

lose that so-called nontangible property, you have no recourse. That is unacceptable.

I know we are going to get all kinds of debate, and I will probably get calls this afternoon: Yes, we do. The fact is, we have had analysis after analysis. The bottom line is that there is no protection for intangible property. That is not protected.

Defendants are even protected from liability for economic losses if they engaged in fraud or misrepresentation under the current legislation.

Our alternative, by contrast, only protects responsible companies. The biggest difference between our approach and theirs is that we protect only companies that have acted responsibly. We require companies to demonstrate that they have taken steps to clear up the Y2K problems.

For example, the pending bill provides blanket proportional liability. The Kerry amendment merely requires companies to have identified and warned potential victims of problems to get proportional liability.

The pending bill caps punitive damages for small companies. Punitive damages punish egregious conduct. We provide no such protection for irresponsible behavior in the alternative we offer.

The pending bill sets up roadblocks for consumers suffering from real Y2K-related problems. Our amendment lets them in the courthouse door to at least have the opportunity for redress their damages in a court of law.

This area of law traditionally falls under State jurisdiction. But this legislation, the pending bill, preempts State law. We acknowledge the need to do so because of unique circumstances, but we also recognize the need to be careful.

The pending bill virtually shifts all Y2K suits into Federal court. It makes it harder for consumers to bring a suit. It increases the strain on an already backlogged Federal court system. Chief Justice Rehnquist and the Judicial Conference oppose such federalization. Our bill places limits on class actions but does not federalize them.

In some ways our bill is very similar. Our version addresses all the basic concerns raised by the high-tech industry. Our plan is identical to the pending bill in many ways. Both give defendants 60 days to fix a Y2K problem. Both allow either party to request alternative dispute resolution. Both require anyone seeking damages to have the opportunity to offer reasonable proof—including the nature and amount of the damages—before a class action suit could proceed.

But while we recognize the need for a bill, we must carefully write it. Evidence is yet unclear as to the extent of this problem. Evidence is yet unclear about how much frivolous litigation will result from the Y2K bug.

We should not grant sweeping legal immunity to those who have caused but not corrected problems. Those who

have not tried to address problems deserve no special protection. Yet, this bill provides them that protection.

Our approaches are identical in every important, necessary way. But they differ in critical ways for consumers and for our court system.

Our approach is the only one the President will sign, so it is the only one that has hope of becoming law.

The year 2000 is fast approaching. We cannot waste time debating a bill we know will be vetoed only to have to start all over again. It is senseless to do that.

If enough of our colleagues vote against this legislation, it sends a message to fix it in conference. If conferees fail to fix it, I will make every effort to pass another bill that addresses the problem, that the President can sign.

In fact, I will present again, as clearly as I can, an articulated, very understandable version of what the President will sign. I want to make it very clear what it is the President will sign and what he will not. We owe it to all of our colleagues to reiterate one more time just what it is that he finds so offensive about this.

Let's go back one more time, because I think it is so incredible an issue. If you are affected tangibly, if your property is somehow tangibly affected, you have redress, you can be compensated for economic losses; but if your database, if your mailing list, or if anything else in the computer is adversely affected, is lost, is destroyed as a result of an advertent or inadvertent error on the part of technology—you lose everything—you have no recourse. You cannot recover economic losses that result.

Is that really what we want to do? Do we want to destroy your opportunity for recourse when you have lost your database? When you have lost your mailing list? Do we really want that to be the law of the land overriding State law? That is exactly what we are voting on.

The answer is, I will bet you this afternoon a majority of our colleagues are going to say: Yes, that is what I am voting on. I will support taking away the right of a small businessman to go to court if he has lost his database. I will support the right of an errant computer salesman or somebody else to take away a small business's opportunity to go to court.

I do not believe we want to do that. That is why the President said he will veto this bill. We can do better than that. Nobody can plead ignorance. I am saying it this afternoon. I want everybody to understand it. Nobody can say, "I didn't know that's what the bill did," because I am telling you right now, that is what it does.

So before you vote, my colleagues, understand, ignorance is not bliss here. Ignorance is no excuse. When they come back and say, "I didn't know," we can say, "I told you before the vote."

If you want to take away a small businessman's right to go to court be-

cause he has lost everything, you go ahead and vote for this bill. If you want a bill that works, work with us, work with the President; let's get one approved by the Senate he can sign.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until the hour of 2:15.

Thereupon, the Senate, at 1:16 p.m., recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

Y2K ACT

The Senate resumed the consideration of the bill.

AMENDMENT NO. 623 TO AMENDMENT NO. 608

Mr. MCCAIN. Mr. President, it is my understanding that there is a Sessions amendment at the desk, No. 623, and I ask for its immediate consideration.

It is also my understanding, with the agreement of the Senator from South Carolina, that the amendment is acceptable to both sides. Therefore, I believe there is no further debate on the amendment.

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

The amendment (No. 623) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 624 TO AMENDMENT NO. 608

Mr. MCCAIN. The next item of business is the amendment that was offered by Senator GREGG.

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. Mr. President, the amendment is very well intentioned. I believe we more appropriately sought to deal with this matter when we adopted the Inhofe amendment. I come to the conclusion that the Gregg amendment could possibly have an adverse affect on the bill and lead to more litigation, when certain individuals use this legislation as an excuse to avoid legitimate regulation.

I also believe that the adoption of this amendment might further increase the risk of veto of the bill. I want to assure the Senator from New Hampshire that we will deal with this matter in a thoughtful manner in conference, but I am very concerned about the impact of this amendment.

I believe that under the previous order, unless the Senator from New Hampshire requests unanimous consent to speak on the amendment, we should move forward.

The PRESIDING OFFICER. There are 2 minutes equally divided.

The Senator from New Hampshire.