even though many States have changed their laws due to this federal commitment to assist in prison construction. Nothing deters and prevents violent crime as well as incarcerating violent and repeat offenders.

Our bill also includes the Juvenile Accountability Incentive Block Grant to help States build juvenile detention centers, drug test juvenile offenders, establish graduated sentencing sanctions for repeat juvenile offenders, and improve juvenile record keeping. This provision authorizes $450 million for the Juvenile Accountability Incentive Block Grant. It also includes $435 million for prevention programs and reauthorizes the Office of Juvenile Justice and Delinquency Prevention within the Justice Department. The administration's budget eliminates funding for the Juvenile Accountability Incentive Block Grant, even though these are the only federal funds dedicated to juvenile law enforcement purposes.

Finally, our bill reauthorizes and reforms the COPS program re-targeting this assistance to the type of policing we know works—zero tolerance for crime, computer tracking of criminal hot spots, and holding commanders responsible for results.

A COMMITMENT TO WINNING THE WAR ON DRUGS

The second major part of this legislative addresses drugs. This section focuses attention where only the federal government has the ability to make a difference—drug interdiction. It also increases the penalties for methamphetamine and powder cocaine trafficking. Our bill encourages States to keep prisons and jails drug-free to break the link between drugs and crime—and provides bonus grants to help States do this. And our bill includes a faith-based drug treatment bill designed by Senator ABRAHAM. I would especially like to thank and acknowledge the leadership that Senators ASHCROFT and DEWINE have shown in fighting drugs, particularly methamphetamine. Their leadership has been invaluable on this issue.

HOLDING VIOLENT OFFENDERS ACCOUNTABLE THROUGH FIREARMS PROSECUTIONS

I do not support gun control, but I do believe in crime control. In addition to remaining true to truth-in-sentencing and prison construction, our bill builds on and expands a successful Richmond, Virginia program in which the U.S. Attorney's office prosecutes as many local gun-related crimes in federal court as possible to take advantage of federal mandatory minimum sentences and stiff bond rules. This provision does not create additional federal crimes, but instead utilizes existing federal statues. This program builds on the Project Triggerlock program which was implemented by the Bush administration.

This program emphasizes cooperation between state and federal prosecutors, as well as the BATF and the local police departments. The last major component of this program is an extensive media campaign to promote the message to potential criminals that ''[a]n illegal gun will get you five years in federal prison.'' The media campaign also encourages citizens to report gun crimes to authorities. This program has been a huge success. Homicides have decreased 50 percent in Richmond after this program was implemented. Our bill provides funds to implement this program in major cities across the nation.

Again, the Clinton administration's record on gun prosecutions is troubling. Between 1992 and 1997, Triggerlock gun prosecutions dropped nearly 50 percent, from 7,045 to 3,765. These are prosecutions of defendants who use a firearm in the commission of a felony.

JUDICIAL-PROCEDURAL REFORMS AND VICTIMS' RIGHTS

The last major element of our crime plan enacts procedural and judicial reforms that improve the administration of justice. Our bill reforms the Miranda rule to allow voluntary statements in evidence. It codifies common-sense procedural issues, including the ''good-faith'' exception to exclusionary rule, and further reforms habeas corpus appeals.

Our bill also recognizes that the administration of justice requires government to safeguard the interests of victims. How can there be justice if crime victims feel victimized by the criminal justice system? The bill ensures that victims are given respect in the criminal system, ensuring their right to attend trials in federal court, to be heard at critical stages such as detention hearings, and to be notified when the defendant is released or escapes. Our bill also calls for ratification of a crime victim's rights constitutional amendment to ensure that these rights are recognized everywhere in America. Our bill also steers necessary funds toward combating violence against women and children, and strengthens federal mandatory restitution laws.

This bill is not a panacea for our crime problem. We are faced, I believe, with a problem which cannot be solved alone by new laws. It is, at its core, a moral problem. Somehow, in too many instances, we have failed as a society to pass to the next generation the moral compass that differentiates right from wrong. This problem cannot be solved by legislation alone. It cannot be restored by the enactment of a new law or the implementation of a new program But it can be achieved by families and communities working together to teach accountability by example and by early intervention when the signs point to violent and anti-social behavior.

Our bill is a step in the right direction. I urge my colleagues to support this important crime fighting legislation, which will strengthen our nation's ability to protect citizens from the scourge of violent crime.

By Mr. BINGAMAN:

S. 901. A bill to provide disadvantaged children with access to dental services; to the Committee on Health, Education, Labor, and Pensions.

CHILDREN'S DENTAL HEALTH IMPROVEMENT ACT OF 1999

Mr. BINGAMAN. Mr. President, I rise today to introduce a measure that is one cornerstone of a series of initiatives that are designed to help ensure that the fundamental needs of children in New Mexico and this country are met. This cornerstone, the Children's Dental Health Improvement Act of 1999, is built on the belief that children must have access to quality, affordable health care. A child who is sick cannot go to school, cannot be expected to learn, and cannot be expected to grow and thrive. For New Mexico, this is a particularly compelling need because according to the Children's Defense Fund, no state has a greater percentage of uninsured children than New Mexico. Specifically, the bill is designed to increase access to dental services for our children.

Some will say: ''Why care about a few cavities in kids?'' In reality, this is a complex children's health issue. Chronically poor oral health is associated with growth and development problems in toddlers and compromises children's nutritional status. These children suffer great pain and cannot play or learn. It is estimated that lack of treatment for these children results in missed school days: an estimated 52 million school hours annually. Their personal suffering is real. In reality, untreated dental problems get progressively worse and ultimately require more expensive interventions.

Medicaid's Early and Periodic Screening Diagnosis and Treatment, or ''EPSDT,'' program requires states to not only pay for a comprehensive set of

child health services, including dental services, but to assure delivery of those services. Unfortunately, low income children do not get the dental service they need. Despite the design of the Medicaid program to reach children and ensure access to routine dental care, the Inspector General of the Department of Health and Human Services reported in 1996 that only 18 percent of children eligible for Medicaid received even a single preventive dental service. The same report shows that no state provides preventive services to more than 50% of eligible children. Dentist participation is too low to assure access. We are falling short of our obligation to these children.

In the past few months, I have had the opportunity to speak to many of New Mexico's rural health care providers and have learned that for New Mexico, the problem is of crisis proportions. Less than two percent of New Mexico's Medicaid dollars are used for children's oral health needs. My state alone projects a shortage of 157 dentists and 229 dental hygienists. Children in New Mexico and elsewhere are showing up in emergency rooms for treatment of tooth abscesses instead of getting their cavities filled early on or having dental decay prevented in the first place.

Tooth decay remains the single most common chronic disease of childhood and according to the Children's Dental Health Project, it affects more than half of all children by second grade. Tooth decay in children six years old is five to eight times more common than asthma which is often cited as the most common chronic disease of childhood.

National data confirm that pediatric oral health in the U.S. is backsliding. Healthy People 2000 goals for dental needs of children will not be met. As this chart shows:

52% of our 6 to 8 year olds have dental caries or cavities compared to 54% in 1986. Our goal was to decrease this to 35% by the year 2000; we have succeeded in a mere 2% change in this area.

Additionally, we have slid backwards in some areas. The Healthy People 2000 oral health indicators show an increase in the percentage of children with untreated cavities. In 1986, 28% of our 6 to 8 year olds had untreated cavities compared to now when we find 31% of these children have untreated cavities.

Tooth decay is increasingly a disease of low and modest income children. A substantial portion of decay in young children goes untreated. In fact, forty seven per cent of decay in children aged 2 through 9, is untreated.

The Children's Dental Health Improvement Act of 1999 is designed to attack the problem from many fronts. First, the bill addresses the issue of provider shortage by expanding opportunities for training pediatric dental health care providers. It allows for the Secretary to look at the reimbursement rates for dental providers as an incentive for dentists to participate in the Medicaid program so that we work toward increasing the actual care provided under the Medicaid program. Additionally, I have looked at the need for pediatric dental research to facilitate better approaches for care and it will put into place greater measures for surveillance of the problem. The bill would lead to increased accountability in the area of actual treatment once a problem is identified. Finally, I have included a section on health promotion and disease prevention to increase the number of children who have access to fluoridated water systems and dental sealants to prevent cavities.

I recognize that this is an ambitious bill and that the issue of access to dental care for children covered by the Medicaid program is a complex one. I want to thank the various groups that have worked on the formulation of this legislation. In particular, I want to thank Drs. Burt Edelstein and Heber Simmons of the American Academy of Pediatric Dentistry for their hard work and excellent information. I also want to thank the American Association of Dental Schools, the American Dental Hygienist Association, the American Dental Association, the Hispanic Dental Association, the National Dental Association, and the American Association for Dental Research for their valuable input and I look forward to working with them all to ensure that we achieve increased access to oral health care for our children.

I am committed to solving the problem of adequate access to dental care for our children and view this as a public health issue that has gone unnoticed for too long. I will welcome my colleagues to work with me to ensure that these children have healthy smiles instead of chronic pain from untreated problems.

Mr. President, I ask unanimous consent to have the text of the Children's Dental Health Improvement Act of 1999 printed in the RECORD.

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

S. 901

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Children's Dental Health Improvement Act of 1999''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—EXPANDED OPPORTUNITIES FOR TRAINING PEDIATRIC DENTAL HEALTH CARE PROVIDERS
Sec. 101. Children's dental health training and demonstration programs.
Sec. 102. Increase in National Health Service Corps dental training positions.
Sec. 103. Maternal and child health centers for leadership in pediatric dentistry education.
Sec. 104. Dental officer multiyear retention bonus for the Indian Health Service.
Sec. 105. Medicare payments to approved nonhospital dentistry residency training programs; permanent dental exemption from voluntary residency reduction programs.
Sec. 106. Dental health professional shortage areas.
TITLE II—ENSURING DELIVERY OF PEDIATRIC DENTAL SERVICES UNDER THE MEDICAID AND SCHIP PROGRAMS
Sec. 201. Increased FMAP and fee schedule for dental services provided to children under the medicaid program.
Sec. 202. Required minimum medicaid expenditures for dental health services.
Sec. 203. Requirement to verify sufficient numbers of participating dental health professionals under the medicaid program.
Sec. 204. Inclusion of recommended age for first dental visit in definition of EPSDT services.
Sec. 205. Approval of final regulations implementing changes to EPSDT services.
Sec. 206. Use of SCHIP funds to treat children with special dental health needs.
Sec. 207. Grants to supplement fees for the treatment of children with special dental health needs.
Sec. 208. Demonstration projects to increase access to pediatric dental services in underserved areas.
TITLE III—PEDIATRIC DENTAL RESEARCH
Sec. 301. Identification of interventions that reduce the burden and transmission of oral, dental, and craniofacial diseases in high risk populations; development of approaches for pediatric oral and craniofacial assessment.
Sec. 302. Agency for Health Care Policy and Research.
Sec. 303. Oral health professional research and training program.
Sec. 304. Consensus development conference.
TITLE IV—SURVEILLANCE AND ACCOUNTABILITY
Sec. 401. CDC reports.
Sec. 402. Reporting requirements under the medicaid program.
Sec. 403. Administration on Children, Youth, and Families.
Sec. 404. Special supplemental food program for women, infants, and children.
TITLE V—ORAL HEALTH PROMOTION AND DISEASE PREVENTION
Sec. 501. Grants to increase resources for community water fluoridation.
Sec. 502. Community water fluoridation.
Sec. 503. Community-based dental sealant program.
TITLE VI—MISCELLANEOUS
Sec. 601. Effective date.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The 1995 Institute of Medicine report on dental education finds that oral health is an integral part of total health, and is integral to comprehensive health, including primary care.

(2) Tooth decay is the most prevalent preventable chronic disease of childhood and only the common cold, the flu, and otitis media occur more often among young children.

(3) Despite the design of the medicaid program to reach children and ensure access to routine dental care, in 1996, the Inspector

General of the Department of Health and Human Services reported that only 18 percent of children eligible for medicaid received even a single preventive dental service.

(4) The United States is facing a major dental health care crisis that primarily affects the poor children of our country, with 80 percent of all dental caries in children found in the 20 percent of the population.

(5) Low income children eligible for the medicaid program and the State children's health insurance program experience disproportionately high levels of oral disease.

(6) The United States is not training enough pediatric dental health care providers to meet the increasing need for dental services for children.

(7) The United States needs to increase access to health promotion and disease prevention activities in the area of oral health for children by increasing access to dental health providers for children.

TITLE I—EXPANDED OPPORTUNITIES FOR TRAINING PEDIATRIC DENTAL HEALTH CARE PROVIDERS

SEC. 101. CHILDREN'S DENTAL HEALTH TRAINING AND DEMONSTRATION PROGRAMS.

(a) IN GENERAL.—Subpart 2 of part E of title VII of the Public Health Service Act, as amended by the Health Professions Education Partnerships Act of 1998 (Public Law 105-392) is amended by adding at the end the following:

"SEC. 771. CHILDREN'S DENTAL HEALTH PROGRAMS.

''(a) TRAINING PROGRAM.—

''(1) IN GENERAL.—The Secretary, acting through the Bureau of Health Professions, shall develop training materials to be used by health professionals to promote oral health through health education.

''(2) DESIGN.—The materials developed under paragraph (1) shall be designed to enable health care professionals to—

''(A) provide information to individuals concerning the importance of oral health;

''(B) recognize oral disease in individuals; and

''(C) make appropriate referrals of individuals for dental treatment.

''(3) DISTRIBUTION.—The materials developed under paragraph (1) shall be distributed to—

''(A) accredited schools of the health sciences (including schools for physician assistants, schools of medicine, osteopathic medicine, dental hygiene, public health, nursing, pharmacy, and dentistry), and public or private institutions accredited for the provision of graduate or specialized training programs in all aspects of health; and

''(B) health professionals and community-based health care workers.

''(b) DEMONSTRATION PROGRAM.—

''(1) IN GENERAL.—The Secretary shall make grants to schools that train pediatric dental health providers to meet the costs of projects—

''(A) to plan and develop new training programs and to maintain or improve existing training programs in providing dental health services to children; and

''(B) to assist dental health providers in managing complex dental problems in children.

''(2) ADMINISTRATION.—

''(A) AMOUNT.—The amount of any grant under paragraph (1) shall be determined by the Secretary.

''(B) APPLICATION.—No grant may be made under paragraph (1) unless an application therefore is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

''(C) ELIGIBILITY.—To be eligible for a grant under subsection (a), the applicant must demonstrate to the Secretary that it has or will have available full-time faculty and staff members with training and experience in the field of pediatric dentistry and support from other faculty and staff members trained in pediatric dentistry and other relevant specialties and disciplines such as dental public health and pediatrics, as well as research.

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

(b) AUTHORIZATION OF APPROPRIATIONS FOR GENERAL AND PEDIATRIC DENTISTRY.—Section 747(e)(2)(A) of the Public Health Service Act (42 U.S.C. 293k(e)(2)(A), as amended by the Health Professions Education Partnerships Act of 1998 (Public Law 105-392) is amended in striking clause (iv) and inserting the following:

''(iv) not less than $8,000,000 for awards of grants and contracts under subsection (a) to programs of pediatric or general dentistry.''.

SEC. 102. INCREASE IN NATIONAL HEALTH SERVICE CORPS DENTAL TRAINING POSITIONS.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall increase the number of dental health providers skilled in treating children who become members of the Commissioned Corps of the U.S. Health Service and who are assigned to duty for the National Health Service Corps (referred to in this section as the ''Corps'') under subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) so that there are at least 100 additional Commissioned Corps dentists and dental hygienists in the Corps by 2001, at least 150 additional dentists and dental hygienists in the Commissioned Corps by 2002, and at least 300 additional dentists and dental hygienists in the Commissioner Corps by 2003.

(b) DETERMINATION OF DENTAL SITE READINESS.—By not later than January 1, 2001, the Secretary shall collaborate with dental education institutions, State and local public health dental officials and dental hygienist societies to determine dental site readiness, specifically in inner city, rural, frontier and border areas.

(c) REPORT BY CORPS.—The Corps shall annually report to Congress concerning how the Corps is meeting the oral health needs of children in underserved areas, including rural, frontier and border areas.

(d) LOAN REPAYMENT PROGRAM.—The Secretary shall increase the number of Corps dentists selected for loan repayments under the provisions referred to in subsection (a) in a sufficient number to address the demand for such repayment by qualified dentists. The Secretary shall increase the number of private practice dentists who contract with the Corps and allow for such student loan repayment.

(e) PEDIATRIC DENTISTS.—The Secretary shall ensure that at least 20 percent of the dentists in the Corps are pediatric dentists and that another 20 percent of the dentists in the Corps have general dentistry residency training.

SEC. 103. MATERNAL AND CHILD HEALTH CENTERS FOR LEADERSHIP IN PEDIATRIC DENTISTRY EDUCATION.

(a) EXPANSION OF TRAINING PROGRAMS.—The Secretary of Health and Human Services shall, through the Bureau of Health Professions, establish at least 10 Pediatric Dental Centers of Excellence with not less than 36 additional training positions annually for pediatric dentists at such centers of excellence. The Secretary shall ensure that such training programs are established in geographically diverse areas.

(b) DEFINITION.—In this section, the term 'centers of excellence' means a health professions school designated under section 736 of the Public Health Service Act (42 U.S.C. 293).

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

SEC. 104. DENTAL OFFICER MULTIYEAR RETENTION BONUS FOR THE INDIAN HEALTH SERVICE.

(a) TERMS AND DEFINITIONS.—In this section:

(1) DENTAL OFFICER.—The term ''dental officer'' means an officer of the Indian Health Service designated as a dental officer.

(2) DIRECTOR.—The term ''Director'' means the Director of the Indian Health Service.

(3) CREDITABLE SERVICE.—The term ''creditable service'' includes all periods that a dental officer spent in graduate dental educational (GDE) training programs while not on active duty in the Indian Health Service and all periods of active duty in the Indian Health Service as a dental officer.

(4) RESIDENCY.—The term ''residency'' means a graduate dental educational (GDE) training program of at least 12 months leading to a speciality, including general practice residency (GPR) or a 12-month advanced education general dentistry (AEGD).

(5) SPECIALTY.—The term ''specialty'' means a dental specialty for which there is an Indian Health Service specialty code number.

(b) REQUIREMENTS FOR BONUS.—

(1) IN GENERAL.—An eligible dental officer of the Indian Health Service who executes a written agreement to remain on active duty for 2, 3, or 4 years after the completion of any other active duty service commitment to the Indian Health Service may, upon acceptance of the written agreement by the Director, be authorized to receive a dental officer multiyear retention bonus under this section. The Director may, based on requirements of the Indian Health Service, decline to offer such a retention bonus to any specialty that is otherwise eligible, or to restrict the length of such a retention bonus contract for a specialty to less than 4 years.

(2) LIMITATIONS.—Each annual dental officer multiyear retention bonus authorized under this section shall not exceed the following:

(A) $14,000 for a 4-year written agreement.

(B) $8,000 for a 3-year written agreement.

(C) $4,000 for a 2-year written agreement.

(c) ELIGIBILITY.—

(1) IN GENERAL.—In order to be eligible to receive a dental officer multiyear retention bonus under this section, a dental officer shall—

(A) be at or below such grade as the Director shall determine;

(B) have at least 8 years of creditable service, or have completed any active duty service commitment of the Indian Health Service incurred for dental education and training;

(C) have completed initial residency training, or be scheduled to complete initial residency training before September 30 of the fiscal year in which the officer enters into a dental officer multiyear retention bonus written service agreement under this section; and

(D) have a dental specialty in pediatric dentistry or oral and maxillofacial surgery, or be a dental hygienist with a minimum of a baccalaureate degree.

(2) EXTENSION TO OTHER OFFICERS.—The Director may extend the retention bonus to dental officers other than officers with a dental specialty in pediatric dentistry based on demonstrated need. The criteria used as the basis for such an extension shall be equitably determined and consistently applied.

(d) TERMINATION OF ENTITLEMENT TO SPECIAL PAY.—The Director may terminate at any time a dental officer's multiyear retention bonus contract under this section. If such a contract is terminated, the unserved portion of the retention bonus contract shall be recouped on a pro rata basis. The Director shall establish regulations that specify the conditions and procedures under which termination may take place. The regulations and conditions for termination shall be included in the written service contract for a dental officer multiyear retention bonus under this section.

(e) REFUNDS.—

(1) IN GENERAL.—Prorated refunds shall be required for sums paid under a retention bonus contract under this section if a dental officer who has received the retention bonus fails to complete the total period of service specified in the contract, as conditions and circumstances warrant.

(2) DEBT TO UNITED STATES.—An obligation to reimburse the United States imposed under paragraph (1) is a debt owed to the United States.

(3) NO DISCHARGE IN BANKRUPTCY.—Notwithstanding any other provision of law, a discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a retention bonus contract under this section does not discharge the dental officer who signed such a contract from a debt arising under the contract or paragraph (1).

SEC. 105. MEDICARE PAYMENTS TO APPROVED NONHOSPITAL DENTISTRY RESIDENCY TRAINING PROGRAMS; PERMANENT DENTAL EXEMPTION FROM VOLUNTARY RESIDENCY REDUCTION PROGRAMS.

(a) MEDICARE PAYMENTS TO APPROVED NONHOSPITAL DENTISTRY TRAINING PROGRAMS.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following:

''(l) PAYMENTS FOR NONHOSPITAL BASED DENTAL RESIDENCY TRAINING PROGRAMS.—

''(1) IN GENERAL.—Beginning January 1, 2000, the Secretary shall make payments under this paragraph to approved nonhospital based dentistry residency training programs providing oral health care to children for the direct and indirect expenses associated with operating such training programs.

''(2) PAYMENT AMOUNT.—

''(A) METHODOLOGY.—The Secretary shall establish procedures for making payments under this subsection.

''(B) TOTAL AMOUNT OF PAYMENTS.—In making payments to approved non-hospital based dentistry residency training programs under this subsection, the Secretary shall ensure that the total amount of such payments will not result in a reduction of payments that would otherwise be made under subsection (h) or (k) to hospitals for dental residency training programs.

''(C) APPROVED PROGRAMS.—The Secretary shall establish procedures for the approval of nonhospital based dentistry residency training programs under this subsection.''.

(b) PERMANENT DENTAL EXEMPTION FROM VOLUNTARY RESIDENCY REDUCTION PROGRAMS.—

(1) IN GENERAL.—Section 1886(h)(6)(C) of the Social Security Act (42 U.S.C. 1395ww(h)(6)(C)) is amended—

(A) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting such subclauses (as so redesignated) appropriately;

(B) by striking ''For purposes'' and inserting the following:

''(i) IN GENERAL.—Subject to clause (ii), for purposes''; and

(C) by adding at the end the following:

''(ii) DEFINITION OF 'APPROVED MEDICAL RESIDENCY TRAINING PROGRAM'.—In this subparagraph, the term 'approved medical residency training program' means only such programs in allopathic or osteopathic medicine.''.

(2) APPLICATION TO DEMONSTRATION PROJECTS AND AUTHORITY.—Section 4626(b)(3) of the Balanced Budget Act of 1997 (42 U.S.C. 1395ww note) is amended by inserting ''in allopathic or osteopathic medicine'' before the period.

(c) REMOVAL OF DENTISTS FROM FULL-TIME EQUIVALENT COUNT AVERAGING PROVISIONS.—

(1) MEDICARE IME.—Section 1886(d)(5)(B)(vi) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(vi)) is amended by adding at the end the following: ''The determination (based on the 3-year average) described in subclause (II) shall apply only to residents in the fields of allopathic medicine and osteopathic medicine. All other residents shall be counted based on the actual full-time equivalent resident count for the cost-reporting period involved.''.

(2) MEDICARE DIRECT GME.—Section 1886(h)(4)(G)(i) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(G)(i)) is amended by adding at the end the following: ''Such determination (based on the 3-year average) shall apply only to residents in the fields of allopathic medicine and osteopathic medicine. All other residents shall be counted based on the actual full-time equivalent resident count for the cost-reporting period involved.''.

(d) DEFINITION OF PRIMARY CARE RESIDENT.—Section 1886(h)(5)(H) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(H)) is amended by striking ''or osteopathic general practice'' and inserting ''osteopathic general practice, general dentistry, advanced general dentistry, pediatric dentistry, or dental public health''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a), (c), and (d) take effect on the date of enactment of this Act.

(2) EXCEPTION.—The amendments made by subsection (b) shall take effect as if included in the enactment of the Balanced Budget Act of 1997.

SEC. 106. DENTAL HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) DESIGNATION.—Section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)) is amended by adding at the end the following:

''(4)(A) In designating health professional shortage areas under this section, the Secretary may designate certain areas as dental health professional shortage areas if the Secretary determines that such areas have a severe shortage of dental health professionals. The Secretary shall develop, publish and periodically update criteria to be used in designating dental health professional shortage areas.

''(B) For purposes of this title a dental health professional shortage area shall be considered to be a health professional shortage area.''.

''(C) In subparagraph (A), the term 'dental health professional' includes general and pediatric dentists and dental hygienists.''.

(b) LOAN REPAYMENT PROGRAM.—Section 338B(b)(1)(A) of the Public Health Service Act (42 U.S.C. 254l–1(b)(1)(A)) is amended by inserting ''(including dental hygienists)'' after ''profession''.

(c) TECHNICAL AMENDMENT.—Section 331(a)(2) of the Public Health Service Act (42 U.S.C. 254d(a)(2)) is amended by inserting ''(including dental health services)'' after ''services''.

TITLE II—ENSURING DELIVERY OF PEDIATRIC DENTAL SERVICES UNDER THE MEDICAID AND SCHIP PROGRAMS

SEC. 201. INCREASED FMAP AND FEE SCHEDULE FOR DENTAL SERVICES PROVIDED TO CHILDREN UNDER THE MEDICAID PROGRAM.

(a) INCREASED FMAP.—Section 1903(a)(5) of the Social Security Act (42 U.S.C. 1396b(a)(5)) is amended—

(1) by striking ''equal to 90 per centum'' and inserting ''equal to—

''(A) 90 per centum'';

(2) by inserting ''and'' after the semicolon; and

(3) by adding at the end the following:

''(B) the greater of the Federal medical assistance percentage or 75 per centum of the sums expended during such quarter which are attributable to dental services for children;''.

(b) FEE SCHEDULE.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (65), by striking the period and inserting ''; and''; and

(2) by inserting after paragraph (65) the following:

''(66) provide for payment under the State plan for dental services for children at a rate that is designed to create an incentive for providers of such services to treat children in need of dental services (but that does not result in a reduction or other adverse impact on the extent to which the State provides dental services to adults).''.

SEC. 202. REQUIRED MINIMUM MEDICAID EXPENDITURES FOR DENTAL HEALTH SERVICES.

Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 201(b), is amended—

(1) in paragraph (65), by striking ''and'' at the end;

(2) in paragraph (66), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (66) the following:

''(67) provide that, beginning with fiscal year 2000—

''(A) not less than an amount equal to 7 percent of the total annual expenditures under the State plan for medical assistance provided to children will be expended during each fiscal year for dental services for children (including the prevention, screening, diagnosis, and treatment of dental conditions); and

''(B) the State will not reduce or otherwise adversely impact the extent to which the State provides dental services to adults in order to meet the requirement of subparagraph (A).''.

SEC. 203. REQUIREMENT TO VERIFY SUFFICIENT NUMBERS OF PARTICIPATING DENTAL HEALTH PROFESSIONALS UNDER THE MEDICAID PROGRAM.

Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 202, is amended—

(1) in paragraph (66), by striking ''and'' at the end;

(2) in paragraph (67), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (67) the following:

''(68) provide that the State will—

''(A) annually verify that the number of dental health professionals (as defined in section 332(a)(4)(C) of the Public Health Service Act) participating under the State plan—

''(i) satisfies the minimum established degree of participation of dental health professionals (as defined in section 332(a)(4)(C) of the Public Health Service Act) to the population of children in the State, as determined by the Secretary in accordance with the criteria used by the Secretary under section

332(a)(4) of such Act (42 U.S.C. 254e(a)(4)) to designate a dental health professional shortage area; and

''(ii) is sufficient to ensure that children enrolled in the State plan have the same level of access to dental services as the children residing in the State who are not eligible for medical assistance under the State plan; and

''(B) collect data on the number of children being served by dental health professionals as compared to the number of children eligible to be served, and the actual services provided.''.

SEC. 204. INCLUSION OF RECOMMENDED AGE FOR FIRST DENTAL VISIT IN DEFINITION OF EPSDT SERVICES.

Section 1905(r)(1)(A)(i) of the Social Security Act (42 U.S.C. 1396d(r)(1)(A)(i)) is amended by inserting ''and, with respect to dental services under paragraph (3), in accordance with guidelines for the age of a first dental visit that are consistent with guidelines of the American Dental Association, the American Dental Hygienist Association, the American Academy of Pediatric Dentistry, and the Bright Futures program of the Health Resources and Services Administration of the Department of Health and Human Services,'' after ''vaccines,''.

SEC. 205. APPROVAL OF FINAL REGULATIONS IMPLEMENTING CHANGES TO EPSDT SERVICES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall issue final regulations implementing the proposed regulations based on section 6403 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2262) that were contained in the Federal Register issued for October 1, 1993.

SEC. 206. USE OF SCHIP FUNDS TO TREAT CHILDREN WITH SPECIAL DENTAL HEALTH NEEDS.

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (b), by striking ''or subsection (u)(3)'' and inserting ''subsection (u)(3), or subsection (u)(4)''; and

(2) in subsection (u)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph:

''(4)(A) For purposes of subsection (b), the expenditures described in this paragraph are expenditures for medical assistance described in subparagraph (B) for a low-income child described in subparagraph (C), but only in the case of such a child who resides in a State described in subparagraph (D).

''(B) For purposes of subparagraph (A), the medical assistance described in this subparagraph consists of the following:

''(i) Dental services provided to children with special oral health needs, including advanced oral, dental, and craniofacial diseases and conditions.

''(ii) Outreach conducted to identify and treat children with such special dental health needs.

''(C) For purposes of subparagraph (A), a low-income child described in this subparagraph is a child whose family income does not exceed 50 percentage points above the medicaid applicable income level (as defined in section 2110(b)(4)).

''(D) A State described in this subparagraph is a State that, as of August 5, 1997, has under a waiver authorized by the Secretary or under section 1902(r)(2), established a medicaid applicable income level (as defined in section 2110(b)(4)) for children under 19 years of age residing in the State that is at or above 185 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section for a family of the size involved).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 4911 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 570).

SEC. 207. GRANTS TO SUPPLEMENT FEES FOR THE TREATMENT OF CHILDREN WITH SPECIAL DENTAL HEALTH NEEDS.

Title V of the Social Security Act (42 U.S.C. 701 et seq.) is amended by adding at the end the following:

''SEC. 511. GRANTS TO SUPPLEMENT FEES FOR THE TREATMENT OF CHILDREN WITH SPECIAL DENTAL HEALTH NEEDS.

''(a) AUTHORITY TO MAKE GRANTS.—

''(1) IN GENERAL.—In addition to any other payments made under this title to a State, the Secretary shall award grants to States to supplement payments made under the State programs established under titles XIX and XXI for the treatment of children with special oral health care needs.

''(2) DEFINITION OF CHILDREN WITH SPECIAL ORAL, DENTAL, AND CRANIOFACIAL HEALTH CARE NEEDS.—In this section the term 'children with special oral health care needs' means children with oral, dental and craniofacial conditions or disorders, and other acute or chronic medical, genetic, and behavioral disorders with dental manifestations.

''(b) APPLICATION OF OTHER PROVISIONS OF TITLE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the other provisions of this title shall not apply to a grant made, or activities of the Secretary, under this section.

''(2) EXCEPTIONS.—The following provisions of this title shall apply to a grant made under subsection (a) to the same extent and in the same manner as such provisions apply to allotments made under section 502(c):

''(A) Section 504(b)(4) (relating to expenditures of funds as a condition of receipt of Federal funds).

''(B) Section 504(b)(6) (relating to prohibition on payments to excluded individuals and entities).

''(C) Section 506 (relating to reports and audits, but only to the extent determined by the Secretary to be appropriate for grants made under this section).

''(D) Section 508 (relating to nondiscrimination).

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

SEC. 208. DEMONSTRATION PROJECTS TO INCREASE ACCESS TO PEDIATRIC DENTAL SERVICES IN UNDERSERVED AREAS.

(a) AUTHORITY TO CONDUCT PROJECTS.—The Secretary of Health and Human Services, through the Administrator of the Health Care Financing Administration, the Administrator of the Health Resources and Services Administration, the Director of the Indian Health Service, and the Director of the Centers for Disease Control and Prevention shall establish demonstration projects that are designed to increase access to dental services for children in underserved areas, as determined by the Secretary.

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

TITLE III—PEDIATRIC DENTAL RESEARCH

SEC. 301. IDENTIFICATION OF INTERVENTIONS THAT REDUCE THE BURDEN AND TRANSMISSION OF ORAL, DENTAL, AND CRANIOFACIAL DISEASES IN HIGH RISK POPULATIONS; DEVELOPMENT OF APPROACHES FOR PEDIATRIC ORAL AND CRANIOFACIAL ASSESSMENT.

(a) IN GENERAL.—The Secretary of Health and Human Services, through the Maternal and Child Health Bureau, the Indian Health Service, and in consultation with the Agency for Health Care Policy and Research and the National Institutes of Health, shall—

(1) support community based research that is designed to improve our understanding of the etiology, pathogenesis, diagnosis, prevention, and treatment of pediatric oral, dental, craniofacial diseases and conditions and their sequelae in high risk populations;

(2) support demonstrations of preventive interventions in high risk populations; and

(3) develop clinical approaches to assess individual patients for pediatric dental disease.

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

SEC. 302. AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

Section 902(a) of the Public Health Service Act (42 U.S.C. 299a(a)) is amended—

(1) in paragraph (7), by striking ''and'' at the end;

(2) in paragraph (8), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(9) the barriers that exist, including access to oral health care for children, and the establishment of measures of oral health status and outcomes.''.

SEC. 303. ORAL HEALTH PROFESSIONAL RESEARCH AND TRAINING PROGRAM.

Part G of title IV of the Public Health Service Act is amended by inserting after section 487E (42 U.S.C. 288-5) the following:

''SEC. 487F. ORAL HEALTH PROFESSIONAL RESEARCH AND TRAINING PROGRAM.

''(a) IN GENERAL.—The Secretary, in consultation with the Director of the National Institute of Dental and Craniofacial Research, shall establish a program under which the Secretary will enter into contracts with qualified oral health professionals and such professionals will agree to conduct research or provide training with respect to pediatric oral, dental, and craniofacial diseases and conditions and in exchange the Secretary will agree to repay, for each year of service, not more than $35,000 of the principal and interest of the educational loans of such professionals.

''(b) QUALIFIED ORAL HEALTH PROFESSIONAL.—

''(1) DEFINITION.—In this section, the term 'qualified oral health professional' includes dentists and allied dental personnel serving in faculty positions.

''(2) SPECIAL PREFERENCE.—In entering into contacts under subsection (a), the Secretary shall give preference to qualified oral health professionals—

''(A) who are serving, or who have served in research or training programs of the National Institute of Dental and Craniofacial Research; or

''(B) who are providing services at institutions that provide oral health care to underserved pediatric populations in rural or border areas.

''(c) PRIORITIES.—The Secretary shall annually determine the clinical and basic research and training priorities for contracts under subsection (a), including dental caries, orofacial accidents or traumas, birth defects

such as cleft lip and palate and severe malocclusions, and new techniques and approaches to treatment.

''(d) CONTRACTS, OBLIGATED SERVICE, AND BREACH OF CONTRACT.—The provisions of section 338B concerning contracts, obligated service, and breach of contract, except as inconsistent with this section, shall apply to contracts under this section to the same extent and in the same manner as such provisions apply to contracts under such section 338B.

''(e) AVAILABILITY OF FUNDS.—Amounts available for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which such amounts were made available.''.

SEC. 304. CONSENSUS DEVELOPMENT CONFERENCE.

(a) IN GENERAL.—Not later than April 1, 2000, the Secretary of Health and Human Services, acting through the National Institute of Child Health and Human Development and the National Institute of Dental and Craniofacial Research, shall convene a conference (to be known as the ''Consensus Development Conference'') to examine the management of early childhood caries and to support the design and conduct of research on the biology and physiologic dynamics of infectious transmission of dental caries. The Secretary shall ensure that representatives of interested consumers and other professional organizations participate in the Consensus Development Conference.

(b) EXPERTS.—In administering the conference under subsection (a), the Secretary of Health and Human Services shall solicit the participation of experts in dentistry, including pediatric dentistry, dental hygiene, public health, and other appropriate medical and child health professionals.

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

TITLE IV—SURVEILLANCE AND ACCOUNTABILITY

SEC. 401. CDC REPORTS.

(a) COLLECTION OF DATA.—The Director of the Centers for Disease Control and Prevention in collaboration with other organizations and agencies shall annually collect data describing the dental, craniofacial, and oral health of residents of at least 1 State from each region of the Department of Health and Human Services.

(b) REPORTS.—The Director shall compile and analyze data collected under subsection (a) and annually prepare and submit to the appropriate committees of Congress a report concerning the oral health of certain States.

SEC. 402. REPORTING REQUIREMENTS UNDER THE MEDICAID PROGRAM.

Section 1902(a)(43)(D) of the Social Security Act (42 U.S.C. 1396a(43)(D)) is amended—

(1) in clause (iii), by striking ''and'' and inserting ''with the specific dental condition and treatment provided identified,'';

(2) in clause (iv), by striking the semicolon and inserting a comma; and

(3) by adding at the end the following:

''(v) the percentage of expenditures for such services that were for dental services,

''(vi) the percentage of dental health professionals (as defined in section 332(a)(4)(C) of the Public Health Service Act) who are licensed in the State and provide services commensurate with eligibility under the State plan, and

''(vii) collect and submit data on the number of children being served as compared to the number of children who are eligible for services, and the actual services provided;''.

SEC. 403. ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES.

The Administrator of the Administration on Children, Youth, and Families shall annually prepare and submit to the appropriate committees of Congress a report concerning the percentage of children enrolled in a Head Start or Early Start program who have access to and who obtain dental care, including children with special oral, dental, and craniofacial health needs. The Administrator of the Administration of Children, Youth and Families shall seek methods to reestablish intraagency agreements with the Administrator of the Health Resources and Services Administration to address technical assistance for its grantees in addressing access to preventive clinical services.

SEC. 404. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end the following:

''(25) The State shall collect and submit data on the number of children being served under this section as compared to the number of children who are eligible for services, and the actual services provided.''.

TITLE V—ORAL HEALTH PROMOTION AND DISEASE PREVENTION

SEC. 501. GRANTS TO INCREASE RESOURCES FOR COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Division of Oral Health of the Centers for Disease Control and Prevention, may make grants to State or locality for the purpose of increasing the resources available for community water fluoridation.

(b) USE OF FUNDS.—A State shall use amounts provided under a grant under subsection (a)—

(1) to purchase fluoridation equipment;

(2) to train fluoridation engineers; or

(3) to develop educational materials on the advantages of fluoridation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2000, and such sums as may be necessary for each subsequent fiscal year.

SEC. 502. COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), acting through the Director of the Indian Health Service and the Director of the Centers for Disease Control and Prevention, shall establish a demonstration project that is designed to assist rural water systems in successfully implementing the Centers for Disease Control and Prevention water fluoridation guidelines entitled ''Engineering and Administrative Recommendations for Water Fluoridation'' (referred to in this section as the ''EARWF'').

(b) REQUIREMENTS.—

(1) COLLABORATION.—The Director of the Indian Health Services shall collaborate with the Director of the Centers for Disease Control and Prevention in developing the project under subsection (a). Through such collaboration the Directors shall ensure that technical assistance and training are provided to tribal programs located in each of the 12 areas of the Indian Health Service. The Director of the Indian Health Service shall provide coordination and administrative support to tribes under this section.

(2) GENERAL USE OF FUNDS.—Amounts made available under this section shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(3) FLUORIDATION SPECIALISTS.—

(A) IN GENERAL.—In carrying out this section, the Secretary shall provide for the establishment of fluoridation specialist engineering positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to tribal water operators, tribal utility operators and other Indian Health Service personnel working directly with fluoridation projects.

(B) LIAISON.—A fluoridation specialist shall serve as the principal technical liaison between the Indian Health Service and the Centers for Disease Control and Prevention with respect to engineering and fluoridation issues.

(C) CDC.—The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(4) IMPLEMENTATION.—The project established under this section shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small rural communities.

(c) EVALUATION.—In conducting the ongoing evaluation as provided for in subsection (b)(4), the Secretary shall ensure that such evaluation includes—

(1) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(2) the identification of the administrative, technical and operational challenges that are unique to the fluoridation of small water systems;

(3) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation with emphasis on small water systems; and

(4) the measurement of any increased percentage of Native Americans or Alaskan Natives who receive the benefits of optimally fluoridated water.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2000, and such sums as may be necessary for each subsequent fiscal year.

SEC. 503. SCHOOL-BASED DENTAL SEALANT PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Maternal and Child Health Bureau of the Health Resources and Services Administration, may award grants to States or localities to provide for the development of school-based dental sealant programs to improve the access of children to sealants.

(b) USE OF FUNDS.—A State shall use amounts received under a grant under subsection (a) to provide funds to eligible school-based entities or to public elementary or secondary schools to enable such entities or schools to provide children in second or sixth grade with access to dental care and dental sealant services. Such services shall be provided by licensed dental health professionals in accordance with State practice licensing laws.

(c) ELIGIBILITY.—To be eligible to receive funds under this section an entity shall—

(1) prepare and submit to the State an application at such time, in such manner and containing such information as the State may require; and

(2) be a public elementary or secondary school—

(A) that located in an urban area and in which and more than 50 percent of the student population is participating in Federal or State free or reduced meal programs; or

(B) that is located in a rural area and, with respect to the school district in which the school is located, the district involved has a median income that is at or below 235 percent of the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Preference in awarding grants shall be provided to eligible entities that use dental

health care professionals in the most cost effective manner.

(d) COORDINATION WITH OTHER PROGRAMS.—(1) IN GENERAL.—An entity that receives funds from a State under this section shall serve as an enrollment site for purposes of enabling individuals to enroll in the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or in the State Children's Health Insurance Program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(2) CONFORMING AMENDMENT.—Section 1920A(b)(3)(A)(i) of the Social Security Act (42 U.S.C. 1396r–1a(b)(3)(A)(i)) is amended—

(A) by striking ''or (II)'' and inserting '', (II)''; and

(B) by inserting '', or (III) is an eligible community-based entity or a public elementary or secondary school that participates in the school-based dental sealant program established under section 503 of the Children's Dental Health Improvement Act of 1999'' before the semicolon.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 2000, and such sums as may be necessary for each subsequent fiscal year.

TITLE VI—MISCELLANEOUS

SEC. 601. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such amendments solely on the basis of its failure to meet the additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

By Mr. TORRICELLI (for himself, Mr. KERRY, Mrs. MURRAY, and Mrs. BOXER):

S. 902. A bill to amend title XIX of the Social Security Act to permit States the option to provide Medicaid coverage for low-income individuals infected with HIV; to the Committee on Finance.

EARLY TREATMENT FOR HIV ACT OF 1999

Mr. TORRICELLI. Mr. President, I rise today to introduce the Early Treatment for HIV Act. In recent years, exciting scientific breakthroughs have led to an improved understanding of AIDS and provided powerful new treatments for Americans living with HIV disease. Commonly known as the protease cocktail, these drugs have helped transform HIV into a manageable chronic disease. To be most effective, the medical community and the U.S. Department of Health and Human Services (HHS) recommends the use of these treatments early in the course HIV infection, before the onset of symptoms. Tragically though, the high cost of these drugs means that only those of significant financial means have access to them.

In another tragic irony, vulnerable low-income HIV-positive Americans cannot receive AIDS-preventing drugs under the Medicaid program until they develop full blown AIDS. By that time, their preventive value has greatly diminished. To correct this glaring flaw in the Medicaid program, the Early Treatment for HIV Act will ensure that HIV positive, low income patients, will be eligible for medical services immediately.

The benefits of this legislation are overwhelming. A report released at the 12th World AIDS Conference in Geneva found that treatment for HIV early in the course of the disease is both medically and economically effective. Another report by the University of California found that expanding Medicaid to provide wider access to HIV therapies would prevent thousands of deaths and AIDS diagnoses, leading to 14,500 more years of life for persons living with HIV disease over five years.

In terms of economic savings, several recent studies have found that money spent ''up front'' on medications are offset by later savings on hospitalizations and other expensive care and treatments for AIDS-related illnesses. A report by the Medical Associates of Los Angeles found that each dollar spent on combination drugs therapies resulted in at least two dollars of savings and overall treatment costs.

Mr. President, the Early Treatment for HIV Act will help thousands of low-income people with HIV live longer, more fulfilling lives by allowing them to overcome the financial barriers to effective medical treatments.

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. 902

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 ''Early Treatment for HIV Act of 1999''.

SEC. 2. OPTIONAL MEDICAID COVERAGE OF LOW-INCOME HIV-INFECTED INDIVIDUALS.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking ''or'' at the end of subclause (XIII);

(B) by adding ''or'' at the end of subclause (XIV); and

(C) by adding at the end the following:

''(XV) who are described in subsection (aa) (relating to HIV-infected individuals);''; and

(2) by adding at the end the following new subsection:

''(aa) HIV-infected individuals described in this subsection are individuals not described in subsection (a)(10)(A)(i)—

''(1) who have HIV infection;

''(2) whose income (as determined under the State plan under this title with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

''(3) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.''.

(b) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended, in the matter preceding paragraph (1)—

(1) by striking ''or'' at the end of clause (x);

(2) by adding ''or'' at the end of clause (xi); and

(3) by inserting after clause (xii) the following:

''(xii) individuals described in section 1902(aa);''.

(c) EXEMPTION FROM FUNDING LIMITATION FOR TERRITORIES.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended by adding at the end the following:

''(3) DISREGARDING MEDICAL ASSISTANCE FOR OPTIONAL LOW-INCOME HIV-INFECTED INDIVIDUALS.—The limitations under subsection (f) and the previous provisions of this subsection shall not apply to amounts expended for medical assistance for individuals described in section 1902(aa) who are only eligible for such assistance on the basis of section 1902(a)(10)(A)(ii)(XV).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

By Mr. KOHL (for himself and Mr. DEWINE):

S. 903. A bill to facilitate the exchange by law enforcement agencies of DNA identification information relating to violent offenders, and for other purposes; to the Committee on the Judiciary.

VIOLENT OFFENDER DNA IDENTIFICATION ACT OF 1999

• Mr. KOHL. Mr. President, I rise today with Senator DEWINE to introduce the Violent Offender DNA Identification Act of 1999. This bipartisan measure will put more criminals behind bars by correcting practical and legal shortcomings that leave too much crucial DNA evidence unused and too many violent crimes unsolved.

Currently, all 50 states require DNA samples to be obtained from certain convicted offenders, and these samples increasingly can be shared through a national DNA database established by Federal law. This national database—part of the Combined Database Index System (CODIS)—enables law enforcement officials to link DNA evidence found at a crime scene with any suspect whose DNA is already on file. By identifying repeat offenders, this DNA sharing can and does make a difference. Already the FBI has recorded over 400 matches through DNA databases, helping solve numerous crimes. And in my home state of Wisconsin, experience proves that DNA ''sharing'' pays off. We've already had 19 ''hits'' that have assisted more than 20 criminal investigations. In fact, just a week

before the statute of limitations ran out in a multiple rape investigation, DNA matching helped identify a serial rapist responsible for three rapes in Kenosha and a fourth in Racine. As a result, he's currently serving an 80-year sentence. Without DNA databases, suspects like this otherwise might never be discovered—or convicted.

As valuable as this system is, it is not as effective as it could—or should—be. The effectiveness of the database is directly related to the number of DNA profiles it contains. For every 1,000 new profiles, we can expect to find at least one match, and with every new profile added, the odds for a match increase. However, there are currently two major obstacles to the effective functioning of the database. Our measure would correct these problems and make the database far more productive.

First, hundreds of thousands of DNA samples that have already been collected still must be analyzed before they can be entered into the national database. The FBI estimates that there is a backlog of nearly 400,000 DNA samples from convicted offenders languishing, unanalyzed, in state crime laboratories for simple lack of funding.

Our measure will reduce the backlog of unanalyzed samples by providing the funding necessary to analyze them and put them ''on-line.'' It provides $30 million over two years to erase the backlog of the 400,000 unanalyzed samples and the almost-as-pressing backlog of approximately 200,000 more samples that need to be reanalyzed using state-of-the-art methods. For example, in Wisconsin, we have almost 2,000 samples that have not yet been analyzed, and more than 10,000 that need to be reanalyzed so they can be effectually shared through the national database.

Indeed, easing this backlog was the lead recommendation of the National Commission on the Future of DNA Evidence appointed by the Attorney General. As the Commission explained, ''the power of the CODIS program lies in the sheer numbers of convicted offender samples that are processed and entered into the database.''

Second, for some inexplicable reason, we do not collect samples from Federal and D.C. offenders. So while the database can identify a suspect whose DNA is on file in one of the 50 states, it generally won't catch a Federal or D.C. offender. Under current law, that suspect will not be identified; his crime may not be solved; and he could get off scot-free. We thought we already closed this loophole through 1996 legislation which provides that the FBI ''may expand [the database] to include Federal crimes and crimes committed in the District of Columbia,'' but Federal officials claim more express authority is necessary. We are not so sure they're right, but there is no need to wait any longer.

Our measure closes once and for all this loophole that allows DNA samples from Federal (including military) and Washington, D.C. offenders to go uncollected. Under our proposal, DNA samples would be obtained from any Federal offender—or any D.C. offender under Federal custody or supervision—convicted of a violent crime or other qualifying offense. And it would require the collection of samples from juveniles found delinquent under Federal law for conduct that would constitute a violent crime if committed by an adult. Our proposal was prepared with the assistance of the FBI, the Administrative Office of the U.S. Courts, the Bureau of Prisons, the U.S. Parole Commission, agencies within the District of Columbia responsible for supervision of released felons, and the Department of Defense.

Mr. President, modern crime-fighting technology like DNA testing and DNA databases make law enforcement much more effective. But in order to take full advantage of these valuable resources, we need this measure to make the database as comprehensive—and as productive—as possible. Violent criminals should not be able to evade arrest simply because a state didn't analyze its DNA samples or because an inexcusable loophole leaves Federal and D.C. offenders out of the DNA database. This measure will ensure that we apprehend violent repeat offenders, regardless of whether they originally violated state, Federal or D.C. law. And, by collecting more DNA evidence and utilizing the best of DNA technology, we also can help exonerate individual suspects whose DNA does not match with particular crime scenes.

The Senate has already made clear that issues like these need to be addressed. In this year's Budget, we acknowledged that ''tremendous backlogs * * * prevent swift administration of justice and impede fundamental individual rights, such as the right to a speedy trial and to exculpatory evidence.'' We unanimously concluded that it was the Sense of the Senate that ''Congress should consider legislation that specifically addresses the backlogs in State and local crime laboratories and medical examiner's offices.''

Mr. President, this measure will help police use modern technology to solve crimes and prevent repeat offenders from committing new ones. So we look forward to working with our colleagues and with the Department of Justice to move this measure forward and help law enforcement keep pace with today's criminal.●

● Mr. DEWINE. Mr. President, today I rise to introduce the ''Violent Offender DNA Identification Act of 1999,'' with my colleague Senator HERB KOHL. Existing anti-crime technology can allow us to solve many violent crimes that occur in our communities—but in order for it to work, it has to be used.

I have been a longtime advocate for use of the Combined DNA Indexing System (CODIS), a national DNA database, to profile convicted offender DNA. In fact, during consideration of the Anti-Terrorism Act of 1996, I proposed a provision under which Federal convicted offenders' DNA would be included in CODIS. Unfortunately, the Department of Justice never implemented this law, though currently all 50 states collect DNA from convicted offenders.

One of the purposes of this legislation is to expressly require the collection of DNA samples from federally convicted felons, and military personnel convicted of similar offenses. Collection of convicted offender DNA is crucial to solving many of the crimes occurring in our communities. Statistics show that many of these violent felons will repeat their crimes once they are back in society. Since the Federal government does not collect DNA from these felons, however, law enforcement's ability to rapidly identify likely suspects is retarded. Collection of such data is critical.

The case of Mrs. Debbie Smith of Virginia underscores the importance of collection of DNA from convicted offenders. Debbie Smith was at her home in the middle of the day when a masked intruder entered her unlocked back door. Her husband, a police lieutenant, was upstairs sleeping. The stranger blindfolded Mrs. Smith and took her to a wooded area behind her house where he robbed and repeatedly raped her. After warning Mrs. Smith not to tell, the assailant let her go. She told her husband, who reported the incident, then took her to the hospital where evidence was collected for DNA analysis.

Debbie Smith's rape experience was so terrible that she contemplated taking her own life. She continued to live in constant fear until six-and-a-half years later when a state crime laboratory found a CODIS match with an inmate then serving in jail for abduction and robbery. In fact, the offender was jailed on another offense one month after raping her. There are thousands of other crimes the DNA database can solve. With CODIS we can grant countless victims, like Mrs. Smith, peace of mind and bring their attackers swiftly to justice.

We need to do everything we can to make sure law enforcement has access to these tools. A major obstacle facing state and local crime laboratories are the backlogs of convicted offender samples. The Federal Bureau of Investigation estimates that there are about 450,000 convicted offender samples in state and local laboratories awaiting analysis. Increasing demand for DNA analysis in active cases, and limited resources, are reducing the ability of state and local crime laboratories to analyze their convicted offender backlogs. While I introduced, and Congress passed, the Crime Identification Technology Act of 1998 to address the long-term needs of crime laboratories, many crime laboratories need immediate assistance to address their short-term backlogs that will help law enforcement solve crime.

This bill would provide about $30 million, over 4 years, to help state and

local crime laboratories address their convicted offender backlogs. We are asking the FBI to work with private, state and local laboratories to organize regional laboratories to analysis backlogged State and local convicted offender samples. While we have considered many ways to address the backlog of convicted offender samples in state and local laboratories, we believe that the approach outlined in this legislation provides the fastest, most cost-effective and efficient method of eliminating the backlog.

Violent criminals should not be able to evade responsibility simply because a state lacks the resources to analyze their DNA samples, or because a loophole excludes certain Federal offenders from our national database. This legislation would be a huge asset for our local law enforcers in their day-to-day fight against crime. I thank Senator KOHL for his efforts.●

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 905. A bill to establish the Lackawanna Valley American Heritage Area; to the Committee on Energy and Natural Resources

LACKAWANNA VALLEY AMERICAN HERITAGE AREA ACT OF 1999

Mr. SANTORUM. Mr. President, I rise today to introduce a bill that would establish the Lackawanna Valley American Heritage Area. This legislation recognizes the significance of Pennsylvania's Lackawanna Valley, the site of the first state heritage park in the Commonwealth of Pennsylvania.

Nearly nine years ago, people in the Lackawanna Valley pursued their vision to recognize the cultural, historical, natural, and recreational values that existed within the region. As such, partnerships were formed among federal, state, and local governments, in addition to local business interests, to move this idea forward. As those partnerships evolved, that cooperation produced ''The Plan for the Lackawanna Heritage Valley.''

With the credo of ''community development through partnerships,'' the LHVA began developing a wide agenda of community projects that would come to define the term ''heritage park.'' Specifically, the LHVA was instrumental in creating the National Institute of Environmental Renewal, a ''living laboratory'' founded with the intention of identification and clean-up of the Lackawanna Valley's scarred industrial landscape. Through an adaptive re-use of a former school building, there now exists a 100,000 square foot Education and Training, Research and Development, and Technology Transfer Center.

Other projects taken on by the Authority include: construction of the Lackawanna Trolley Museum; designation of the Lackawanna River Heritage Trail; development of the Olyphant Elementary School housing project; and the ''Young People's Heritage Festival.'' One of the most significant undertakings by LHVA partners has been a research document commissioned by the National park Service and the PA Historical and Museum Commission. The study, ''Anthracite Coal in Pennsylvania: an Industry and a Region,'' concludes that, ''the anthracite industry of northeastern Pennsylvania played a critical role in the expansion of the American economy during the second quarter of the nineteenth century.''

The legislation that I am introducing today, with the support of Senator SPECTER, encourages the continuation of local interest by demonstrating the federal government's commitment to preserving the unique heritage of the Lackawanna Valley. It would require the Lackawanna Heritage Valley Authority to enter a compact with the Secretary of the Interior to establish Heritage Area boundaries, and to prepare and implement a management plan within three years. This plan would inventory resources and recommend policies for resource management interpretation. Further, based on the criteria of other Heritage Areas established by the Omnibus Parks and Public Lands Management Act of 1996, this bill requires that federal funds provided under this bill do not exceed 50 percent of the total cost of the program.

Mr. President, this legislation is a culmination of the hard work and diligence of many parties interested in preserving the cultural and natural resources of the Lackawanna Valley. I believe this bill represents the positive impact public and private institutions can have when given the opportunity for collaboration.

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. 905

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 ''Lackawanna Valley American Heritage Area Act of 1999''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the industrial and cultural heritage of northeastern Pennsylvania, including Lackawanna County, Luzerne County, Wayne County, and Susquehanna County, related directly to anthracite and anthracite-related industries, is nationally significant;

(2) the industries referred to in paragraph (1) include anthracite mining, ironmaking, textiles, and rail transportation;

(3) the industrial and cultural heritage of the anthracite and anthracite-related industries in the region described in paragraph (1) includes the social history and living cultural traditions of the people of the region;

(4) the labor movement of the region played a significant role in the development of the Nation, including—

(A) the formation of many major unions such as the United Mine Workers of America; and

(B) crucial struggles to improve wages and working conditions, such as the 1900 and 1902 anthracite strikes;

(5)(A) the Secretary of the Interior is responsible for protecting the historical and cultural resources of the United States; and

(B) there are significant examples of those resources within the region described in paragraph (1) that merit the involvement of the Federal Government to develop, in cooperation with the Lackawanna Heritage Valley Authority, the Commonwealth of Pennsylvania, and local and governmental entities, programs and projects to conserve, protect, and interpret this heritage adequately for future generations, while providing opportunities for education and revitalization; and

(6) the Lackawanna Heritage Valley Authority would be an appropriate management entity for a Heritage Area established in the region described in paragraph (1).

(b) PURPOSES.—The purposes of the Lackawanna Valley American Heritage Area and this Act are—

(1) to foster a close working relationship among all levels of government, the private sector, and the local communities in the anthracite coal region of northeastern Pennsylvania and enable the communities to conserve their heritage while continuing to pursue economic opportunities; and

(2) to conserve, interpret, and develop the historical, cultural, natural, and recreational resources related to the industrial and cultural heritage of the 4-county region described in subsection (a)(1).

SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Lackawanna Valley American Heritage Area established by section 4.

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the management entity for the Heritage Area specified in section 4(c).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area developed under section 6(b).

(4) PARTNER.—The term ''partner'' means—

(A) a Federal, State, or local governmental entity; and

(B) an organization, private industry, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. LACKAWANNA VALLEY AMERICAN HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Lackawanna Valley American Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall be comprised of all or parts of Lackawanna County, Luzerne County, Wayne County, and Susquehanna County, Pennsylvania, determined in accordance with the compact under section 5.

(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Lackawanna Heritage Valley Authority.

SEC. 5. COMPACT.

(a) IN GENERAL.—To carry out this Act, the Secretary shall enter into a compact with the management entity.

(b) CONTENTS OF COMPACT.—The compact shall include information relating to the objectives and management of the area, including—

(1) a delineation of the boundaries of the Heritage Area; and

(2) a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the partners.

SEC. 6. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES OF MANAGEMENT ENTITY.—The management entity may, for the purposes of preparing and implementing the management plan, use funds made available under this Act—

(1) to make loans and grants to, and enter into cooperative agreements with, any State or political subdivision of a State, private organization, or person; and

(2) to hire and compensate staff.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—The management entity shall develop a management plan for the Heritage Area that presents comprehensive recommendations for the conservation, funding, management, and development of the Heritage Area.

(2) CONSIDERATION OF OTHER PLANS AND ACTIONS.—The management plan shall—

(A) take into consideration State, county, and local plans;

(B) involve residents, public agencies, and private organizations working in the Heritage Area; and

(C) include actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area.

(3) SPECIFICATION OF FUNDING SOURCES.—The management plan shall specify the existing and potential sources of funding available to protect, manage, and develop the Heritage Area.

(4) OTHER REQUIRED ELEMENTS.—The management plan shall include the following:

(A) An inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the purposes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its historical, cultural, natural, recreational, or scenic significance.

(B) A recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, natural, and recreational resources of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability.

(C) A program for implementation of the management plan by the management entity, including—

(i) plans for restoration and construction; and

(ii) specific commitments of the partners for the first 5 years of operation.

(D) An analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act.

(E) An interpretation plan for the Heritage Area.

(5) SUBMISSION TO SECRETARY FOR APPROVAL.—

(A) IN GENERAL.—Not later than the last day of the 3-year period beginning on the date of enactment of this Act, the management entity shall submit the management plan to the Secretary for approval.

(B) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the day referred to in subparagraph (A), the Secretary shall not, after that day, provide any grant or other assistance under this Act with respect to the Heritage Area until a management plan for the Heritage Area is submitted to the Secretary.

(c) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions specified in the compact and management plan, including steps to assist units of government and nonprofit organizations in preserving the Heritage Area;

(2) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(3) encourage economic viability in the Heritage Area consistent with the goals of the management plan;

(4) encourage local governments to adopt land use policies consistent with the management of the Heritage Area and the goals of the management plan;

(5) assist units of government and nonprofit organizations to ensure that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are placed throughout the Heritage Area;

(6) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area;

(7) conduct public meetings not less often than quarterly concerning the implementation of the management plan;

(8) submit substantial amendments (including any increase of more than 20 percent in the cost estimates for implementation) to the management plan to the Secretary for the Secretary's approval; and

(9) for each year in which Federal funds have been received under this Act—

(A) submit a report to the Secretary that specifies—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which any loan or grant was made during the year;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(d) USE OF FEDERAL FUNDS.—

(1) FUNDS MADE AVAILABLE UNDER THIS ACT.—The management entity shall not use Federal funds received under this Act to acquire real property or any interest in real property.

(2) FUNDS FROM OTHER SOURCES.—Nothing in this Act precludes the management entity from using Federal funds obtained through law other than this Act for any purpose for which the funds are authorized to be used.

SEC. 7. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) PROVISION OF ASSISTANCE.—The Secretary may, at the request of the management entity, provide technical and financial assistance to the management entity to develop and implement the management plan.

(B) PRIORITY IN ASSISTANCE.—In assisting the management entity, the Secretary shall give priority to actions that assist in—

(i) conserving the significant historical, cultural, and natural resources that support the purposes of the Heritage Area; and

(ii) providing educational, interpretive, and recreational opportunities consistent with the resources and associated values of the Heritage Area.

(2) EXPENDITURES FOR NON-FEDERALLY OWNED PROPERTY.—

(A) IN GENERAL.—To further the purposes of this Act, the Secretary may expend Federal funds directly on non-federally owned property, especially for assistance to units of government relating to appropriate treatment of districts, sites, buildings, structures, and objects listed or eligible for listing on the National Register of Historic Places.

(B) STUDIES.—The Historic American Buildings Survey/Historic American Engineering Record shall conduct such studies as are necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—

(1) IN GENERAL.—The Secretary, in consultation with the Governor of the Commonwealth of Pennsylvania, shall approve or disapprove a management plan submitted under this Act not later than 90 days after receipt of the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—

(A) IN GENERAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the management plan.

(B) DEADLINE FOR APPROVAL OF REVISION.—The Secretary shall approve or disapprove a proposed revision within 90 days after the date on which the revision is submitted to the Secretary.

(c) APPROVAL OF AMENDMENTS.—

(1) REVIEW.—The Secretary shall review substantial amendments (as determined under section 6(c)(8)) to the management plan for the Heritage Area.

(2) REQUIREMENT OF APPROVAL.—Funds made available under this Act shall not be expended to implement the amendments described in paragraph (1) until the Secretary approves the amendments.

SEC. 8. SUNSET PROVISION.

The Secretary shall not provide any grant or other assistance under this Act after September 30, 2012.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this Act for any fiscal year.

(b) 50 PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this Act shall not exceed 50 percent.

By Mr. ABRAHAM:

S. 906. A bill to establish a grant program to enable States to establish and maintain pilot drug testing and drug treatment programs for welfare recipients engaging in illegal drug use, and for other purposes; to the Committee on Finance.

DRUG TESTING AND TREATMENT FOR WELFARE RECIPIENTS ACT OF 1999

Mr. ABRAHAM. Mr. President, I rise to introduce the Drug Testing and Treatment for Welfare Recipients Act of 1999. This legislation would establish a pilot program encouraging up to 5 States to implement drug testing and treatment programs for people receiving assistance through the Temporary Assistance to Needy Families Block Grant (TANF); the AFDC replacement established through the 1996 welfare reform law. It would fund these programs through three year competitive grants,

providing States with the resources and flexibility they need to establish the most effective drug testing and treatment programs for their communities.

Mr. President, across the nation, welfare caseloads are dropping. More and more welfare recipients are working to provide for their families and moving closer to complete independence from public assistance. According to the Congressional Research Service, in March of 1994 5.1 million families received assistance through the Aid to Families with Dependent Children program (AFDC). By September of 1998, those numbers had dropped to 2.9 million families receiving assistance through the Temporary Assistance to Needy Families (TANF) block grant program.

This 43% decline in the welfare caseload is encouraging. But it should not stop our efforts to help those hard-to-serve cases still on the rolls. Individuals who continue to receive welfare payments face daunting barriers to employment. One such barrier is drug addiction. People who are addicted to drugs have great trouble concentrating, keeping set schedules and maintaining basic order in their lives. For them, steady employment is often simply out of reach.

According to the Administration's Office of National Drug Control Policy, drug abuse has plagued America for over a century. It has torn families apart, regardless of socio-economic background as it has destroyed individual lives and spawned crime and social breakdown. Drugs pose a threat to the individual, the family, and the community. Individuals dependent on illegal substances cannot take care of themselves, much less their children, and drug dependence often leads to other crimes. Desperate to feed their addiction, abusers are often forced into theft, assault, or even worse crimes in the search for that next hit.

Today, an estimated 12.8 million Americans use illegal drugs. Approximately 45% of Americans know someone with a substance abuse problem. And the problem is particularly acute among young people preparing to enter adult life and the adult workforce. 25 percent of 12th graders still use illegal drugs regularly, as do 20 percent of 10th graders and 12 percent of 8th graders.

To combat the debilitating effects of drugs on addicts and those around them, this bill would enable States to fund drug testing and treatment programs for welfare recipients in their communities. It would do this by establishing a three year competitive grant program. States would apply for this grant by submitting a drug testing and treatment plan for their welfare recipients. The Secretary of Health and Human Services would then award the grant to up to 5 states in the amount of $1.5 million per year per state for three years, bringing the total cost of this grant program to $22.5 million.

The award decision will be based on two factors: (1) the need and ability of the State to address drug abuse by welfare recipients and (2) the ability of the State to continue such testing and treatment programs after the 3 year grant subsidies. Upon receiving the grant, States would be required to distribute the monies to entities already receiving funds through the Federal Substance Abuse Prevention and Treatment block grant (SAPT), the primary tool the federal government uses to support State substance abuse prevention and treatment programs. The States may allocate the funds in any manner they deem appropriate to establish programs that best serve their communities.

Mr. President, we often talk about breaking the cycle of poverty, and I believe that goes hand in hand with winning the drug war. I would like to read a brief quotation from the Administration's Office of National Drug Control Policy's National Drug Control Strategy. I think it makes an important point: ''While drug use and its consequences threaten Americans of every socio-economic background * * * the effects of drug use are often felt disproportionally. Neighborhoods where illegal drug markets flourish are plagued by attendant crime and violence.'' I have always been a strong advocate of community renewal and I truly believe that when we begin building drug-free families, safer streets, safer communities and more opportunities for our nation's economically disadvantaged will follow.

Treatment for welfare recipients engaged in illegal drug use is the most important form of assistance they will ever receive. The Office of National Drug Control Policy points out that ''Americans who lack comprehensive health plans and have smaller incomes may be less able to afford treatment programs to overcome drug dependence.''

Mr. President, this bill would put drug treatment dollars in the hands of those who need it most. States need these funds to help finance more comprehensive treatment programs not covered by Medicaid. Comprehensive services are desperately needed for the most serious victims of drug abuse. This grant program constitutes a small investment that would encourage States to address drug abuse by welfare recipients, further reducing rates of welfare dependency and other social problems related to drug addiction.

Ultimately, our goal is to help individuals provide for their families and achieve independence by breaking the cycle of dependency. This legislation will help significantly in that effort and I encourage my colleagues to give it their support.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis be printed in the RECORD.

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

S. 906

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 ''Drug Testing and Treatment for Welfare Recipients Act of 1999''.

SEC. 2. PURPOSE.

The purpose of this Act is to create a grant program that assists States in establishing and maintaining pilot drug testing and drug treatment programs for welfare recipients who have a commitment to overcoming their substance abuse problems and are in acute need of overcoming such problems.

SEC. 3. DEFINITIONS.

In this Act:

(1) DRUG.—The term ''drug'' means a drug within the meaning of subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).

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

(3) WELFARE AGENCY.—The term ''welfare agency'' means a State agency carrying out a program described in paragraph (4).

(4) WELFARE RECIPIENT.—The term ''welfare recipient'' means an individual in a State who is receiving assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

SEC. 4. PROGRAM AUTHORIZED.

The Secretary may award grants to States to establish and maintain pilot drug testing programs and drug treatment programs for welfare recipients in each State that receives a grant.

SEC. 5. APPLICATIONS.

(a) IN GENERAL.—To be eligible to receive a grant under this Act, a State shall submit an application to the Secretary.

(b) CONTENTS.—Each application submitted pursuant to subsection (a) shall—

(1) describe a program to provide drug testing for welfare recipients in the State; and

(2) describe a drug treatment program for welfare recipients in the State that provides treatment if such a recipient receives a positive result on a test described in paragraph (1).

SEC. 6. CRITERIA FOR AWARD OF GRANTS.

(a) IN GENERAL.—The Secretary shall award grants to eligible States under section 4 on a competitive basis in accordance with the criteria set out in subsection (b).

(b) CRITERIA.—The Secretary shall award grants to eligible States based on the following criteria:

(1) The need and ability of a State to address drug use by welfare recipients.

(2) The ability of the State to continue the State programs established under this Act after the grant program established under this Act is concluded.

SEC. 7. AWARDS.

(a) AMOUNT OF GRANT.—The Secretary shall award a grant under this Act in the amount of $1,500,000 per year.

(b) DURATION.—The Secretary shall award a grant under this Act for a period of 3 years.

(c) LIMITATION ON NUMBER OF GRANTS.—The Secretary shall award grants under this Act to not more than 5 States.

SEC. 8. USE OF FUNDS.

(a) IN GENERAL.—A State that receives a grant under this Act shall use the funds made available through the grant to establish and maintain the programs described in the application submitted by the State under section 5.

(b) DISTRIBUTION BY STATES.—Each State receiving a grant under this Act shall distribute grant funds only to entities that are

receiving assistance under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

DRUG TESTING AND TREATMENT FOR WELFARE RECIPIENTS ACT OF 1999—SECTION-BY-SECTION ANALYSIS

A bill to establish a grant program to enable States to establish and maintain pilot drug testing and drug treatment programs for welfare recipients engaging in illegal drug use, and for other purposes.

Section 1. Short Title.

The act may be cited as the ''Drug Testing and Treatment for Welfare Recipients Act of 1999''.

Section 2. Purpose.

The purpose of this Act is to create a grant program that assists States in establishing and maintaining pilot drug testing and drug treatment programs for welfare recipients that have an acute and intensive need in overcoming drug abuse.

Section 3. Definitions.

This section defines various terms used in the bill. Significantly, for the purposes of this legislation, a welfare recipient is defined as an individual receiving assistance under the State temporary assistance for needy families (TANF) grant program. A welfare agency is any State agency that carries out the TANF program.

Section 4. Program Authorized.

This section states that the Secretary of Health and Human Services may award grants to States to establish and maintain pilot drug testing and treatment programs in each State receiving the grant.

Section 5. Applications.

To receive a grant, a State must submit an application to the Secretary of Health and Human Services that describes a program to provide drug testing and treatment for welfare recipients in the State.

Section 6. Criteria for award of grants.

These grants will be awarded on a competitive basis and shall be based on the need and ability of the State to address drug use by welfare recipients and the ability of the State to continue such testing and treatment programs after this Act sunsets.

Section 7. Awards.

The Secretary will award the grant to no more than 5 States. Each grant will be $1.5 million dollars per year for three years. That brings the total cost of this Act to $22.5 million dollars.

Section 8. Use of Funds.

The State shall distribute grant funds to those entities that currently receive federal funding in the form of the Substance Abuse Prevention and Treatment block grant (SAPT). The grant money, which will be allotted in amounts determined solely by the States, will be used for treatment purposes.

Section 9. Authorization of Appropriations.

This section authorizes to be appropriated such sums as may be necessary to carry out this Act.

By Mr. SMITH of New Hampshire:

S. 907. A bill to protect the right to life of each born and preborn human person in existence at fertilization; to the Committee on the Judiciary.

RIGHT TO LIFE ACT OF 1999

Mr. SMITH of New Hampshire. Mr. President, I rise today to introduce the Right to Life Act of 1999.

Our Nation's founding document, the Declaration of Independence, declared for all the world that we hold it to be self-evident that the right to life comes from God and that it is unalienable. Life itself, the Declaration held, is the fundamental right without which the rights to liberty and the pursuit of happiness have to meaning. As the author of the Declaration, Thomas Jefferson, later wrote, ''The care of human life and not its destruction . . . is the first and only object of good government.''

Almost 200 years after the Declaration of Independence, however, in 1973, the United States Supreme Court violated its most sacred principle. In Roe versus Wade, the Supreme Court held that the entire class of unborn children—from fertilization to birth—have no right to life and may be destroyed at will. In subsequent cases, the Court has zealously guarded the right to abortion that it created. The Court has repeatedly rejected all meaningful attempts by the States to protect the unalienable right to life of unborn children.

Those of us who proudly count ourselves to be members of the right-to-life movement must not lose sight of our ultimate goal. Our objective is to keep the Declaration's promise by reversing Roe versus Wade and restoring to unborn children their God-given right to life. In order to keep that hope alive in the Senate, I am introducing today the ''Right to Life Act of 1999.''

My bill first sets forth several findings of Congress regarding the fundamental right to life and the tragic constitutional errors of Roe versus Wade. Based on these findings and in the exercise of the powers of the Congress under Article I, Section 8, of the Constitution, and Section 5 of the Fourteenth Amendment to the Constitution, my bill establishes that ''the right to life guaranteed by the Constitution is vested in each human being at fertilization.''

Mr. President, I ask unanimous consent that the text of my bill, the ''Right to Life Act of 1999,'' be printed in the RECORD.

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

S. 907

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 ''Right to Life Act of 1999''.

SEC. 2. The Congress finds that—

(1) we, as a Nation, have declared that the unalienable right to life endowed by Our Creator is guaranteed by our Constitution for each human person:

(2) the Supreme Court, in *Roe* v. *Wade* (410 U.S. 113 at 159), stated: ''We need not resolve the difficult question of when life begins . . . the judiciary at this point in the development of man's knowledge, is not in a position to speculate as to the answer . . .'';

(3) the Supreme Court, in *Roe* v. *Wade* (410 U.S. 113 at 156–157), stated: ''If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the [Fourteenth] Amendment . . .'';

(4) the Supreme Court, in *Roe* v. *Wade* stated that the privacy right is not absolute, and stated (410 U.S. 113, at 159) that: ''The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus. . . . The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly.'';

(5) a human father and mother beget a human offspring when the father's sperm fertilizes the mother's ovum, and the life of each preborn human person begins at fertilization;

(6) there is no justification for any Federal, State, or private action intentionally to kill an innocent born or preborn human person, and that Federal, State, and private action must assure equal care and protection for the right to life of both a pregnant mother and her preborn child in existence at fertilization;

(7) Americans and our society suffer from the evils of killing even one innocent born or preborn human person, and each day suffer the torture and slaughter of an estimated 4,000 preborn persons;

(8) the intentional killing of preborn human persons occurs in Federal enclaves, in interstate commerce activities, and in the States, estimated at 1,500,000 per year and 33,000,000 since 1973; and

(9) the violence of intentionally killing a preborn human person has provoked more violence, carnage, and conflict reaching into homes, schools, churches, workplaces and lives of Americans.

SEC. 3. RIGHT TO LIFE.

Upon the basis of these findings and in the exercise of duty, authority, and powers of the Congress, including its power under Article I, Section 8, to make necessary and proper laws, and including its power under section 5 of the 14th article of amendment to the Constitution of the United States, the Congress hereby declares that the right to life guaranteed by the Constitution is vested in each human being at fertilization.

SEC. 4. DEFINITION OF STATE.

For the purpose of this Act, the term ''State'' used in the 14th article of amendment to the Constitution of the United States and other applicable provisions of the Constitution includes the District of Columbia, the Commonwealth of Puerto Rico, and each other territory or possession of the United States.

By Mr. DORGAN:

S. 908. A bill to establish a comprehensive program to ensure the safety of food products intended for human consumption that are regulated by the Food and Drug Administration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

CONSUMER FOOD SAFETY ACT OF 1999

Mr. DORGAN. Mr. President, I am introducing legislation Wednesday to improve the safety of the nation's food supply, by increasing educational efforts for food processors and handlers and the frequency of inspections for some of them. The bill also establishes new mechanisms for identifying food processors and handlers who originate contaminated food in order to improve federal recall and food safety law enforcement action.

Farmers produce high quality products and expect them to reach the consumer with the same high quality

standards observed. Farmers and consumers both have an interest in assuring the unquestioned safety of our food.

The new global economy is another reason for strengthening the nations' food safety laws. With the new global economy, we have food moving around the world without much understanding of where its coming from, who produced it, and under what conditions. I think it calls for a much more rigorous food inspections, not only for the safety of consumers, but to safeguard the reputation of the products our farmers produce.

Another important feature of the bill is new authority for inspection of food and food products at the border as they enter the United States from foreign countries, and in some cases inspections at food processing plants located in foreign countries.

A similar bill will be introduced shortly in the U.S. House by Representative FRANK PALLONE (D–NJ), underscoring the urban-rural, producer-consumer nature of the new drive for improved food safety laws.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. STEVENS, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above the call of duty, and for other purposes.

S. 44

At the request of Mr. FRIST, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 44, a bill to amend the Gun-Free Schools act of 1994 to require a local educational agency that receives funds under the Elementary and Secondary Education Act of 1965 to expel a student determined to be in possession of an illegal drug, or illegal drug paraphernalia, on school property, in addition to expelling a student determined to be in possession of a gun, and for other purposes.

S. 241

At the request of Mr. JOHNSON, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 241, a bill to amend the Federal Meat Inspection Act to provide that a quality grade label issued by the Secretary of Agriculture for beef and lamb may not be used for imported beef or imported lamb.

S. 242

At the request of Mr. JOHNSON, the names of the Senator from South Dakota (Mr. DASCHLE) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 242, a bill to amend the Federal Meat Inspection Act to require the labeling of imported meat and meat food products.

S. 303

At the request of Mr. MCCAIN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 303, a bill to amend the Communications Act of 1934 to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes.

S. 401

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 401, a bill to provide for business development and trade promotion for native Americans, and for other purposes.

S. 443

At the request of Mr. LAUTENBERG, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 443, a bill to regulate the sale of firearms at gun shows.

S. 472

At the request of Mr. GRASSLEY, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 472, a bill to amend title XVIII of the Social Security Act to provide certain medicare beneficiaries with an exemption to the financial limitations imposed on physical, speech-language pathology, and occupational therapy services under part B of the medicare program, and for other purposes.

S. 512

At the request of Mr. GORTON, the names of the Senator from Michigan (Mr. ABRAHAM), the Senator from Minnesota (Mr. WELLSTONE), and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 512, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 514

At the request of Mr. COCHRAN, the names of the Senator from Maine (Ms. COLLINS), the Senator from Hawaii (Mr. AKAKA), and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 514, a bill to improve the National Writing Project.

S. 517

At the request of Mr. GRAHAM, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 517, a bill to assure access under group health plans and health insurance coverage to covered emergency medical services.

S. 542

At the request of Mr. ABRAHAM, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 542, a bill to amend the Internal Revenue Code of 1986 to expand the deduction for computer donations to schools and allow a tax credit for donated computers.

S. 577

At the request of Mr. HATCH, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 577, a bill to provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor.

S. 597

At the request of Mr. SMITH, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 597, a bill to amend section 922 of chapter 44 of title 28, United States Code, to protect the right of citizens under the Second Amendment to the Constitution of the United States.

S. 600

At the request of Mr. WELLSTONE, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 600, a bill to combat the crime of international trafficking and to protect the rights of victims.

S. 625

At the request of Mr. GRASSLEY, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 625, a bill to
States Code, and for other purposes.

S. 631

At the request of Mr. DEWINE, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of S. 631, a bill to amend the Social Security Act to eliminate the time limitation on benefits for immunosuppressive drugs under the medicare program, to provide continued entitlement for such drugs for certain individuals after medicare benefits end, and to extend certain medicare secondary payer requirements.

S. 638

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii [Mr. AKAKA], and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 638, a bill to provide for the establishment of a School Security Technology Center and to authorize grants for local school security programs, and for other purposes.

S. 662

At the request of Mr. CHAFEE, the names of the Senator from New York [Mr. SCHUMER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Arkansas [Mrs. LINCOLN], and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 662, a bill to amend title XIX of the Social Security Act to provide medical assistance for certain women screened and found to have breast or cervical cancer under a federally funded screening program.

S. 697

At the request of Mrs. BOXER, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 697, a bill to ensure that a woman can designate an obstetrician or gynecologist as her primary care provider.

S. 721

At the request of Mr. GRASSLEY, the name of the Senator from Colorado

[Mr. ALLARD] was added as a cosponsor of S. 721, a bill to allow media coverage of court proceedings.

S. 784

At the request of Mr. ROCKEFELLER, the names of the Senator from Illinois [Mr. DURBIN] and the Senator from New York [Mr. SCHUMER] were added as cosponsors of S. 784, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 789

At the request of Mr. MCCAIN, the names of the Senator from Maine [Ms. SNOWE] and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 789, a bill to amend title 10, United States Code, to authorize payment of special compensation to certain severely disabled uniformed services retirees.

S. 791

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 791, a bill to amend the Small Business Act with respect to the women's business center program.

S. 805

At the request of Mr. DURBIN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 805, a bill to amend title V of the Social Security Act to provide for the establishment and operation of asthma treatment services for children, and for other purposes.

S. 820

At the request of Mr. CHAFEE, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 820, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 836

At the request of Mr. SPECTER, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 836, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group health plans and health insurance issuers provide women with adequate access to providers of obstetric and gynecological services.

S. 860

At the request of Mr. GRAHAM, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 860, a bill to require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

S. 878

At the request of Mr. TORRICELLI, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 878, a bill to amend the Federal Water Pollution Control Act to permit grants for the national estuary program to be used for the development and implementation of a comprehensive conservation and management plan, to reauthorize appropriations to carry out the program, and for other purposes.

SENATE JOINT RESOLUTION 2

At the request of Mr. KYL, the name of the Senator from Illinois [Mr. FITZGERALD] was added as a cosponsor of Senate Joint Resolution 2, a joint resolution proposing an amendment to the Constitution of the United States to require two-thirds majorities for increasing taxes.

SENATE JOINT RESOLUTION 3

At the request of Mr. KYL, the name of the Senator from Ohio [Mr. VOINOVICH] was added as a cosponsor of Senate Joint Resolution 3, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

SENATE CONCURRENT RESOLUTION 26

At the request of Mr. ASHCROFT, the names of the Senator from Georgia [Mr. COVERDELL] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Concurrent Resolution 26, a concurrent resolution expressing the sense of the Congress that the current Federal income tax deduction for interest paid on debt secured by a first or second home should not be further restricted.

SENATE RESOLUTION 22

At the request of Mr. CAMPBELL, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Resolution 22, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives serving as law enforcement officers.

SENATE RESOLUTION 29

At the request of Mr. ROBB, the names of the Senator from Missouri [Mr. BOND], the Senator from Kansas [Mr. BROWNBACK], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Idaho [Mr. CRAPO], the Senator from New Mexico [Mr. DOMENICI], the Senator from Wyoming [Mr. ENZI], the Senator from Illinois [Mr. FITZGERALD], the Senator from Washington [Mr. GORTON], the Senator from Texas [Mr. GRAMM], the Senator from Utah [Mr. HATCH], the Senator from Florida [Mr. MACK], the Senator from Arizona [Mr. MCCAIN], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Kansas [Mr. ROBERTS], the Senator from Alabama [Mr. SHELBY], the Senator from New Hampshire [Mr. SMITH], the Senator from Oregon [Mr. SMITH], the Senator from Wyoming [Mr. THOMAS], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Resolution 29, a resolution to designate the week of May 2, 1999, as ''National Correctional Officers and Employees Week.''

SENATE RESOLUTION 34

At the request of Mr. TORRICELLI, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Resolution 34, a resolution designating the week beginning April 30, 1999, as ''National Youth Fitness Week.''

SENATE RESOLUTION 59

At the request of Mr. LAUTENBERG, the names of the Senator from Louisiana [Ms. LANDRIEU] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Resolution 59, a resolution designating both July 2, 1999, and July 2, 2000, as ''National Literacy Day.''

SENATE RESOLUTION 71

At the request of Mr. ABRAHAM, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of Senate Resolution 71, a resolution expressing the sense of the Senate rejecting a tax increase on investment income of certain associations.

SENATE RESOLUTION 72

At the request of Mr. TORRICELLI, the names of the Senator from Nevada [Mr. REID], the Senator from Virginia [Mr. ROBB], the Senator from Minnesota [Mr. GRAMS], the Senator from Maryland [Mr. SARBANES], the Senator from Louisiana [Mr. BREAUX], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Colorado [Mr. CAMPBELL], the Senator from California [Mrs. BOXER], the Senator from Mississippi [Mr. COCHRAN], the Senator from North Carolina [Mr. EDWARDS], the Senator from Kentucky [Mr. BUNNING], the Senator from North Carolina [Mr. HELMS], the Senator from Delaware [Mr. ROTH], the Senator from North Dakota [Mr. DORGAN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Oregon [Mr. WYDEN], the Senator from Georgia [Mr. COVERDELL], the Senator from Washington [Mrs. MURRAY], the Senator from Alabama [Mr. SESSIONS], the Senator from Illinois [Mr. DURBIN], the Senator from Montana [Mr. BURNS], the Senator from Massachusetts [Mr. KERRY], the Senator from Missouri [Mr. ASHCROFT], the Senator from Nevada [Mr. BRYAN], the Senator from Michigan [Mr. ABRAHAM], the Senator from Georgia [Mr. CLELAND], the Senator from South Carolina [Mr. THURMOND], the Senator from Hawaii [Mr. AKAKA], the Senator from Connecticut [Mr. DODD], the Senator from California [Mrs. FEINSTEIN], the Senator from Wisconsin [Mr. KOHL], the Senator from Nebraska [Mr. KERREY], the Senator from Missouri [Mr. BOND], the Senator from Florida [Mr. GRAHAM], the Senator from Vermont [Mr. LEAHY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Arizona [Mr. MCCAIN], the Senator from New Mexico [Mr. DOMENICI], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Tennessee [Mr. FRIST], the Senator from Indiana [Mr.

LUGAR], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Illinois [Mr. FITZGERALD], the Senator from South Dakota [Mr. JOHNSON], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Resolution 72, a resolution designating the month of May in 1999 and 2000 as ''National ALS Awareness Month.''

SENATE RESOLUTION 84

At the request of Ms. SNOWE, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Resolution 84, a resolution to designate the month of May, 1999, as ''National Alpha 1 Awareness Month.''

SENATE RESOLUTION 88—RELATIVE TO THE DEATH OF THE HONORABLE ROMAN L. HRUSKA, FORMERLY A SENATOR FROM THE STATE OF NEBRASKA

Mr. HAGEL (for himself and Mr. KERREY) submitted the following resolution; which was considered and agreed to:

S. RES. 88

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Roman L. Hruska, formerly a Senator from the State of Nebraska.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the deceased Senator.

SENATE RESOLUTION 89—DESIGNATING THE HENRY CLAY DESK IN THE SENATE CHAMBER FOR ASSIGNMENT TO THE SENIOR SENATOR FROM KENTUCKY AT THAT SENATOR'S REQUEST

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 89

Resolved, That during the One Hundred Sixth Congress and each Congress thereafter, the desk located within the Senate Chamber and used by Senator Henry Clay shall, at the request of the senior Senator from the State of Kentucky, be assigned to that Senator for use in carrying out his or her senatorial duties during that Senator's term of office.

AMENDMENTS SUBMITTED

Y2K ACT

LEAHY AMENDMENT NO. 273

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill (S.96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of that year's date; as follows:

At the appropriate place, insert the following:

SEC. . EXCLUSION FOR CONSUMERS.

(a) CONSUMER ACTIONS.—This does not apply to any Y2K action brought by a consumer.

(b) DEFINITIONS.—In this section:

(1) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product for purposes other than resale.

(2) CONSUMER PRODUCT.—The ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

INHOFE AMENDMENT NO. 274

(Ordered to lie on the table.)

Mr. INHOFE submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

On page 11, between lines 10 and 11, insert the following:

(f) APPLICATION TO ACTIONS DESCRIBED IN SECTION 3(1)(C).—

(1) IN GENERAL.—This Act applies as provided in this section to actions by a government entity described in section 3(1)(C).

(2) DEFINITIONS.—In this subsection:

(A) DEFENDANT.—

(i) IN GENERAL.—The term ''defendant'' includes a State or local government.

(ii) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) LOCAL GOVERNMENT.—The term ''local government'' means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in clause (i) recognized by the Secretary of Housing and Urban Development.

(B) Y2K UPSET.—The term ''Y2K upset''—

(i) means an exceptional incident involving temporary noncompliance with applicable federally enforceable requirements because of factors related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable requirements that provide for the safety and soundness of the banking or monetary system, including the protection of depositors;

(III) noncompliance to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance; or

(V) lack of preparedness for Y2K.

(3) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET.—A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a good faith effort to effectively remediate Y2K problems;

(B) a Y2K upset occurred as a result of a Y2K system failure or other Y2K emergency;

(C) noncompliance with the applicable federally enforceable requirement was unavoidable in the face of a Y2K emergency or was intended to prevent the disruption of critical functions or services that could result in the harm of life or property;

(D) upon identification of noncompliance the defendant invoking the defense began immediate actions to remediate any violation of federally enforceable requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that it became aware of the upset.

(4) GRANT OF A Y2K UPSET DEFENSE.—Subject to the other provisions of this section, the Y2K upset defense shall be a complete defense to any action brought as a result of noncompliance with federally enforceable requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

(5) LENGTH OF Y2K UPSET.—The maximum allowable length of the Y2K upset shall be not more than 30 days beginning on the date of the upset unless granted specific relief by the appropriate regulatory authority.

(6) VIOLATION OF A Y2K UPSET.—Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to penalties provided in section 1001 of title 18, United States Code.

(7) EXPIRATION OF DEFENSE.—The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

HOLLINGS AMENDMENTS NOS. 275–281

(Ordered to lie on the table.)

Mr. HOLLINGS submitted seven amendments intended to be proposed by him to the bill, S. 96, supra; as follows:

AMENDMENT NO. 275

Strike section 16.

AMENDMENT NO. 276

Strike section 15.

AMENDMENT NO. 277

Strike section 14.

AMENDMENT NO. 278

Strike section 13.

AMENDMENT NO. 279

Strike section 6.

AMENDMENT NO. 280

Strike section 5.

AMENDMENT NO. 281

On page six, strike line 19 through Page 10, line 7 and insert the following:

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action alleging commercial loss commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

(9) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss incurred by a plaintiff in the course of operating a business enterprise that provides goods or services for compensation.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a state of Federal court after February 22, 1999, in which the plaintiff alleges harm from commercial loss arising from a Y2K failure occurring before January 1, 2003, including any appeal, reward, stay, or other judicial, administrative, or alternative dispute resolution preceding in such an action.

TORRICELLI AMENDMENT NO. 282

(Ordered to lie on the table.)

Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

Strike section 9.

At the appropriate place, insert the following:

SEC. ___. ANTIPROFITEERING.

(a) DEFINITIONS.—In this section:

(1) PRODUCT SELLER.—The term ''product seller'' means a person who in the course of a business conducted for that purpose, sells an information technology product.

(2) YEAR 2000 COMPLIANT.—The term ''year 2000 compliant'' means, with respect to information technology, that the information technology accurately processes (including calculating, comparing, and sequencing) date and time data from, into, and between the 20th and 21st centuries and the years 1999 and 2000, and leap year calculations, to the extent that other information technology properly exchanges date and time data with it.

(b) CORRECTION.—Notwithstanding any other provision of law, during the 60-day period beginning on the date on which a plaintiff or prospective plaintiff provides notice under section 7, if—

(1) the plaintiff or prospective plaintiff is a business and alleges harm caused by an information technology product that is not year 2000 compliant; and

(2) a product seller that is a defendant or prospective defendant sold the plaintiff that information technology product;

that product seller shall be required to render that information technology product year 2000 compliant (if a practicable method of doing so is available) and provide the applicable certification under subsection (c).

(c) CERTIFICATION.—A product seller that is required under subsection (b) to provide certification under this subsection shall certify, as applicable, that—

(1) the product seller is not obligated, under a contract, written agreement, or applicable State law, to render the information technology product described in subsection (b) year 2000 compliant;

(2) a practicable method of rendering the information technology product described in subsection (b) year 2000 compliant is not available; or

(3)(A) the correction to render the information technology product described in subsection (b) year 2000 compliant is provided at actual cost to the seller; and

(B) the correction is being provided at the least costly and most practicable manner available.

(d) PENALTIES.—Notwithstanding any other provision of this Act, if a product seller provides false information in a certification under subsection (c), in a year 2000 civil action for harm caused by the information technology product—

(1) the plaintiff shall have the burden of proof in demonstrating, by a preponderance of the evidence, that the product seller made a false certification under subsection (c); and

(2) if the plaintiff proves under paragraph (1) that such a false certification was made, the product seller shall be liable for 3 times the amount of actual and consequential damages suffered by the business as a result of the year 2000 failure involved.

(e) EFFECT ON WRITTEN AGREEMENTS AND CONTRACT OBLIGATIONS.—Nothing in this section may supersede, alter, or abrogate a written agreement or contractual obligation entered into by a product seller and a party harmed by an information technology product that is not year 2000 compliant.

FEINGOLD AMENDMENTS NOS. 283–286

(Ordered to lie on the table.)

Mr. FEINGOLD submitted four amendments intended to be proposed by him to the bill, S. 96, supra; as follows:

AMENDMENT NO. 283

In section 14, strike subsection (c).

AMENDMENT NO. 284

In section 5(a), strike ''In any Y2K action in which punitive damages are permitted by applicable State law,'' and inserting ''Punitive damages may be awarded in a Y2K action and''.

AMENDMENT NO. 285

In section 6, strike subsection (g).

AMENDMENT NO. 286

Strike sections 5 through 14 and insert in lieu thereof the following:

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—Punitive damages may be awarded in a Y2K action and the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees.

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility

under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) Fraud; recklessness.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NEW WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMNT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUITON.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except that an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not alter than 6 months after the date on which such payment was made.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or less allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant of service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSABILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which

paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contact, or a statute enacted before January 1, 1999, requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable Federal or State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amended, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c) whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by clear and convincing evidence.

(b) LIMITATION OF BYSTANDER LIABILITY FOR Y2K FAILURES.—(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves, by clear and convincing evidence, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for who special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATION OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, systems, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership or non-profit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee or employee from the business or organization during that 12 months immediatley preceding the act or omission for which liability is inmposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose

regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

DODD AMENDMENT NO. 287

(Ordered to lie on the table.)

Mr. DODD submitted an amendment intended to be proposed by him to the bill, S. 96, supra; as follows:

In section 5, strike subsection (b) and insert the following:

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) DEFENDANT DESCRIBED.—A defendant described in this paragraph is a defendant—

(A) who—

(i) is sued in his or her capacity as a individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, or organization with fewer than 25 full-time employees.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

In section 13—

(1) in subsection (a), strike ''by clear and convincing evidence'' and inserting ''by the standard of evidence under applicable State law in effect before January 1, 1999'';

(2) in subsection (b)(1), strike ''by clear and convincing evidence'' and inserting ''by the standard of evidence under applicable State law in effect before January 1, 1999''; and

(3) at the end add the following:

(d) PROTECTIONS OF THE YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT APPLY.—The protections for the exchange of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) shall apply to this Act.

Strike section 14.

FEINSTEIN AMENDMENT NO. 288

(Ordered to lie on the table.)

Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill, S. 96, supra; as follows:

Strike Section 5.

Strike Section 13.

Strike Section 14.

MURKOWSKI AMENDMENTS NOS. 289–290

(Ordered to lie on the table.)

Mr. MURKOWSKI submitted two amendments intended to be proposed by him to the bill, S. 96, supra; as follows:

AMENDMENT NO. 289

At the end of section 5(b)(3), strike ''plaintiff.'' and insert the following:

''plaintiff or that the defendant sold the product or service that is the subject of the Y2K action after the date of enactment of this Act knowing that the product or service will have a Y2K failure, without a signed waiver from the plaintiff.''

AMENDMENT NO. 290

Section 7(c) of the bill is amended by adding at the end the following:

(5) PRIORITY.—A prospective defendant receiving more than 1 notice under this section shall give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

KENNEDY AMENDMENT NO. 291

Mr. KENNEDY proposed an amendment to the motion to recommit proposed by him to the bill, S. 96, supra; as follows:

At the appropriate place, insert the following:

SEC. . FAIR MINIMUM WAGE.

(a) SHORT TITLE.—This section may be cited as the ''Fair Minimum Wage Act of 1999''.

(b) MINIMUM WAGE INCREASE.—

(1) WAGE.—Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.65 an hour during the year beginning on September 1, 1999; and

''(B) $6.15 an hour beginning on September 1, 2000;''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on September 1, 1999.

(c) APPLICABILITY OF MINIMUM WAGE TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—The provisions of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to the Commonwealth of the Northern Mariana Islands.

LOTT AMENDMENT NO. 292

Mr. MCCAIN (for Mr. LOTT) proposed an amendment to the bill, S. 96, supra; as follows:

In lieu of the instructions insert the following: ''with instructions to report forthwith with the following amendment:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress

supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection

(b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and

the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee,

or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

LOTT AMENDMENT NO. 293

Mr. MCCAIN (for Mr. LOTT) proposed an amendment to amendment No. 292 proposed by Mr. LOTT to the bill, S. 96, supra; as follows:

Strike all after the word ''with'' and insert ''Instructions to report forthwith with the following amendment:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is

subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities

against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective five days after the date of enactment.

LOTT AMENDMENT NO. 294

Mr. LOTT proposed an amendment to the motion to recommit proposed by him to the bill, S. 96, supra; as follows:

At the end of the instructions add the following:

with an amendment as follows:

Strike all after the word ''SECTION'' and add the following:

1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same

damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective four days after the date of enactment.

LOTT AMENDMENT NO. 295

Mr. LOTT proposed an amendment to amendment No. 294 proposed by Mr. LOTT to the bill, S. 96, supra; as follows:

Strike all after the word ''1'' and add the following:

SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Application of Act.
Sec. 5. Punitive damages limitations.
Sec. 6. Proportionate liability.
Sec. 7. Pre-litigation notice.
Sec. 8. Pleading requirements.
Sec. 9. Duty to mitigate.
Sec. 10. Application of existing impossibility or commercial impracticability doctrines.
Sec. 11. Damages limitation by contract.
Sec. 12. Damages in tort claims.
Sec. 13. State of mind; bystander liability; control.
Sec. 14. Liability of officers, directors, and employees.
Sec. 15. Appointment of special masters or magistrates for Y2K actions.
Sec. 16. Y2K actions as class actions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the

time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with Y2K date change, and work against the successful resolution of those difficulties.

(7) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

(b) PURPOSES.—Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purpose of this Act are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve Y2K computer date-change problems before they develop;

(2) to encourage continued Y2K remediation and testing efforts by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve Y2K disputes by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of Y2K problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action''—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense is related directly or indirectly to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) GOVERNMENT ENTITY.—The term ''government entity'' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(8) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999, for a Y2K failure occurring before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) CONTRACT PRESERVATION.—

(1) IN GENERAL.—Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) INTERPRETATION OF CONTRACT.—In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(3) NO CAP IF INJURY SPECIFICALLY INTENDED.—Neither paragraph (1) nor paragraph (2) applies if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) GOVERNMENT ENTITIES.—Punitive damages in a Y2K action may not be awarded against a government entity.

SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY.—

(1) DETERMINATION OF RESPONSIBILITY.—In any Y2K action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiff.

(c) JOINT LIABILITY FOR SPECIFIC INTENT OR FRAUD.—

(1) IN GENERAL.—Notwithstanding subsection (a), the liability of a defendant in a Y2K action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) FRAUD; RECKLESSNESS.—

(A) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS.—For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES.—

(1) UNCOLLECTIBLE SHARE.—

(A) IN GENERAL.—Notwithstanding subsection (a), if, upon motion not later than 6 months after a final judgment is entered in any Y2K action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) PERCENTAGE OF NET WORTH.—The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) OTHER PLAINTIFFS.—For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability of a defendant under this clause may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (b)(2).

(B) OVERALL LIMIT.—The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(2) SPECIAL RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE.—

(1) IN GENERAL.—A defendant who settles a Y2K action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION.—If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) GENERAL RIGHT OF CONTRIBUTION.—

(1) IN GENERAL.—A defendant who is jointly and severally liable for damages in any Y2K action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution in connection with a Y2K action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED.—Nothing in this section pre-empts or supersedes any provision of State statutory law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRE-LITIGATION NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K claim shall send a written notice by certified mail to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) PERSON TO WHOM NOTICE TO BE SENT.—The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or to a similarly-situated person for any other enterprise; or

(3) if the prospective defendant has designated a person to receive pre-litigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the

designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR.—The Written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSIBILITY.—A written statement required by this paragraph is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence at legal action against that prospective defendant.

(e) REMEDIATION PERIOD.—

(1) IN GENERAL.—If the prospective defendant responds and proposes remedial action it will take, of offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT.—The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED.—Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED.—Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) EFFECT OF CONTRACTUAL OR STATUTORY WAITING PERIODS.—In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of non-performance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED.—Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure.

SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL.—A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable State law.

(b) ECONOMIC LOSS.—For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term ''economic loss''—

(1) means amounts awarded to compensate an injured party for any loss other than losses described in subsection (a)(2); and

(2) includes amounts awarded for damages such as—

(A) lost profits or sales;

(B) business interruption;

(C) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(D) losses that arise because of the claims of third parties;

(E) losses that must be plead as special damages; and

(F) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN ACTIONS EXCLUDED.—This section does not affect, abrogate, amend, or alter any patent, copyright, trade-secret, trademark, or service-mark action, or any claim for defamation or invasion of privacy under Federal or State law.

(d) CERTAIN OTHER ACTIONS.—A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c), whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND.—In a Y2K action other than a claim for breach of repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that elements of the claim by clear and convincing evidence.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES.—

(1) IN GENERAL.—With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY.—For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) CERTAIN CLAIMS EXCLUDED.—For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

SEC. 14. LIABILITY OF OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) is not personally liable in any Y2K action in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability is imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) made statements intended to be misleading regarding any actual or potential year 2000 problem; or

(2) withheld from the public significant information there was a legal duty to disclose regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of State law, charter, or a bylaw authorized by State law in existence on January 1, 1999, that establishes lower financial limits on the liability of a director, officer, trustee, or employee of such a business or organization.

SEC. 15. APPOINTMENT OF SPECIAL MASTERS OR MAGISTRATES FOR Y2K ACTIONS.

Any District Court of the United States in which a Y2K action is pending may appoint a special master or a magistrate to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 16. Y2K ACTIONS AS CLASS ACTIONS.

(a) MINIMUM INJURY REQUIREMENT.—A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including as estimate of the total amount that would be paid if the requested damages were to be granted.

(c) FORUM FOR Y2K CLASS ACTIONS.—

(1) JURISDICTION.—Except as provided in paragraph (2), a Y2K action may be brought as a class action in a United States District Court or removed to a United States District Court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(2) EXCEPTION.—A Y2K action may not be brought or removed as a class action under this section if—

(A) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(B) the primary defendants are citizens of that State; and

(C) the claims asserted will be governed primarily by the law of that State, or

the primary defendants are States, State officials, or other governmental entities against whom the United States District Court may be foreclosed from ordering relief.

(D) This section shall become effective seven days after the date of enactment.

LOTT AMENDMENT NO. 296

Mr. LOTT proposed an amendment to the motion to recommit proposed by him to the bill, S. 557, supra; as follows:

At the end of the instructions, add the following:

with an amendment as follows:

Strike all after the word ''TITLE'' and add the following:

II—SOCIAL SECURITY SURPLUS PRESERVATION AND DEBT REDUCTION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Social Security Surplus Preservation and Debt Reduction Act''.

SEC. 202. FINDINGS.

Congress finds that—

(1) the $69,246,000,000 unified budget surplus achieved in fiscal year 1998 was entirely due to surpluses generated by the social security trust funds and the cumulative unified budget surpluses projected for subsequent fiscal years are primarily due to surpluses generated by the social security trust funds;

(2) Congress and the President should balance the budget excluding the surpluses generated by the social security trust funds;

(3) according to the Congressional Budget Office, balancing the budget excluding the surpluses generated by the social security trust funds will reduce the debt held by the public by a total of $1,723,000,000,000 by the end of fiscal year 2009; and

(4) social security surpluses should be used for social security reform or to reduce the debt held by the public and should not be spent on other programs.

SEC. 203. PROTECTION OF THE SOCIAL SECURITY TRUST FUNDS.

(a) PROTECTION BY CONGRESS.—

(1) REAFFIRMATION OF SUPPORT.—Congress reaffirms its support for the provisions of section 13301 of the Budget Enforcement Act of 1990 that provides that the receipts and disbursements of the social security trust funds shall not be counted for the purposes of the budget submitted by the President, the congressional budget, or the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) PROTECTION OF SOCIAL SECURITY BENEFITS.—If there are sufficient balances in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Secretary of Treasury shall give priority to the payment of social security benefits required to be paid by law.

(b) POINTS OF ORDER.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the Senate to consider a concurrent resolution on the budget, an amendment thereto, or a conference report thereon that violates section 13301 of the Budget Enforcement Act of 1990.

''(k) DEBT HELD BY THE PUBLIC POINT OF ORDER.—It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would—

''(1) increase the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985; or

''(2) provide additional borrowing authority that would result in the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 being exceeded.

''(l) SOCIAL SECURITY SURPLUS PROTECTION POINT OF ORDER.—

''(1) IN GENERAL.—It shall not be in order in the Senate to consider a concurrent resolution on the budget, an amendment thereto, or a conference report thereon that sets forth a deficit in any fiscal year.

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is suspended; or

''(B) the deficit for a fiscal year results solely from the enactment of—

''(i) social security reform legislation, as defined in section 253A(e)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985; or

''(ii) provisions of legislation that are designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985.''.

(c) SUPERMAJORITY WAIVER AND APPEAL.—Subsections (c)(1) and (d)(2) of section 904 of the Congressional Budget Act of 1974 are amended by striking ''305(b)(2),'' and inserting ''301(k), 301(l), 305(b)(2), 318,''.

(d) CONFORMING AMENDMENT.—Section 318 of the Congressional Budget Act of 1974, as added by this Act, is amended by adding at the end the following:

''(c) EXCEPTION FOR DEFENSE SPENDING.—Subsection (b) shall not apply against an

emergency designation for a provision making discretionary appropriations in the defense category.''.

SEC. 204. DEDICATION OF SOCIAL SECURITY SURPLUSES TO REDUCTION IN THE DEBT HELD BY THE PUBLIC.

(a) AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.—The Congressional Budget Act of 1974 is amended—

(1) in section 3, by adding at the end the following:

''(11)(A) The term 'debt held by the public' means the outstanding face amount of all debt obligations issued by the United States Government that are held by outside investors, including individuals, corporations, State or local governments, foreign governments, and the Federal Reserve System.

''(B) For the purpose of this paragraph, the term 'face amount', for any month, of any debt obligation issued on a discount basis that is not redeemable before maturity at the option of the holder of the obligation is an amount equal to the sum of—

''(i) the original issue price of the obligation; plus

''(ii) the portion of the discount on the obligation attributable to periods before the beginning of such month.

''(12) The term 'social security surplus' means the amount for a fiscal year that receipts exceed outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.'';

(2) in section 301(a) by—

(A) redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectfully; and

(B) inserting after paragraph (5) the following:

''(6) the debt held by the public; and''; and

(3) in section 310(a) by—

(A) striking ''or'' at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) inserting the following new paragraph;

''(4) specify the amounts by which the statutory limit on the debt held by the public is to be changed and direct the committee having jurisdiction to recommend such change; or''.

(b) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—The Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in section 250, by striking subsection (b) and inserting the following:

''(b) GENERAL STATEMENT OF PURPOSE.—This part provides for the enforcement of—

''(1) a balanced budget excluding the receipts and disbursements of the social security trust funds; and

''(2) a limit on the debt held by the public to ensure that social security surpluses are used for social security reform or to reduce debt held by the public and are not spent on other programs.'';

(2) in section 250(c)(1), by inserting ''' debt held by the public', 'social security surplus'" after ''outlays',''; and

(3) by inserting after section 253 the following:

"SEC. 253A. DEBT HELD BY THE PUBLIC LIMIT.

''(a) LIMIT.—The debt held by the public shall not exceed—

''(1) for the period beginning May 1, 2000 through April 30, 2001, $3,628,000,000,000;

''(2) for the period beginning May 1, 2001 through April 30, 2002, $3,512,000,000,000;

''(3) for the period beginning May 1, 2002 through April 30, 2004, $3,383,000,000,000;

''(4) for the period beginning May 1, 2004 through April 30, 2006, $3,100,000,000,000;

''(5) for the period beginning May 1, 2006 through April 30, 2008, $2,775,000,000,000; and,

''(6) for the period beginning May 1, 2008 through April 30, 2010, $2,404,000,000,000.

''(b) ADJUSTMENTS FOR ACTUAL SOCIAL SECURITY SURPLUS LEVELS.—

''(1) ESTIMATED LEVELS.—The estimated level of social security surpluses for the purposes of this section is—

''(A) for fiscal year 1999, $127,000,000,000;

''(B) for fiscal year 2000, $137,000,000,000;

''(C) for fiscal year 2001, $145,000,000,000;

''(D) for fiscal year 2002, $153,000,000,000;

''(E) for fiscal year 2003, $162,000,000,000;

''(F) for fiscal year 2004, $171,000,000,000;

''(G) for fiscal year 2005, $184,000,000,000;

''(H) for fiscal year 2006, $193,000,000,000;

''(I) for fiscal year 2007, $204,000,000,000;

''(J) for fiscal year 2008, $212,000,000,000; and

''(K) for fiscal year 2009, $218,000,000,000.

''(2) ADJUSTMENT TO THE LIMIT FOR ACTUAL SOCIAL SECURITY SURPLUSES.—After October 1 and no later than December 31 of each year, the Secretary shall make the following calculations and adjustments:

''(A) CALCULATION.—After the Secretary determines the actual level for the social security surplus for the current year, the Secretary shall take the estimated level of the social security surplus for that year specified in paragraph (1) and subtract that actual level.

''(B) ADJUSTMENT.—

''(i) 2000 THROUGH 2004.—With respect to the periods described in subsections (a)(1), (a)(2), and (a)(3), the Secretary shall add the amount calculated under subparagraph (A) to—

''(I) the limit set forth in subsection (a) for the period of years that begins on May 1st of the following calendar year; and

''(II) each subsequent limit.

''(ii) 2004 THROUGH 2010.—With respect to the periods described in subsections (a)(4), (a)(5), and (a)(6), the Secretary shall add the amount calculated under subparagraph (A) to—

''(I) the limit set forth in subsection (a) for the period of years that includes May 1st of the following calendar year; and

''(II) each subsequent limit.

''(c) ADJUSTMENT TO THE LIMIT FOR EMERGENCIES.—

''(1) ESTIMATE OF LEGISLATION.—

''(A) CALCULATION.—If legislation is enacted into law that contains a provision that is designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e), OMB shall estimate the amount the debt held by the public will change as a result of the provision's effect on the level of total outlays and receipts excluding the impact on outlays and receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

''(B) BASELINE LEVELS.—OMB shall calculate the changes in subparagraph (A) relative to baseline levels for each fiscal year through fiscal year 2010 using current estimates.

''(C) ESTIMATE.—OMB shall include the estimate required by this paragraph in the report required under section 251(a)(7) or section 252(d), as the case may be.

''(2) ADJUSTMENT.—After January 1 and no later than May 1 of each calendar year beginning with calendar year 2000—

''(A) with respect to the periods described in subsections (a)(1), (a)(2), and (a)(3), the Secretary shall add the amounts calculated under paragraph (1)(A) for the current year included in the report referenced in paragraph (1)(C) to—

''(i) the limit set forth in subsection (a) for the period of years that begins on May 1 of that calendar year; and

''(ii) each subsequent limit; and

''(B) with respect to the periods described in subsections (a)(4), (a)(5), and (a)(6), the Secretary shall add the amounts calculated under paragraph (1)(A) for the current year included in the report referenced in paragraph (1)(C) to—

''(i) the limit set forth in subsection (a) for the period of years that includes May 1 of that calendar year; and

''(ii) each subsequent limit.

''(3) EXCEPTION.—The Secretary shall not make the adjustments pursuant to this section if the adjustments for the current year are less than the on-budget surplus for the year before the current year.

''(d) ADJUSTMENT TO THE LIMIT FOR LOW ECONOMIC GROWTH AND WAR.—

''(1) SUSPENSION OF STATUTORY LIMIT ON DEBT HELD BY THE PUBLIC.—

''(A) LOW ECONOMIC GROWTH.—If the most recent of the Department of Commerce's advance, preliminary, or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than 1 percent, the limit on the debt held by the public established in this section is suspended.

''(B) WAR.—If a declaration of war is in effect, the limit on the debt held by the public established in this section is suspended.

''(2) RESTORATION OF STATUTORY LIMIT ON DEBT HELD BY THE PUBLIC.—

''(A) RESTORATION OF LIMIT.—The statutory limit on debt held by the public shall be restored on May 1 following the quarter in which the level of real Gross Domestic Product in the final report from the Department of Commerce is equal to or is higher than the level of real Gross Domestic Product in the quarter preceding the first two quarters that caused the suspension of the pursuant to paragraph (1).

''(B) ADJUSTMENT.—

''(i) CALCULATION.—The Secretary shall take level of the debt held by the public on October 1 of the year preceding the date referenced in subparagraph (A) and subtract the limit in subsection (a) for the period of years that includes the date referenced in subparagraph (A).

''(ii) ADJUSTMENT.—The Secretary shall add the amount calculated under clause (i) to—

''(I) the limit in subsection (a) for the period of fiscal years that includes the date referenced in subparagraph (A); and

''(II) each subsequent limit.

''(e) ADJUSTMENT TO THE LIMIT FOR SOCIAL SECURITY REFORM PROVISIONS THAT AFFECT ON-BUDGET LEVELS.—

''(1) ESTIMATE OF LEGISLATION.—

''(A) CALCULATION.—If social security reform legislation is enacted, OMB shall estimate the amount the debt held by the public will change as a result of the legislation's effect on the level of total outlays and receipts excluding the impact on outlays and receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

''(B) BASELINE LEVELS.—OMB shall calculate the changes in subparagraph (A) relative to baseline levels for each fiscal year through fiscal year 2010 using current estimates.

''(C) ESTIMATE.—OMB shall include the estimate required by this paragraph in the report required under section 252(d) for social security reform legislation.

''(2) ADJUSTMENT TO LIMIT ON THE DEBT HELD BY THE PUBLIC.—If social security reform legislation is enacted, the Secretary shall adjust the limit on the debt held by the public for each period of fiscal years by the amounts determined under paragraph (1)(A) for the relevant fiscal years included in the report referenced in paragraph (1)(C).

''(e) DEFINITIONS.—In this section:

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(2) SOCIAL SECURITY REFORM LEGISLATION.—The term 'social security reform legislation' means a bill or joint resolution that is enacted into law and includes a provision stating the following:

'''( ) SOCIAL SECURITY REFORM LEGISLATION.—For the purposes of the Social Security Surplus Preservation and Debt Reduction Act, this Act constitutes social security reform legislation.'

This paragraph shall apply only to the first bill or joint resolution enacted into law as described in this paragraph.

''(3) SOCIAL SECURITY REFORM PROVISIONS.—The term 'social security reform provisions' means a provision or provisions identified in social security reform legislation stating the following:

'''( ) SOCIAL SECURITY REFORM PROVISIONS.—For the purposes of the Social Security Surplus Preservation and Debt Reduction Act, _____ of this Act constitutes or constitute social security reform provisions.', with a list of specific provisions in that bill or joint resolution specified in the blank space.''.

SEC. 205. PRESIDENT'S BUDGET.

Section 1105(f) of title 31, United States Code, is amended by striking ''in a manner consistent'' and inserting ''in compliance''.

SEC. 206. SUNSET.

This title and the amendments made by this title shall expire on May 3, 2010.

LOTT AMENDMENT NO. 297

Mr. LOTT proposed an amendment to amendment No. 296 proposed by Mr. LOTT to the bill, S. 96, supra; as follows:

In the amendment strike all after the word ''II'' and add the following:

SOCIAL SECURITY SURPLUS PRESERVATION AND DEBT REDUCTION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Social Security Surplus Preservation and Debt Reduction Act''.

SEC. 202. FINDINGS.

Congress finds that—

(1) the $69,246,000,000 unified budget surplus achieved in fiscal year 1998 was entirely due to surpluses generated by the social security trust funds and the cumulative unified budget surpluses projected for subsequent fiscal years are primarily due to surpluses generated by the social security trust funds;

(2) Congress and the President should balance the budget excluding the surpluses generated by the social security trust funds;

(3) according to the Congressional Budget Office, balancing the budget excluding the surpluses generated by the social security trust funds will reduce the debt held by the public by a total of $1,723,000,000,000 by the end of fiscal year 2009; and

(4) social security surpluses should be used for social security reform or to reduce the debt held by the public and should not be spent on other programs.

SEC. 203. PROTECTION OF THE SOCIAL SECURITY TRUST FUNDS.

(a) PROTECTION BY CONGRESS.—

(1) REAFFIRMATION OF SUPPORT.—Congress reaffirms its support for the provisions of section 13301 of the Budget Enforcement Act of 1990 that provides that the receipts and disbursements of the social security trust funds shall not be counted for the purposes of the budget submitted by the President, the congressional budget, or the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) PROTECTION OF SOCIAL SECURITY BENEFITS.—If there are sufficient balances in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Secretary of Treasury shall give priority to the payment of social security benefits required to be paid by law.

(b) POINTS OF ORDER.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the Senate to consider a concurrent resolution on the budget, an amendment thereto, or a conference report thereon that violates section 13301 of the Budget Enforcement Act of 1990.

''(k) DEBT HELD BY THE PUBLIC POINT OF ORDER.—It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would—

''(1) increase the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985; or

''(2) provide additional borrowing authority that would result in the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 being exceeded.

''(l) SOCIAL SECURITY SURPLUS PROTECTION POINT OF ORDER.—

''(1) IN GENERAL.—It shall not be in order in the Senate to consider a concurrent resolution on the budget, an amendment thereto, or a conference report thereon that sets forth a deficit in any fiscal year.

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the limit on the debt held by the public in section 253A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is suspended; or

''(B) the deficit for a fiscal year results solely from the enactment of—

''(i) social security reform legislation, as defined in section 253A(e)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985; or

''(ii) provisions of legislation that are designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985.''.

(c) SUPERMAJORITY WAIVER AND APPEAL.—Subsections (c)(1) and (d)(2) of section 904 of the Congressional Budget Act of 1974 are amended by striking ''305(b)(2),'' and inserting ''301(k), 301(l), 305(b)(2), 318,''.

(d) CONFORMING AMENDMENT.—Section 318 of the Congressional Budget Act of 1974, as added by this Act, is amended by adding at the end the following:

''(c) EXCEPTION FOR DEFENSE SPENDING.—Subsection (b) shall not apply against an emergency designation for a provision making discretionary appropriations in the defense category.''.

SEC. 204. DEDICATION OF SOCIAL SECURITY SURPLUSES TO REDUCTION IN THE DEBT HELD BY THE PUBLIC.

(a) AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.—The Congressional Budget Act of 1974 is amended—

(1) in section 3, by adding at the end the following:

''(11)(A) The term 'debt held by the public' means the outstanding face amount of all debt obligations issued by the United States Government that are held by outside investors, including individuals, corporations, State or local governments, foreign governments, and the Federal Reserve System.

''(B) For the purpose of this paragraph, the term 'face amount', for any month, of any debt obligation issued on a discount basis that is not redeemable before maturity at the option of the holder of the obligation is an amount equal to the sum of—

''(i) the original issue price of the obligation; plus

''(ii) the portion of the discount on the obligation attributable to periods before the beginning of such month.

''(12) The term 'social security surplus' means the amount for a fiscal year that receipts exceed outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.'';

(2) in section 301(a) by—

(A) redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectfully; and

(B) inserting after paragraph (5) the following:

''(6) the debt held by the public; and''; and

(3) in section 310(a) by—

(A) striking ''or'' at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) inserting the following new paragraph;

''(4) specify the amounts by which the statutory limit on the debt held by the public is to be changed and direct the committee having jurisdiction to recommend such change; or''.

(b) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—The Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in section 250, by striking subsection (b) and inserting the following:

''(b) GENERAL STATEMENT OF PURPOSE.—This part provides for the enforcement of—

''(1) a balanced budget excluding the receipts and disbursements of the social security trust funds; and

''(2) a limit on the debt held by the public to ensure that social security surpluses are used for social security reform or to reduce debt held by the public and are not spent on other programs.'';

(2) in section 250(c)(1), by inserting '''' debt held by the public', 'social security surplus'''' after ''outlays',''; and

(3) by inserting after section 253 the following:

''SEC. 253A. DEBT HELD BY THE PUBLIC LIMIT.

''(a) LIMIT.—The debt held by the public shall not exceed—

''(1) for the period beginning May 1, 2000 through April 30, 2001, $3,628,000,000,000;

''(2) for the period beginning May 1, 2001 through April 30, 2002, $3,512,000,000,000;

''(3) for the period beginning May 1, 2002 through April 30, 2004, $3,383,000,000,000;

''(4) for the period beginning May 1, 2004 through April 30, 2006, $3,100,000,000,000;

''(5) for the period beginning May 1, 2006 through April 30, 2008, $2,775,000,000,000; and,

''(6) for the period beginning May 1, 2008 through April 30, 2010, $2,404,000,000,000.

''(b) ADJUSTMENTS FOR ACTUAL SOCIAL SECURITY SURPLUS LEVELS.—

''(1) ESTIMATED LEVELS.—The estimated level of social security surpluses for the purposes of this section is—

''(A) for fiscal year 1999, $127,000,000,000;

''(B) for fiscal year 2000, $137,000,000,000;

''(C) for fiscal year 2001, $145,000,000,000;

''(D) for fiscal year 2002, $153,000,000,000;

''(E) for fiscal year 2003, $162,000,000,000;

''(F) for fiscal year 2004, $171,000,000,000;

''(G) for fiscal year 2005, $184,000,000,000;

''(H) for fiscal year 2006, $193,000,000,000;

''(I) for fiscal year 2007, $204,000,000,000;

''(J) for fiscal year 2008, $212,000,000,000; and

''(K) for fiscal year 2009, $218,000,000,000.

''(2) ADJUSTMENT TO THE LIMIT FOR ACTUAL SOCIAL SECURITY SURPLUSES.—After October 1 and no later than December 31 of each year, the Secretary shall make the following calculations and adjustments:

''(A) CALCULATION.—After the Secretary determines the actual level for the social security surplus for the current year, the Secretary shall take the estimated level of the social security surplus for that year specified

in paragraph (1) and subtract that actual level.

''(B) ADJUSTMENT.—

''(i) 2000 THROUGH 2004.—With respect to the periods described in subsections (a)(1), (a)(2), and (a)(3), the Secretary shall add the amount calculated under subparagraph (A) to—

''(I) the limit set forth in subsection (a) for the period of years that begins on May 1st of the following calendar year; and

''(II) each subsequent limit.

''(ii) 2004 THROUGH 2010.—With respect to the periods described in subsections (a)(4), (a)(5), and (a)(6), the Secretary shall add the amount calculated under subparagraph (A) to—

''(I) the limit set forth in subsection (a) for the period of years that includes May 1st of the following calendar year; and

''(II) each subsequent limit.

''(c) ADJUSTMENT TO THE LIMIT FOR EMERGENCIES.—

''(1) ESTIMATE OF LEGISLATION.—

''(A) CALCULATION.—If legislation is enacted into law that contains a provision that is designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e), OMB shall estimate the amount the debt held by the public will change as a result of the provision's effect on the level of total outlays and receipts excluding the impact on outlays and receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

''(B) BASELINE LEVELS.—OMB shall calculate the changes in subparagraph (A) relative to baseline levels for each fiscal year through fiscal year 2010 using current estimates.

''(C) ESTIMATE.—OMB shall include the estimate required by this paragraph in the report required under section 251(a)(7) or section 252(d), as the case may be.

''(2) ADJUSTMENT.—After January 1 and no later than May 1 of each calendar year beginning with calendar year 2000—

''(A) with respect to the periods described in subsections (a)(1), (a)(2), and (a)(3), the Secretary shall add the amounts calculated under paragraph (1)(A) for the current year included in the report referenced in paragraph (1)(C) to—

''(i) the limit set forth in subsection (a) for the period of years that begins on May 1 of that calendar year; and

''(ii) each subsequent limit; and

''(B) with respect to the periods described in subsections (a)(4), (a)(5), and (a)(6), the Secretary shall add the amounts calculated under paragraph (1)(A) for the current year included in the report referenced in paragraph (1)(C) to—

''(i) the limit set forth in subsection (a) for the period of years that includes May 1 of that calendar year; and

''(ii) each subsequent limit.

''(3) EXCEPTION.—The Secretary shall not make the adjustments pursuant to this section if the adjustments for the current year are less than the on-budget surplus for the year before the current year.

''(d) ADJUSTMENT TO THE LIMIT FOR LOW ECONOMIC GROWTH AND WAR.—

''(1) SUSPENSION OF STATUTORY LIMIT ON DEBT HELD BY THE PUBLIC.—

''(A) LOW ECONOMIC GROWTH.—If the most recent of the Department of Commerce's advance, preliminary, or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than 1 percent, the limit on the debt held by the public established in this section is suspended.

''(B) WAR.—If a declaration of war is in effect, the limit on the debt held by the public established in this section is suspended.

''(2) RESTORATION OF STATUTORY LIMIT ON DEBT HELD BY THE PUBLIC.—

''(A) RESTORATION OF LIMIT.—The statutory limit on debt held by the public shall be restored on May 1 following the quarter in which the level of real Gross Domestic Product in the final report from the Department of Commerce is equal to or is higher than the level of real Gross Domestic Product in the quarter preceding the first two quarters that caused the suspension of the pursuant to paragraph (1).

''(B) ADJUSTMENT.—

''(i) CALCULATION.—The Secretary shall take level of the debt held by the public on October 1 of the year preceding the date referenced in subparagraph (A) and subtract the limit in subsection (a) for the period of years that includes the date referenced in subparagraph (A).

''(ii) ADJUSTMENT.—The Secretary shall add the amount calculated under clause (i) to—

''(I) the limit in subsection (a) for the period of fiscal years that includes the date referenced in subparagraph (A); and

''(II) each subsequent limit.

''(e) ADJUSTMENT TO THE LIMIT FOR SOCIAL SECURITY REFORM PROVISIONS THAT AFFECT ON-BUDGET LEVELS.—

''(1) ESTIMATE OF LEGISLATION.—

''(A) CALCULATION.—If social security reform legislation is enacted, OMB shall estimate the amount the debt held by the public will change as a result of the legislation's effect on the level of total outlays and receipts excluding the impact on outlays and receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

''(B) BASELINE LEVELS.—OMB shall calculate the changes in subparagraph (A) relative to baseline levels for each fiscal year through fiscal year 2010 using current estimates.

''(C) ESTIMATE.—OMB shall include the estimate required by this paragraph in the report required under section 252(d) for social security reform legislation.

''(2) ADJUSTMENT TO LIMIT ON THE DEBT HELD BY THE PUBLIC.—If social security reform legislation is enacted, the Secretary shall adjust the limit on the debt held by the public for each period of fiscal years by the amounts determined under paragraph (1)(A) for the relevant fiscal years included in the report referenced in paragraph (1)(C).

''(e) DEFINITIONS.—In this section:

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(2) SOCIAL SECURITY REFORM LEGISLATION.—The term 'social security reform legislation' means a bill or joint resolution that is enacted into law and includes a provision stating the following:

''( ) SOCIAL SECURITY REFORM LEGISLATION.—For the purposes of the Social Security Surplus Preservation and Debt Reduction Act, this Act constitutes social security reform legislation.'

This paragraph shall apply only to the first bill or joint resolution enacted into law as described in this paragraph.

''(3) SOCIAL SECURITY REFORM PROVISIONS.—The term 'social security reform provisions' means a provision or provisions identified in social security reform legislation stating the following:

''( ) SOCIAL SECURITY REFORM PROVISIONS.—For the purposes of the Social Security Surplus Preservation and Debt Reduction Act, _____ of this Act constitutes or constitute social security reform provisions.', with a list of specific provisions in that bill or joint resolution specified in the blank space.''.

SEC. 205. PRESIDENT'S BUDGET.

Section 1105(f) of title 31, United States Code, is amended by striking ''in a manner consistent'' and inserting ''in compliance''.

SEC. 206. SUNSET.

This title and the amendments made by this title shall expire on April 30, 2010.

This section shall become effective 1 day after enactment.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, April 28, for purposes of conducting a closed full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to receive testimony on damage to the national security from Chinese espionage at DOE nuclear weapons laboratories.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be granted permission to conduct a hearing Wednesday, April 28, at 2:30 p.m., Hearing Room (SD–406), to receive testimony from, George T. Frampton, Jr., nominated by the President to be a Member of the Council on Environmental Quality.

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

COMMITTEE ON FINANCE

Mr. MCCAIN. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Wednesday, April 28, 1999 beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Governmental Affairs Committee Subcommittee on International Security, Proliferation, and Federal Services be permitted to meet on Wednesday, April 28, 1999, at 2:30 p.m. for a hearing on ''The Future of the ABM Treaty.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, April 28, at 9:30 a.m.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the

Senate on Wednesday, April 28, 1999 at 9:30 a.m. to conduct an Oversight Hearing on Bureau of Indian Affairs Capacity and Mission. The Hearing will be held in Room 485, Russell Senate Building.

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

COMMITTEE ON THE JUDICIARY

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, April 28, 1999 at 9:30 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on: ''S.J. Res. 14, Proposing an Amendment to the Constitution of the United States, authorizing Congress to Prohibit the Physical Desecration of the Flag of the United States.''

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, April 28, 1999 at 9:30 a.m. to receive testimony on the operations of the Architect of the Capitol.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, April 28, 1999 at 2 p.m. to hold a closed hearing on Intelligence Matters.

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

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, April 28, for purposes of conducting a Subcommittee on Forests and Public Lands Management hearing which is scheduled to begin at 2 p.m. The purpose of this hearing is to receive testimony on S. 415, a bill to amend the Arizona Statehood and Enabling Act in order to protect the permanent trust funds of the State of Arizona from erosion due to inflation and modify the basis on which distributions are made from the funds, and S. 607, a bill to reauthorize and amend the National Geological Mapping Act of 1992; and S. 416, a bill to direct the Secretary of Agriculture to convey to the city of Sisters, Oregon, a certain parcel of land for use in connection with a sewage treatment facility.

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

ADDITIONAL STATEMENTS

KOSOVO

● Mr. GRASSLEY. Mr. President, I rise today to bring your attention to a newspaper column that I believe provides thoughtful commentary on current events taking place in Kosovo and in the United States. The following, written by Mr. A.M. Rosenthal, appeared in the New York Times on April 9, 1999.

I ask that it be printed in the RECORD.

The material follows:

Do Americans understand that while we have been bombing the Serbs, the following took place:

Libya was exonerated from responsibility in the destruction of Pan AM 103.

Saddam Hussein's closedown of the U.N. search for Iraq's nuclear, chemical and biological weapons went into its eighth month. Richard Butler, the chief arms inspector, was barred Wednesday by the Russians from even entering the U.N. Security Council chamber where his inspection commission was the agenda, marked for death.

China's Prime Minister was visiting America getting a great press—plus a step nearer to a trade agreement that will fatten China's economy and armed forces. On the day Zhu Rongji arrived in Washington representing the Communist politburo, President Clinton criticized not China's expanding arrests of political and religious dissidents, but American critics of China.

So: do Americans understand that while we fight one dictatorship, fumbling around trying to heighten the war and somehow end it at the same time, three other dictatorships more dangerous to American interests are walking away with America's pants?

The Libya deal was possible because the Administration signed off on it. This sweetheart gift to Col. Muammar el-Qaddafi ends the effective sanctions imposed on Libya for harboring two Libyans accused of murdering 270 people in the bombing of Pan AM 103 on Dec. 21, 1988.

American intelligence agents are not allowed to ask the suspects now held in the Netherlands if perchance Qaddafi knew what his boys were up to or Syria and Iran were involved—as Western intelligence agencies had long believed. And during the trial itself, Libya's Government is not to be undermined, hear?

For Libya, a no-loser. Even if the men are found guilty, the sanctions will remain ended. Italy, Russia, France and other countries have already lined up fat oil and gas deals with Libya. U.S. companies will follow. The deal is disgusting, an insult to the dead and their families, and to all, who fly in U.S. planes.

Do Americans understand that the U.S. delegation to the U.N. did not stand up and holler at the barring of Mr. Butler? Let's hope it will when he tries again today.

Do they understand that the President denounced U.S. critics of China on the very day that Jeff Gerth and James Risen of The Times were writing that even more Chinese nuclear espionage took place than the reporters had already disclosed? Another chapter in Chinese espionage was written in 1995, reported to Samuel Berger, now the national security adviser, in April 1996, who told the President in July 1997, who ordered tightened security—in February 1998.

And do Americans understand that the Administration disgraced itself in the war on Serbia?

Slobodan Milosevic, not America, is responsible for driving cold, hungry, terrified Albanian Kosovars from their homes. But Washington's disgrace is that President Clinton and his top people did not know and did not expect that Mr. Milosevic would use the bombing as an opportunity to expel them by the hundreds of thousands. American leadership still does not seem able to plan more than a couple of days ahead.

So we need no longer worry about America's credibility; we have none.

For a democracy, credibility comes not just from smart weapons but smart leaders, from respect for the intelligence of the public, domestic and foreign, from a measure of honesty. In a democracy, pretense in war or peace is transparent, embarrassing and finally self-destructive.

We need not and should not support Kosovar secession. But we helped Mr. Milosevic in his fight with the Kosovars by not foreseeing his mass expulsion plans, and not having our own plans that would treat the Serbian nation as something more than a bombing target.

''When at war, support the troops.'' To me, that means making sure they have the strength they need, the affection, respect—and doable mission.

What is does not mean is keeping our mouths shut about misconduct of a war by an American Government—or about its failure to protect American interests in other crises that may inconveniently present themselves. That's not supporting American armed forces, but walking away from them.●

UNITARIAN UNIVERSALIST CHURCH OF SAN DIEGO

● Mrs. BOXER. Mr. President, today I want to recognize the First Unitarian Universalist Church of San Diego as it celebrates 125 years of religious freedom. The First Unitarian Universalist Church of San Diego enjoys a rich history in San Diego. Founded in 1873, the Church has continued to grow into a diverse community of over 3,000 members with differing beliefs yet shared values.

The First Unitarian Universalist Church of San Diego is an important part of the spiritual lives of thousands of San Diegans. In 1890, founder Lydia Horton helped to pioneer women's rights through the Church. Today, it continues that tradition of activism by working for environmental protection, gay and lesbian rights, and women's equality. In the local community, the Church is fighting discrimination and illiteracy, building schools in underserved neighborhoods, and teaching San Diego's children the value of community involvement.

The Church encourages members of its congregation to develop their own religious wisdoms, truthful to themselves and respectful of others.

For thriving 125 years in San Diego, I salute the First Unitarian Universalist Church of San Diego and wish them many successful years ahead.●

RECOGNIZING THE WORLD CLASS SCHOLARS PROGRAM, ABERDEEN, WA

● Mr. GORTON. Mr. President, a constant theme heard in the economic

news of our country is the dramatic success and sustained growth of our nation's economy. My own state of Washington has been particularly fortunate in that regard, even give the much-talked about ''Asian flu.'' Not all of Washington's communities, however, have been so lucky. Among those is Aberdeen, in Grays Harbor County. Unemployment in Aberdeen is double the state average; over 17 percent of the county depends on public assistance as a primary source of income; and 27 percent of the adult population has not completed high school. To combat these issues, the Aberdeen School District and Grays Harbor Community College came together in 1993 to create the World Class Scholars program which I am pleased to present with one of my Innovation in Education Awards.

Recognizing that students were struggling to finish their education and would therefore be unqualified for many of the well paying technology-based jobs in Washington state, local educators created a new path to reach these workers of tomorrow—the World Class Scholars Program. The school district and community college agreed that students in the scholars program would automatically be accepted into the local community college, receive scholarship assistance and college credit for college-level work completed in high school. In return, students must follow through on a pledge made in the 7th grade to graduate with a ''B'' average. Students in the program also agree to demonstrate leadership and other interpersonal skills, volunteer at school or in the community, and become technologically proficient. This is exactly the kind of jump-start this community needed to encourage students to complete their education and to ensure that recent graduates have the tools necessary to compete for today's high-paying jobs.

Each year, the number of students and volunteers involved in the World Class Scholars program continues to grow. But, perhaps of great mention, the number of other school districts participating throughout the county in collaboration with Grays Harbor Community College has also grown. In two years, the first class of high school students will graduate and the community's pledge to provide them with continued education will be honored. Clearly, Aberdeen and surrounding school districts have needs that are different, perhaps unique, from other localities throughout Washington state. They have met this problem head on and are well on the way to making their community a better place to live. The response of the Grays Harbor community perfectly demonstrates that local educators really do know best.

In presenting my Innovation in Education Awards, I fall back on this common-sense idea, that it is parents and educators the who look our children in the eye every day that know best how to educate them. For too long, the federal government has been telling local schools that Washington, DC bureaucrats know best. Educators across Washington state and throughout the country, like those involved in the World Class Scholars program, deserve more decision-making authority they deserve and I pledge to work hard to return that power to them.●

REMARKS BY DR. HENRY BUCHWALD

● Mr. HOLLINGS. Mr. President, I offer for the RECORD the text of a lecture delivered at the Central Surgical Association by Dr. Henry Buchwald, Professor of Surgery at the University of Minnesota. Dr. Buchwald, a past president of the association, is a highly regarded surgeon, and as we address Medicare reform and related matters in the months ahead, I believe we would do well to consider his words. At this time, I ask that excerpts of Dr. Henry Buchwald's presidential address be printed in the RECORD.

The material follows.

PRESIDENTIAL ADDRESS: A CLASH OF CULTURES—PERSONAL AUTONOMY VERSUS CORPORATE BONDAGE

(By Henry Buchwald, MD)

PERSONAL AUTONOMY

A constellation of principles embody the personality of the surgeon. At its core are the tradition and the ethos of personal autonomy. One of the distinguished past presidents of the Central Surgical Association, Donald Silver, who has been a role model for me, entitled his 1992 presidential address, ''Responsibilities and Rights.'' He allowed very few intrinsic rights to surgeons, but first among the limited prerogatives he granted was autonomy.

As surgeons, we tend to be individualists and to espouse individual responsibility. To us, maturity means being responsible for our actions. We keep our commitments. We view fiscal independence as essential. We take pride in earning a living and, should we have a family, in providing for its needs. To give the gift of an education to our children has been integral to our aspirations.

The years of medical school, residency, and the post-postgraduate education of clinical practice finally give birth to a surgeon. This individual has acquired a base of knowledge and the insight to apply facts and rational suppositions to the care of patients. This individual has obtained operating room skills secured by observation, trial and error, repetition, and respect for tissues and tissue planes and has learned the art of being gentle with a firm and steady hand. The surgeon has been sobered by death, by bad results, by the frustration of the inadequacies of even the most modern medical advances, and by the vagaries of human nature that obstruct the best of intentions and efforts. The surgeon has acknowledged fallibility and his or her power to do harm. The surgeon has become comfortable in a profession in which decisions are singular and responsibility is particular. The mature surgeon has achieved personal autonomy.

Within our company of surgeons we take just pride in our accomplishments. We are a distinct discipline with a unique body of knowledge. We are, for the most part, successful. We save lives, we increase life expectancy, we enhance the quality of existence. In addition, we have provided society with numerous competent surgical practitioners and built dynasties of surgical educators and researchers—individuals who bridge the present with the future of our profession.

Unfortunately, this golden age for surgery and the personal autonomy of the individual surgeon are threatened with imminent destruction by a force that will, if not countered and checked, lead us into corporate bondage. I will term this force administocracy.

CORPORATE BONDAGE

Ideally, the role of health care administration is to facilitate the work of physicians and health care personnel. But the chief administrators in our health care institutions and universities are no longer facilitators. They now seek to control. They have been redefining medical practice, clinics, academic departments, and universities on a corporate model, a model that subverts the essential nature of an intellectual society, a model totally alien to the definition of a university as a community.

Administrocracy, the term I have coined to epitomize this force, is the rule of centralized administration, based on the top-down control of money, resources, and opportunities. Its primary beneficiaries are the administrative hierarchy. Administocracy has established itself as a new ruling class, an order clearly separated from the toilers in the vineyard of medicine. Administocracy is governance not by facilitation but by intimidation. Administocracy has gained or is gaining control of our medical schools, our teaching and community hospitals, and our current means of providing health care. I will outline administocracy's practices, codified into its own perverted Ten Commandments.

I: Thou shalt have no other system. The glory of our nation's democracy, the longest surviving democracy in the history of the world, is its ability to tolerate differences—to take new initiatives and then to retrench, to be liberal and to be conservative—and, concurrently, to be responsible to the will of the governed and to the precepts of fundamental code of principles and individual rights. An autocracy, on the other hand, denies flexibility and governance alternatives. An autocracy's overriding objective and only goal, regardless of any protestations of working for the common good, is its own perpetuation. By definition, such a system denies the will of the governed and refuses recognition of individual rights.

Administocracy is, of course, an autocracy. Once in power, administocracy's first order of business is to replicate itself. For example, in 1993 the academic administocracy at the University of Minnesota cut 435 civil service positions, while simultaneously adding 45 more executives and administrators.[1] The Office of the Senior Vice President for Health Sciences at Minnesota, a unit that did not even exist some years ago, now has 25 members.

The growth of medical administocracy is the result of genuine problems in the distribution of health care, including cost problems not adequately addressed by the medical profession itself. Our failure, or inability, to take action on these issues has allowed outsiders and opportunists within our own profession to hijack the delivery of health care. Among practicing physicians, a general ennui and a lack of resistance have been the reactions to the administocracies that are becoming our overlords. Perhaps one reason for this seeming complacency is that, individually, physicians feel powerless when faced with the well-organized, implacable machine of administocracy—an entity that knows its purpose and will use any means to attain its goals. Another reason is well expressed by Thurber's paraphrase of

Lincoln: ''You can fool too many of the people too much of the time.''[2]

II: Thou shalt make new images. In his classic novel *1984,* Orwell beautifully illustrated the power of language and its willful distortion by governments. His use of ostensibly neutral words for disguising uncomforting realities set the standards for the current proliferation of Orwell's ''Newspeak.''[3] The medical and academic administocracies of today have devised their own Orwellian glossary of deception, often borrowing and redefining phrases from corporate industry and the military.

CEO, for chief executive officer, obviously comes from the corporate world. In academia and in hospital administration, it means a titular despot who controls the destiny and income of faculty and staff.

Reporting to and chain of command come from the military. These designations of caste and of obedience have not only been fully accepted by members of our profession but actually embraced and fostered by certain of our colleagues.

Executive management group means a cluster of deans.

Managed care is a euphemism for reducing patient services and physicians' fees to redistribute income to the ever-increasing number of administrators.

Utilization review stands for a bureaucratic sleight of hand to justify a predetermined reduction in patient services and health care personnel.

Market and consumer mean patient.

Market share means the number of patients you can hold hostage in a provider network.

Health care team means that the physician is only as essential to patient care as the multitude of people who stare into computers on nursing stations.

Vendor means you, the doctor.

II: Thou shalt take what is in vain: reengineer. Reengineering is the golden calf of administrocracy and takes in vain much of what we hold sacred. Reengineering would substitute dicta for scientific inquiry, the ''clean sheet'' for methodology, and assumptions for acquired knowledge. Reengineering has never been critically tested, certainly not in academia and hospital administration. No randomized clinical trials of reengineering have ever been conducted.

The definitions of reengineering are all quite similar. Michael Hammer and James Champy, two of the principal writers and consultants in the field, define it as follows: ''the fundamental rethinking and radical redesign of business processes, management systems, and structures of the business to achieve dramatic improvements in critical, contemporary measures of performance such as cost, quality service, and speed.''[4]

The stages of reengineering are usually listed by its author advocates as preparing for change, planning for change, designing for change, implementing change, and evaluating change. Obviously, ''change'' is the key message, often spoken of as ''swift and radical change.'' Initiates to reengineering are instructed that it is essential to start this swift and radical change with the proverbial ''blank sheet of paper.'' Besides the logical fallacy of changing that which is blank, the sheet of paper is not blank; it contains our heritage. To start with a blank sheet means to erase the past. This concept of eliminating what we have painstakingly learned denies the most fundamental precept that we, as teachers, have passed on to generations of our students; namely, know the past and build on it. That way offers progress. Paul's First Epistle to the Thessalonians (5:21) states ''Prove all things; hold fast that which is good.''

If we do not learn from experience, from accumulated data and analyses, we will continually repeat history, and often bad history. Reengineering is a denial of the methodology of learned skills to deal with the business at hand, a denial of accumulated knowledge, a denial of the wisdom based on that knowledge. It is an abrogation of the scientific method.

In too much of the corporate-industrial world, reengineering has been the death blow to the company as family, a place to work with pride until retirement. In its place, reengineering has imposed the lean and mean corporate model of harsh downsizing—an organization devoid of workers' loyalty; characterized by a disregard for the customer in favor of the stockholder, plagued with a heavy load of debt, and ripe for a merger, conglomerate integration, and, eventually, extinction.

But enlightened industry has been abandoning reengineering, and the gurus of this nonsense have found it profitable to shift their expensive consultative services to academia and health care. Many of our associates have bitten hard into this apple of poisoned knowledge: Harvard, Tufts, Columbia, Cornell, Stanford, the University of California-San Francisco, Michigan, Henry Ford, and Minnesota are just some of the great institutions that have, to one degree or another, adopted reengineering. Physician-administrators, with little or no experience in the business world, are pushing hard to sell reengineering as a panacea for success and good fortune in the health sciences and in health care. They are huckstering a placebo.

The former provost of the University of Minnesota Academic Health Center and current president of Johns Hopkins, Dr. William R. Brody, brought the aforementioned James Champy to a University of Minnesota ''leadership retreat'' in July of 1995. At that meeting Mr. Champy, was quoted as saying: ''We live in debate . . . but you may have to exercise powers and say sometimes., 'The debate is over. This is the way we are going to be.' . . . visions are not built by groups . . . people in organizations want to be told what to do . . . There is a thirst for leadership, for top-down direction.''[1]

Champy gave this advice pro bono. Eventually, however, his consulting firm, CSC Index, was paid $2.2 million by the University of Minnesota to put his philosophy into practice.[1]

Ever since the Brody mindset took hold of the university's administocracy, I have listened to speech after speech emphasizing that ''everything is on the table'' (freely translated to mean—tell us what you have so that we can take it away from you), and that the ultimate goal of reengineering was the ''reinvention of the academic health center.'' I was also present when straightforward questions about a prospective hospital merger were met with evasion and statements such as ''The negotiations are as yet too delicate to be openly discussed'' and ''I am not at liberty to provide these details.'' Only when the secret discussions had been concluded and the final decisions had already been made were faculty members informed of the swift and radical changes that would forever affect their lives and that these changes were ''non-negotiable.''

IV: Thou shalt keep horizontal integration holy. In the application of reengineering to academia and health care, the basic work unit is achieved by horizontal integration across disciplines. The medical community until recently has been discipline oriented. The change to horizontal integration represents a major paradigm shift. This change means that a patient would proceed not from one physician to other disciplinary specialists, as needed, but would be referred to a disease- or system-complex of physicians. This unit has been designated as a disease-based cluster, also called in various institutions a center, an institute, a service-line unit, and an interdisciplinary service program. The disease-based cluster is an imposition on patient care of management by a standing committee.

Contrary to the promises of the administocrats, life within the horizontally integrated unit is far from utopian. Because the income allocated to the unit by the administocrats is distributed by formula to the members of the disease-based cluster, the fewer members in the cluster, the more money for those who are retained. That formula encourages the urge to lighten ship. In this cluster, the members of the group have yielded the control of their practice and of their personal income to the group mentality. The surgeon is an employee of this group of primarily nonsurgeons, a fully salaried employee with few, if any, financial incentives.

Further, each cluster decides on the optimal time management for its employees. Economic unit pressure will limit the amount of time allocated for teaching and for research. If you want to teach, you will be told that extensive teaching is a luxury that the unit cannot afford for its surgeons. You will be told to limit your time with medical students and to limit the operating room time you offer residents, because this use of time does not serve the market-driven goals of your new workplace. Time spent in laboratory research by members of a clinical unit, especially the unit's surgeons, will be restricted or disallowed, because it would most assuredly decrease the unit's ability to compete in the clinical marketplace. Although the surgeon is the main stoker of the unit's economic furnace, decisions for the individual surgeon's distribution of time will no longer be at his or her discretion, but rather at the discretion of the economic will of the group. And, because the surgeon must spend an extensive amount of time in the operating room, the director of this disease-based cluster will, more than likely, not be a surgeon.

Where are the positive incentives for surgeons in the horizontally integrated unit? We have seen that the incentive is not in money, in teaching, or in research. Is it in the practice of our craft? Even that pleasure may not be allowed. Disease management in the cluster will be by what has been termed clinical pathways. This means surgery by the numbers; every surgeon will do the same procedure for a specific problem, in exactly the same manner, with a prescribed set of instructions for the use of nasogastric tubes, drains, antibiotics, alimentation, and so on. This assembly-line concept of surgery represents the ultimate destruction of the autonomy of the surgeon.

What will be left? The negative incentives of job security and the threat of punishment for expressions of individuality. Criteria for employment will be obedience to the group and a proper sense of beholdenness.

The emergence of horizontal integration in reengineered institutions is being vigorously proselytized by its advocates. Indeed, several plenary sessions at the 1997 meeting of the American College of Surgeons gave podium time to the leading proponents of horizontal integration, but none to its opponents. A more balanced analysis of this ''brave new world'' is needed. In the words of Aldous Huxley: ''Thought must be divided against itself before it can come to any knowledge of itself.''[5]

V: Dishonor thy father and thy mother. The professional fathers and mothers of practicing doctors of medicine are the departments of the medical school. For use as surgeons, our professional parent is the department of surgery. Most of us have a

strong allegiance to the departments that trained us and to those we now represent. We cite the teachings of our department as a justification for what we do and what we believe. We extol the achievements of the heroes of our department, and we have been known to contest between departments with fierce team loyalties. We tell departmental anecdotes into our dotage.

Historically, the strongest medical schools have had the most powerful departments. Feudalism may not have been an intellectual success in the Middle Ages, but it has been the appropriate medical school governance system for our golden age of surgery. The independent department of surgery has, as a rule, been financially sound. It is able, therefore, to provide its faculty, in addition to a clinical practice, research opportunities, as well as the time to teach and to travel. The clinical atmosphere is exciting, allowing faculty to interact with questioning residents, and, through grand rounds and mortality and morbidity conferences, offering the best second opinions available anywhere. Independent departments gave birth to independent individuals, who had the imagination, innovative spirit, incentive, and drive to make surgery in the United States the best and the most envied in the world.

Reengineering would have us deny our departments, abandon them as mere relics. We are being told to dishonor our parental heritage and to deprive future generations of its nurturing. Horizontal integration is the death knell of the strong department of surgery as we know it. Independent departments that give rise to individualists are anathema to an administocracy, which would replace departmental parenting with the cloning of conformists.

The proponents of radical change are proposing that departments, for now, be maintained only for teaching students and lower levels of residents, and that their income will somehow be supplied by the dean of the medical school, to whom they will be indebted. The department chairs who will head these units will no longer be selected for scholarship, clinical acumen, and research accomplishments, but for administrative experience and political aspirations. As the lowest tier of the administocracy, they will not uphold or defend the department. In the future this system will eliminate clinical departments altogether, including their independent research, and delegate the teaching of the basic's of surgery to other than practicing surgeons.

VI: Thou shalt kill tenure. Tenure had its origins in the high Middle Ages and into the Reformation when royal edicts protected the person of the scholar and guaranteed safe passage.[6] As the university tradition developed on the continent and at Cambridge and Oxford, tenure became more of a fortification against the internal threat of dismissal at the pleasure of the clerical and political appointees who constituted the administration of these universities.[6]

In the 1990s, once again, tenure has become a highly charged controversy emerging from the academic cloister into the everyday world. Tenure is under attack in institutions of higher learning throughout the United States. This foundation of academic freedom, which includes the tenets of due process and freedom of expression, is being challenged as unwieldy and as an impediment to progress in today's fast-moving world and economy. It is seen as a barrier to effective top-down university administration. A lifelong commitment of appointment for faculty is being considered an unreasonable limit to a university's competitiveness. Tenure-track appointments per se are becoming more and more difficult to obtain, and the possibility of abolishing tenure is a current reality.

In the field of medicine we have traditionally not been strong advocates of the tenure system. Most surgeons, in and out of academia, have usually thought of tenure as the subterfuge of the weak and unaccomplished, the refuge of idlers and ne'er-do-wells. For my part, however, I am a strong proponent of tenure on principle and from experience. I have seen the University of Minnesota administocracy attempt to kill tenure. I have seen an outside consultant lawyer, hired by the Board of Regents, write a new tenure policy, subsequently put forth by the Board of Regents, that would have seriously restricted many aspects of academic freedom, denied due process, and allowed the disciplining of faculty for not having ''a proper attitude of industry and cooperation.'' I have seen the provost of the Academic Health Center become the leading opponent of tenure at the University of Minnesota and promise the state legislature to destroy tenure in exchange for increased funding for his personal vision of reengineering.

That threat to tenure has gone hand in hand with, and has served as the primary impetus for, unionization efforts by faculty, a turning to collective bargaining, the terminal polarization of a university into ''them'' and ''us.'' The union movement has been successful in some institutions and almost successful in others. We must recognize that the alternative before us is not between tenure or no tenure, but between tenure or membership in a trade union.

Centuries of reflection, turmoil, and hard-earned victories for freedom of expression within institutions of higher learning are embodied in tenure. That 1000-year-old legacy should not be swept aside by the know-nothing approach of ''reinventing the university.'' In the final analysis, tenure is the only protection that allows university faculty open criticism of the administocracy. Make no mistake about it, without tenure the outspoken individualists in the academic departments of surgery will be among the first to be fired for insubordination, for not having a proper attitude. They will be fired without due process and without the least concern for their productivity, hard work, loyalty, and demonstrable accomplishments. If not for tenure, many of our predecessors would not have survived to found and to sustain the Central Surgical Association. If not for tenure, many of us in this room would not be signing our names as professor of surgery.

VII: Thou shalt not commit to more than one career option. Once it was considered laudable in academia to pursue more than one career option—to be a researcher, a teacher, a consultant, as well as a practicing clinician. In the system of administocracy, such pursuits are adulterous, and they are prohibited. William Kelley, the apostle of linear career tracks, has made the laboratory doctors the highest order in the academic departmental hierarchy.[7] They follow a standard tenure track, spend little time with patients, and obtain their income from grants and from the efforts of their clinical-tract colleagues. Clinicians are confined, in turn, to patient activities, can have no laboratories, and may do only clinical research. Their primary job is to make the money needed by a two-track department. If these clinical doctors cannot keep up with the overall monetary demands, a third and fluid group of physicians, fresh out of residency, may be hired to see patients on a strict salary basis and to generate a sufficient overage of income to maintain the lifestyles of the nonclinicians.

Where does the double-threat, triple-threat, or even quadruple-threat academic surgeon of yesterday and today fit into such a system? He or she does not fit. Where is there allowance for the person who has honed his or her clinical judgment and operating room technique to achieve superb clinical outcomes and is also known as an eminent researcher, an outstanding teacher, and, possibly, an administrator-educator in the field of surgery? We may not find such renaissance individuals in the university of the first century of the third millennium. Those who exist today—many of them in this room—are the equivalents of the dinosaur. Honored today for their stature, their breed is destined for extinction.

VIII: Thou shalt steal. If the goal of administocracy is power, the means to achieve that goal is the control of money. For most of us, our incomes have been primarily derived from patient care on a fee-for-service basis. In the academic centers we ourselves allocated a percentage of our income to research, to resident education, to travel, and to departmental needs, as well as to paying a tithe to the dean. Currently, we are being forced to acquiesce to a seizure of our income at its source for redistribution outside of our control, consent, and often, knowledge. The imposition of layer upon layer of administrators and managers siphons off money to pay for their income, for the maintenance of their staff, and for the fulfillment of their, not our, aspirations. What finally trickles down to surgeons is a small fraction of the income we generate. In my opinion, this is theft.

The proliferation of health care provider organizations has given rise to a boom in building construction and occupancy to provide for the newly created health care managers. CEOs of managed care empires now take home millions of dollars annually. This is not capitalism but the embodiment of the Communist Manifesto: ''From each according to his abilities; to each according to his needs.''[8] Apparently, administocrats have the greatest needs. We have seen the advent of a plethora of executives, echelons of supervisors, authorizers of services, accountants, marketing and sales personnel, secretaries, telephone operators, and so on—all to do what we were able to do with a relatively minimal support staff. What feeds these engines of power? Fewer available patient services, less compensation for services, and an unparalleled redistribution of what we, the surgeons, earn. Whereas surgeons have a long and honorable history of providing care free of charge to the needy, the new system, through gatekeepers, restricts care for the needy and, through capitation, provides income to the greedy.

IX. Thou shalt bear false witness. The administocracy rewards or punishes faculty members in promotion and tenure proceedings, bestows awards and recognition, and grants institutional honors. The threat and implementation of both false-positive and false-negative witnessing are standard procedures in academic advancement and in the closure of academic careers. In certain institutions this method of control has extended to the misuse of the legal arm of central administration and the subversion of the internal judicial system of the university. Administocrats and their attorneys have made up rules as they go, with no basis for them in institutional regulations, the ''Calvin-ball''[9] approach to adjudication. For those who insist on believing that not all individuals in power can be corrupt and that decency at some level must still exist, I cite the words of 17th century aphorist, Jean de La Bruyère: ''Even the best-intentioned of great men need a few scoundrels around them; there are some things that you cannot ask an honest man to do.''[10]

X: Thou shalt covet. Finally, we come to coveting (Exodus 20:17): ''Thou shalt not covet thy neighbor's house, . . . nor anything that is thy neighbor's.''

The administocracy does indeed covet your ''house,'' because space is power. The personal space that you occupy outisde of the hospital and clinic, your office and your laboratory, is controlled by the administocracy. Allocation decisions are made not to facilitate your work and not as an incentive for productivity, but as a threat to achieve conformity and to guarantee compliance with their policies. When income is limited and proscribed, when the surgeon has become a 100% employee, then space and the use of that space become powerful inducements for faculty recruitment and retention. Space become a means to form a faculty to fit the new corporate mold. More than ever, space becomes a weapon to enforce compliance and to deny personal autonomy.

If money and space have been removed from the surgeon's control, how about the control of an individual's research? Here, too, administocracy has moved in. The formerly automatic forwarding of a properly prepared grant application has recently been subjected to additional internal institutional review and the threat of an institutional refusal to forward certain grant applications. This newly assumed institutional power has been termed a violation of academic freedom by a regional president of the American Association of University Professors.[1] Ongoing grants have been challenged by administocrats, with attempts at mandating personnel changes on a faculty research team. Faculty peer committees to supervise proper contract relations with industry have been disbanded and replaced by an administrator or a group subservient to the administocracy. Autonomy of research has been replaced by research at the pleasure of the administocracy.

There is, unfortunately, no limit to coveting. According to Horace: ''The covetous man is ever in want.''[11]

RESOLUTION

Although I coined the term administocracy, all else in this version of the Ten Commandments, as perverted by this new corporate bondage, is based on what has happened, is happening, and will happen. For many of us, certain, if not all, of the forces and events outlined are already part of our personal histories. Those fortunate enough to have been spared thus far will not be so favored in the future. I hope no one in this audience suffers from ''mural dyslexia,''[12] the inability to read the handwriting on the wall.

My intent in this narrative has been to express, in words and by examples, the manifestations of a calamitous reality that is altering the basic fabric of our professional lives, as well as the quality of medical care. We cannot elect simply to observe this transformation. The structures we stand on are disintegrating. If we continue to be complacent, if we do not oppose the powerful economic elements arrayed against us, if we take little interest in understanding the nature of our enemies, then surgery, as a discipline, and we, as surgeons and as independent practitioners, free to act within the boundaries of our conscience, will lose our culture, as well as our personal autonomy.

I have tried in these remarks to outline a brief differential diagnosis of this malady of encroaching administoracy, in order that we may formulate practical deterrents. I ask you to consider, each for your own situations, a workable, achievable alternative to administocracy, the forging of an ethical governance for academia, income distribution, and administration by facilitation. All of us need to take an active role in this process of evolution and innovation, to take it now, and to commit to it in the years to come.

Further, to maintain the individuality we prize, we have to realize that, individually, we are easy pickings. We must work together, as a community of surgeons, in our academic, cultural, and political organizations to defend our values. Ironic as it may be, we will need to give up some of our precious autonomy to safeguard that very autonomy. In his Republic, Plato expressed the concept of banding together as fundamental to preserving individualty: '' . . . a state comes into existence because no individual is self-sufficient. . . .''[13]

A satisfactory resolution of this clash of cultures will not be achieved quickly or easily. This contest will not be decided by the sprinters. Victory will belong to the marathoners. Fortunately, surgeons are trained for the long haul.

CLOSURE

I would like to close with one final quotation, four questions of self-examination from the Talmud, which express my personal aspirations: ''Have I lived honorably on a daily basis? Have I raised the next generation? Have I set aside time for study? Have I lived hopefully?[14]

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RECOGNITION OF ACHIEVEMENT

● Mr. ASHCROFT. Mr. President, I rise today to extend appreciation to my spring 1999 class of interns: Lionel Thompson, Ryan Carney, Stephanie Harris, Kelly Owens, Daniel Lawson, Lacey Muhlfeld, Pete Johnson, Brian Kim, and J.Y. Brown. Each of these young people has served the people of Missouri diligently in my office. They have been invaluable members of my Operations Team over the past several months, and their efforts have not gone unnoticed.

Since I was elected in 1994, my staff and I have made an oath of service, commitment, and dedication. We dedicate ourselves to quality service. America's future will be determined by the character and productivity of our people. In this respect, we seek to lead by our example. We strive to lead with humility and honesty, and to work with energy and spirit. Our standard of productivity is accuracy, courtesy, efficiency, integrity, validity, and timeliness.

My spring interns have not only achieved this standard, but set a new standard on the tasks they were given. They exemplified a competitive level of work while maintaining a cooperative spirit. It is with much appreciation that I recognize Lionel, Ryan, Stephanie, Kelly, Daniel, Lacey, Pete, Brian, and J.Y. for their contribution to me and my staff in our effort to fulfill our office pledge and to serve all people by whose consent we govern.●

WORKERS' MEMORIAL DAY 1999

● Mr. FEINGOLD. Mr. President, I rise today to honor the men and women in our labor force that put their health and safety on the line every day at work. Today, we observe the passage of the landmark Occupational Safety and Health Act, signed into law 29 years ago, and the tenth anniversary of Workers' Memorial Day.

Mr. President, today is a chance for all of us to celebrate, and to mourn—to recognize the strides we've made on worker safety, and to mourn those who have lost their lives while they were simply doing their job.

Although the workplace death rate has been cut in half since 1970, 60,000 workers still die every year from job hazards, and six million more are injured. In Wisconsin our workplace accidents rate of 11.4 workplace accidents per 100 workers is higher than the national average. This is not a statistic anyone should be proud of, but it does help us maintain our focus as we work toward stronger laws, stricter enforcement, and safer workplaces.

We need to work together to protect the workers that have built our communities and helped them thrive. Unfortunately we still hear stories of workers like Vernon Langholff, who in 1993 fell 100 feet to his death when a corroded fire escape collapsed beneath him while he was cleaning dust from a grain bin. Just this year a company in Jefferson County was convicted in a state court for the recklessness that caused Langholff's death. In 1996 the company was fined $450,000 for its deliberate indifference to worker safety—because they delayed spending the $15,000 it would have taken to fix the fire escape and prevent Langholff's death. Stories like this remind us that an unsafe workplace can mean disaster for everyone involved—it can bring untold tragedy to a family, it can bring serious, long-term financial and legal repercussions for an employer.

The consequences of delaying the repair of a fire escape or ignoring safety

procedures can often be tragic, and they are always preventable. To prevent more tragedies on the job, we've got to make sure workers can join unions without employer interference or intimidation, we must help protect whistleblowers who call attention to dangerous working conditions, and above all we've got to fight back against attempts in Congress to weaken OSHA laws.

I do not understand the yearly assault on worker safety in Congress. Again this year, the Safety Advancement for Employees Act, or SAFE Act has been introduced. This legislation takes away a worker's right to an on-site inspection to investigate a hazard, or permitting OSHA to issue warnings instead of citations. This bill isn't OSHA re-form, it's OSHA de-form. This bill would more appropriately be named the ''UNSAFE'' act.

Mr. President, I will work with my colleagues to fight back any attempt to weaken the protection of Wisconsin's workers. It's time to move the workplace forward to the 21st Century, not back to the dark ages.

I am proud to stand with this country's workers in the fight for the dignity, respect and safe workplace they deserve. I urge my colleagues to join me in this important and worthy battle.

I yield back the remainder of my time.●

NATIONAL ASSOCIATION OF LETTER CARRIERS

● Mr. SHELBY. Mr. President, I would like to bring to your attention the National Association of Letter Carriers Food Drive Day. On Saturday, May 8, letter carriers from around the country will collect nonperishable food items placed near their customers' mail boxes. The food will then be given to local food pantries for distribution to those in need. The National Association of Letter Carriers in Alabama collected more than 500,000 items last year alone, and I would like to encourage my colleagues to support the letter carriers' food drives in their States, districts, and hometowns in order to make this worthy event a success.●

THE VILLA TRAGARA

● Mr. LEAHY. Mr. President, I was delighted to see that the Villa Tragara in Waterbury Center, Vermont has been awarded the ''Emblem of Excellence'' in Italian Cuisine.

I am not the least bit surprised. My wife and I enjoy going to this restaurant more than any other. The owners, Tony and Patricia DiRuocco are special friends of ours and have brought the highest of culinary excellence to our state of Vermont. I count among my most enjoyable experiences meals in their superb restaurant and I wanted the rest of the country to have notice of this great honor.

I ask that the article from our local newspaper, The Times Argus, be printed in the RECORD.

The article follows:

[The Times Argus, April 8, 1999]

VILLA TRAGARA HONORED BY ITALIAN ACADEMY, GOVERNMENT

WATERBURY CENTER—The Villa Tragara Ristorante of Waterbury Center has been awarded ''Insegna Del Ristorante Italiano'' meaning ''The Emblem of Excellence'' in Italian Cuisine.

The award has been presented by the prestigious Italian Academy of Cuisine, located in Rome.

Villa Tragara chef/owner Antonino DiRuocco, born in Capri, Italy, and his partner and wife, Patricia, are scheduled to fly to Rome for festivities that include presentation of the award April 10–12.

Festivities include a trip to the Vatican, the Italian Senate and the ''Quirinale,'' home of the Italian president.

DiRuocco will be presented his award April 12 by Signor Oscar Luigi Scalfaro, Italy's president.

Restaurants throughout the world are judged on authenticity of the culinary art, creativity and presentation. A separate award is presented for wines and spirits.

Villa Tragara will be one of 80 restaurants worldwide to receive the award.●

TRIBUTE TO MS. RUBY B. MCMILLEN

● Mr. WARNER. Mr. President, I rise today to pay tribute to Ms. Ruby B. McMillen, a native of Virginia's Albemarle County, who is retiring from the Defense Logistics Agency, Fort Belvoir, Virginia, this month after a distinguished civilian career spanning more than thirty-six years. Ms. McMillen, who currently directs the Agency's business management office, has devoted her professional life to supporting the logistics needs of military men and women assigned around the world in defense of our freedom. Her accomplishments are many and her reputation for innovative, visionary leadership is unparalleled. Her contributions to the National Defense will be missed, so as she transitions to new opportunities, I want to say thanks to her on behalf of a grateful nation.

Ms. McMillen's career is noteworthy for many reasons, but her remarkable rise through the civil service ranks speaks to the real value of the work she has done for our warfighters over the years. Starting as a GS–3 clerk in Richmond's Defense General Supply Center, she soon transitioned into professional and leadership positions, but never lost her appreciation of the unique challenges faced by junior-level employees. With each assignment came additional responsibilities and a reputation for cutting through business-as-usual obstacles. Over the years her abilities developed, her contributions grew, and she rose to the top of her career field. For all the challenges she successfully met, Ms. McMillen's enduring contribution will be all those employees to whom she served as an active mentor. The next generation of DLA's professional logisticians has countless members who would not be making tremendous contributions to the Agency if not for her help, encouragement, and motivation along the way.

Mr. President, I am proud and honored to ask my colleagues to join me in congratulating Ms. Ruby McMillen on her retirement from the Federal Civil Service.●

TRIBUTE TO THE AMERICAN GATHERING OF JEWISH HOLOCAUST SURVIVORS

● Mr. SCHUMER. Mr. President, I rise to have printed in the RECORD, the remarks made by Benjamin Meed, President of the Warsaw Ghetto Resistance Organization, on the 56th anniversary of the Warsaw Ghetto Uprising. Mr. Meed made these remarks to the Congregation Emanu-El in New York City.

The material follows:

REMARKS OF BENJAMIN MEED

Governor Pataki, Senator Schumer, Mayor Giuliani, Comptroller Hevesi, Members of the U.S. Congress, Ambassador Sisso of Israel and Members of the Israeli Consulate, State and City Officials, Members of the New York Legislature, Boro President, Distinguished Guests, fellow survivors, and dear friends.

Today, Jews gather to pay tribute to the memory of our Six Million brothers and sisters murdered only because they were Jewish; We gather to honor the fighters of the Warsaw Ghetto; to grieve; and to continue asking the questions: Why did it happen? How could the civilized world allow it to happen? Why were we so abandoned? Six million times, why?

This year's national Days of Remembrance theme is dedicated to the voyage of the *SS St. Louis.* It is a story of refuge denied; it is a tale of international abandonment and betrayal. Why were they refused entry into this country? How can we ever understand why this was allowed to happen? Today, it is inconceivable to us just how that ship in those days was turned away.

Today 54 years ago the American soldiers came across Nazi Germany slave labor camps and liberated Buchenwald and saved many of us who are here present today. Our gratitude will remain with us forever. We will always remain grateful to these soldiers for their kindness and generosity, and we will always remember those young soldiers who sacrificed their lives to bring us liberty.

Today, wherever Jews live—from Antwerp to Melbourne, from Jerusalem to Buenos Aires, from New York to Budapest—we come together to remember to say Kadish collectively.

Remembering the Holocaust is now a part of the Jewish calendar. We are together in our dedication to Memory and our aspiration for peace and brotherhood. Yom Hashoah, the Days of Remembrance, time to collectively bear witness as a community.

And what lessons did we derive from these horrible experiences? The most important lesson is obvious—it can happen again the impossible is possible again. Ethnic cleansing, genocide, is happening as I speak. It can happen to any one or any group of people. The slaughter in Kosovo and in other places must be brought to an end.

Should there be another Holocaust, it may be on a cosmic scale. How can we prevent it? All of us must remain vigilant—always aware, always on guard against those who are determined to destroy innocent human life for no other reason than birthright.

It is vital that we remember, it is our commitment to those who perished, and to each other; a commitment taken up by your children and, hopefully, by the generation to come. What we remember is gruesome and painful. But remember we must. Over the years, we have tried to make certain that what happened to us was communicated and continues to be told, and retold, until it becomes an inseparable part of the world's conscience.

And yet, some fifty years after the Holocaust, we continue to be repulsed by revelations about the enormity of the crimes against our people. And we are shocked to learn of the behavior of those who could have helped us, or at least, not hurt us, but who, instead, actually helped those whose goal was to wipe us out. Sadly, many of those who claimed they were neutral were actually involved with the German Nazis. They were anything but not neutral.

The world has now learned that the Holocaust was not only the greatest murder of humanity, the greatest crime against humanity, but also the greatest robbery in the history of mankind. Driven from our homes, stripped of family heirlooms—indeed of all our possessions—the German Nazis and their collaborators took anything that was or could be of value for recycling. They stole from the living and even defiled the Jewish dead, tearing out gold fillings and cutting off fingers to recover wedding bands from our loved ones who they had murdered.

But the German Nazis did not—could not—do it alone. The same people who now offer reasonable sounding justifications for their conduct during the Holocaust were, in those darkest of times, more than eager to profit from the German war against the Jews.

None of the so-called ''neutral'' nations has fully assumed responsibility for its conduct during the Holocaust. The bankers, brokers, and business people who helped Nazi Germany now offer some money to survivors, but they say little about their collaboration. They utter not a word about how they sent fleeing Jews back to the German Nazis' machinery of destruction, nor about how they supported the Nazis in other ways—no admission of guilt; no regret; no expression of moral responsibility.

We must guard against dangerous, unintended consequences arising from all that is going on now. Hopefully, family properties and other valuables will be returned to their rightful owners. But the blinding glitter of gold—the unrealistic expectations created by all the international publicity—has diverted attention from the evil which was the Holocaust.

For five decades, we survivors vowed that what happened to our loved ones would be remembered and that our experiences would serve as a warning to future generations. We must continue to make sure that the images of gold bars wrapped in yellow Stars of David do not overshadow the impressions of a mother protecting her daughter with her coat, upon which a Star of David is sewn, or of a young boy desperately clutching his father's hand at Auschwitz/Birkenau before entering the gas chambers.

The search for lost and stolen Jewish-owned assets has generated enormous publicity and excitement, but it also has created serious concerns. Gold, bank accounts, insurance policies and other assets have become the focal point of the Holocaust. That somehow minimizes Germany's murderous role.

Great care must be taken to find a balance. The various investigations must continue to uncover the hidden or little publicized truths about the so-called neutral countries that collaborated, and to recover what rightfully belongs to the victims, survivors and their families.

The focus should never be shifted from the moral and financial responsibility of Germany for the slaughter of our people—acts for which there is no statute of limitations, acts for which Germany remains eternally responsible. Our books should not and cannot be closed.

Let us Remember.●

DEATH OF FORMER SENATOR ROMAN L. HRUSKA

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 88, submitted earlier by Senators HAGEL and KERREY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 88) relative to the death of the Honorable Roman L. Hruska, formerly a Senator from the State of Nebraska.

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

Mr. MCCAIN. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 88) was agreed to, as follows:

S. RES. 88

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Roman L. Hruska, formerly a Senator from the State of Nebraska.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the deceased Senator.

DESIGNATING THE HENRY CLAY DESK

Mr. McCAIN. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 89, submitted earlier by Senator MCCONNELL.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 89) designating the Henry Clay Desk in the Senate Chamber for assignment to the senior Senator from Kentucky.

There being no objection, the Senator proceeded to consider the resolution.

Mr. LOTT. Mr. President, it is my distinct honor to support this resolution submitted today by Senator MCCONNELL assigning the Henry Clay Desk in the Senate Chamber to the senior Senator from Kentucky. This resolution will ensure that the Henry Clay Desk will forever stay within the family of Kentucky Senators.

The Senate has a proud tradition of passing this type of resolution. During the 94th Congress, for example, the Senate adopted a resolution assigning the Daniel Webster Desk to the senior Senator from New Hampshire. And, during the 104th Congress, the Senate agreed to a resolution ensuring that the Jefferson Davis Desk would forever reside with the senior Senator from Mississippi.

Let me take a brief moment to reflect on the life and legacy of Henry Clay. Henry Clay began his political career in the Kentucky House of Representatives in 1803, at age 27, and remained in public service until his death in 1852. During Clay's long and distinguished career, he served his state and his nation in a wide range of capacities including speaker of the Kentucky House of Representatives, Speaker of the United States House of Representatives, and, of course, as a U.S. Senator for fifteen years. Clay also served President John Quincy Adams as Secretary of State for four years, and received his party's nomination for President in 1824, 1832, and 1844.

Henry Clay's ability to facilitate compromise was quickly recognized in Washington, and he became well-known as a highly-skilled negotiator. This skill, coupled with his knack for convincing and persuasive speech, made Clay the ideal appointment in 1814 to help negotiate the Treaty of Ghent that concluded the war with Great Britain. And, during Clay's quest to save the Union in 1820, he earned his reputation as ''The Great Compromiser'' by helping broker the Missouri Compromise. His leadership, however, did not end there. He also went on to play a significant role in crafting the Compromise of 1850.

Henry Clay's lifetime of public service is indeed worthy of recognition. He will always be a role model for public servants because of his dedication to the people of Kentucky and to our great Nation, and lives on his history as one of the greatest Senators of all time. In fact, Henry Clay's portrait is displayed just off the Senate floor to honor his designation in 1957, as one of history's ''Five Outstanding Senators.'' Clay certainly deserves today's honor of committing his former desk to Senator MCCONNELL and to the senior Senators from Kentucky who will follow.

Mr. President, let me say today that I think Senator MCCONNELL is following in the footsteps of Henry Clay. He has done a tremendous job representing the good people of Kentucky for the past 15 years. And, on a personal level, I would like to say that I have developed a genuine appreciation for Senator MCCONNELL's courage, his political insight, and his keen and candid advice on a wide range of subjects. I value him as a friend, a confidant, and an advisor, and look forward to many more years of service with him here in this chamber.

Mr. President, I am proud today to support this resolution submitted by Senator MCCONNELL. It is his strong desire to maintain the heirloom of the

Clay desk in the family of Kentucky Senators for the years to come. I urge the Senate to adopt this resolution and ask that it be included in the collection of the Standing Orders of the Senate.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 89) was agreed to, as follows.

S. RES. 89

Resolved, That during the One Hundred Sixth Congress and each Congress thereafter, the desk located within the Senate Chamber and used by Senator Henry Clay shall, at the request of the senior Senator from the State of Kentucky, be assigned to that Senator for use in carrying out his or her senatorial duties during that Senator's term of office.

ORDERS FOR THURSDAY, APRIL 29, 1999

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, April 29. I further ask that on Thursday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day. I further ask unanimous consent that immediately following the prayer, there be 1 hour for debate only, equally divided between Senator MCCAIN and Senator HOLLINGS, relative to the cloture motion on the McCain amendment to S. 96. I further ask that following that debate, the Senate proceed to a vote on the motion to invoke cloture.

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

PROGRAM

Mr. MCCAIN. Mr. President, for the information of all Senators, the Senate will convene at 9:30 a.m. and immediately begin 1 hour of debate relating to the cloture motion to the McCain amendment to the Y2K legislation. At approximately 10:30 a.m., following that debate, the Senate will proceed to a cloture vote on the pending McCain amendment to S. 96. As a reminder, under rule XXII, all second-degree amendments to the McCain amendment must be filed 1 hour prior to the vote.

ORDER FOR FILING SECOND-DEGREE AMENDMENTS

Mr. MCCAIN. Mr. President, I ask unanimous consent that Members have until 10 a.m. on Thursday in order to file second-degree amendments to the substitute amendment.

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

Mr. MCCAIN. Mr. President, following the cloture vote, the Senate may continue debate on the Y2K bill, the lockbox issue or any other legislative or executive items cleared for action. As a further reminder, a cloture motion was filed today to the pending amendment to the Social Security lockbox legislation. That vote will take place on Friday at a time to be determined by the two leaders. For the remainder of the week, it is possible that the Senate may begin debate on the situation in Kosovo.

ORDER FOR ADJOURNMENT

Mr. MCCAIN. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment as a further mark of respect to the memory of deceased Senator Roman Hruska, following the remarks of Senator GRAHAM.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. GRAHAM. Thank you, Mr. President.

JUDICIAL EXPANSION AND THE Y2K ACT

Mr. GRAHAM. Mr. President, over the last several years—according to our colleague from North Carolina, over the last 40 years—we have heard multiple warnings about the Y2K computer problem. We have heard how this problem will overwhelm our Nation's transportation networks, financial institutions, business sectors, and State and local communities.

I bring to the attention of the Senate this afternoon another institution that could be overwhelmed by the rush to prepare for the new millennium, and that institution is one of our direct responsibilities—the Federal courts.

Just over a month ago, the Judicial Conference of the United States—the principal policymaking body for the Federal courts, chaired by the Chief Justice of the U.S. Supreme Court—asked Congress to create nearly 70 new permanent and temporary judgeships: 11 on the appellate level and 58 in Federal district courts.

This was an unusually large request by the Judicial Conference. It was also an urgent request.

The Judicial Conference has made biennial pleas for help from Congress. Every 2 years, the Conference has recommended additional judgeships to be created in order to maintain currency with the capacity of the judicial system of the Federal Government of the United States with the caseload that system was being asked to accommodate.

I am saddened to have to state and to indicate to my colleagues and the American people that Congress has not created so much as one new Federal judgeship since December of 1990—almost 9 years ago.

Since December of 1990, appellate filings have increased by more than 30 percent. District court filings have grown by more than 20 percent. But this increase is not equally distributed across the Nation.

In my home State of Florida, we have seen a worse—a much worse—situation. The Middle and Southern Districts of Florida have seen case filings increase by over 60 percent in the last 9 years without one additional Federal judge being added to the Middle or Southern Districts.

What has been the consequence of this failure of Congress to respond to the legitimate request of the Federal judiciary for additional resources to mediate these additional case demands? This has resulted in over 1,100 criminal defendants having cases currently pending in the Middle District of Florida. On the civil side, more than 5,900 cases have yet to receive final disposition.

The reasons for this need are many. But one stands out in the context of the legislation we are now debating, the legislation to turn responsibility for Y2K litigation to the Federal courts; and that is, the increasing willingness of Congress to federalize what were formerly, and I believe properly, State civil and criminal legal issues.

In other forums we have addressed the federalization of criminal statutes, and thus I will not dwell on that subject today. But just suffice it to say this one fact: It has been now some 135 years since the end of the Civil War. Of all of the Federal criminal statutes enacted since the end of the Civil War, 30 percent of them have been enacted since 1980, or in the last 19 years. So we are in an era in which there has been a rush to create new Federal criminal statutes.

While we can and should debate the merits of this trend, what cannot be debated is the fact that this has dramatically increased the burdens on the Federal courts and their ability to dispense justice. This trend is no less prevalent on the civil side as it is on the criminal side.

In the last Congress, we considered major legal overhauls that would have preempted State tort and property laws.

In 1998, Chief Justice Rehnquist stated:

> [S]hould Congress consider expanding the jurisdiction of the federal judiciary, it should do so cautiously and only after it has considered all the alternatives and the incremental impact the increase will have on both the need for additional judicial resources and the traditional role of the federal judiciary.

Unfortunately, the legislation we are considering today runs counter to that sage advice. The very nature of the Y2K problem means that multiple

plaintiffs will have similar claims against common defendants—a situation ripe for a profusion of class action lawsuits. By giving the Federal judiciary original jurisdiction over Y2K class actions, Congress will sentence Federal courts to overburdened caseloads far beyond the crisis that we currently face.

I want to make it clear that I recognize the seriousness of the Y2K problem and the need to address some of the related legal issues. Senators BENNETT and DODD deserve tremendous credit for their committee's assessment of how the U.S. Government is preparing for the Y2K problem.

I commend Senator MCCAIN for his forward-thinking focus on the legal ramifications of the millennium bug. But I have serious reservations about making Federal courts a clearinghouse for Y2K lawsuits of any kind. Proponents of this measure have argued that it is necessary to federalize the Y2K litigation in order to establish national uniformity in this area of the law.

This view runs counter to basic tenets of federalism. According to the National Governors' Association, 39 States currently have legislation enacted or pending that could resolve this issue at the State level. As such, the burden of proof falls on the proponents of this legislation to show why the Federal Government, contrary to two centuries of tradition of State responsibility for civil litigation, is in the best position to deal with this issue. Such an action of federalization amounts to a theft of what has traditionally been the State responsibility for these types of cases. As such, I will oppose cloture on this legislation.

Mr. President, thus far, I know of no plan whatsoever to address the massive new workload that legislative action such as the federalization of Y2K cases could impose on the Federal judiciary, particularly the U.S. district courts.

I urge my colleagues to consider not only the potential legal cases that will be generated by the Y2K challenge, but also to thoughtfully consider where those cases should best be heard. I believe the presumption should be that those cases should be heard where most of our civil litigation is heard, which is in State courts. I do not believe that the proponents of this change have effectively advocated for the necessity of changing that basic tradition in American jurisprudence.

We must be vigilant, as Members of Congress, to avoid legislative action that will increase the workload on our Federal courts without a commensurate increase in judicial resources. If we fail to do so, the end result will be justice delayed and justice denied.

I thank the Chair.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m., Thursday, April 29, 1999.

Thereupon, the Senate, at 6:04 p.m., adjourned until Thursday, April 29, 1999, at 9:30 a.m.