in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–137. A communication from the Executive Director of the State Justice Institute, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–138. A communication from the Director of the Woodrow Wilson Center, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–139. A communication from the Executive Director of the Office of Navajo and Hopi Indian Relocation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–140. A communication from the Chief of Staff of the Office of the Nuclear Waste Negotiator, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

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. MCCAIN:

S. 233. A bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes; to the Committee on Governmental Affairs.

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

S. 234. A bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. HUTCHISON:

S. 235. A bill to amend the Clean Air Act to prohibit the Federal government from requiring State plans to mandate trip reduction measures; to the Committee on Environment and Public Works.

S. 236. A bill to amend the Clean Air Act to repeal the mandatory requirement for State motor vehicle inspection and maintenance programs for ozone nonattainment areas; to the Committee on Environment and Public Works.

By Mr. HOLLINGS:

S. 237. A bill to amend the Internal Revenue Code of 1986 to impose a value added tax and to use the receipts from the tax to reduce the Federal budget deficit and Federal debt and to finance health care reform; to the Committee on Finance.

S. 238. A bill to create a legislative line item veto by requiring separate enrollment of items in appropriations bills; to the Committee on Rules and Administration.

By Mr. SHELBY (for himself, Mr. NICKLES, Mr. BURNS, Mrs. HUTCHISON, Mr. LOTT, Mr. PACKWOOD, Mr. PRESSLER, Mr. INHOFE, Mr. THOMAS, and Mr. BROWN):

S. 239. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, and Mr. PELL):

S. 240. A bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. D'AMATO:

S. 241. A bill to increase the penalties for sexual exploitation of children, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. REID, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. FORD, Mr. DODD, and Mr. KERRY):

S. 242. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 20. A joint resolution granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. KASSEBAUM:

S. Res. 62. An original resolution authorizing expenditures by the Committee on Labor and Human Resources; from the Committee on Labor and Human Resources; to the Committee on Rules and Administration.

By Mr. DORGAN (for himself, Mr. DODD, and Mr. HARKIN):

S. Res. 63. A resolution to express the sense of the Senate regarding calculation of the Consumer Price Index; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SIMPSON:

S. Res. 64. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; from the Committee on Veterans Affairs; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN:

S. 233. A bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes; to the Committee on Governmental Affairs.

THE REPORTING REQUIREMENTS SUNSET ACT

Mr. MCCAIN. Mr. President, I introduce legislation that would terminate the statutory requirement for all congressionally mandated reports, except for those required under the Inspector Generals Act and the Chief Financial Officers Act, 5 years after its enactment. The Reporting Requirements Sunset Act of 1995 is almost identical to legislation (S. 1971) that I introduced in the last Congress. This bill would also require the President to identify which reports he feels are unnecessary or wasteful in his next budget submission to Congress, a measure which will hopefully spur the Congress to swiftly dispose of those specific reports.

This proposal is intended to address the growing problem of the thousands of reports the Congress is burdening the executive branch with each year. Each year, Members of Congress add layer upon layer of onerous paperwork requirements upon executive branch agencies by mandating various reports. This problem has a very real and substantive cost to taxpayers in terms of wasting hundreds of millions of dollars, in addition to taking up untold number of work-hours by Federal employees, and draining vast amounts of other agency resources that could be far better utilized in more worthy endeavors.

The Vice President's National Performance Review determined that in 1993 alone the Congress mandated that the Office of the President and executive branch agencies to prepare over 5,300 reports. This is a problem that is reaching truly epic proportions of unnecessary and wasteful papershuffling.

I have based this legislation upon the official list of congressionally mandated reports which is published each Congress by the Clerk of the House of Representatives. It is the most comprehensive compilation available. Let me give just a few examples of the type of reports I am talking about. Each year, the following are required to be sent to the Congress from Federal agencies: a report on activities involving electric and hybrid vehicle research; a report on the United States-Japan Cooperative Medical Science Program; another on the number of customs service undercover operations commenced, pending, and closed; and finally, a report on the transportation, sale, and handling of animals for research and pets.

Is the continued research, preparation, and production of these types of reports—and thousands more, all at taxpayers' expense—really necessary? I think the answer is likely no, Mr. President, and I am confident most people determined to reduce the size and cost of Government will agree.

This problem of foisting massive reporting requirements on Federal agencies is extremely expensive. The Department of Agriculture alone spent over $40 million in taxpayers money in 1993 to produce the 280 reports it was required to submit to the Congress. That is astounding, Mr. President—$40 million in taxpayer dollars spent by a single department on reports mandated by the Congress. At a time when our country is struggling to alleviate the burdens of the middle class and also address the urgent needs of our citizenry, this is an especially egregious waste of money.

Furthermore, this problem is getting worse with each passing year. The GAO stated that in 1970, the Congress mandated only 750 recurring reports from Federal agencies. Now we have spiraled well past 5,300, and the GAO determined that ''Congress imposes about 300 new requirements on Federal agencies each year.'' Clearly, Mr. President, the wasteful blizzard of paperwork that Vice President Gore criticized is becoming an avalanche, and it's time for the Senate to take decisive action to remedy it.

This legislation would terminate the statutory requirement for all congressionally mandated reports 5 years after it is signed into law, with two specific exceptions. The reports to be exempted are those required under the Inspector Generals Act of 1978 and the Chief Financial Officers Act of 1990. The Inspector Generals Act requires the Congress to be advised of activities regarding investigations into waste, fraud, and abuse in Federal agencies; and the CFO Act requires agencies to provide financial information about their short- and long-term management of agency resources.

I believe the reports required by these two laws are very important and merit continuation, and I also recognize that there are many other reports that my colleagues feel have great value because of the information they provide to the Congress. Such reports can simply be reauthorized at any time in the 5 years before this amendment would sunset them.

Mr. President, it's time we put an end to this cycle of waste and misspent resources. The adoption of this legislation would be a strong contribution toward downsizing Government as the American people are calling on us to do. I urge my colleagues to support this legislation and remove the millstone of unnecessary and costly paperwork that Congress has hung around the neck of the Federal Government for too long.

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

S. 234. A bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes; to the Committee on Environment and Public Works.

MOTORCYCLE SAFETY LEGISLATION

Mr. CAMPBELL. Mr. President, today, I rise to introduce legislation which will provide relief to 25 of those States that have been penalized by one such mandate. The Intermodal Transportation Act of 1991 penalized States which did not pass laws mandating seatbelt and helmet usage by October 1 of 1993. The penalties involve a required transfer of scarce transportation and construction dollars to section 402 safety programs. The penalties are assessed regardless of whether the State already has the funds dedicated to safety programs and regardless of the State's individual safety record.

Like many of my colleagues, Mr. President, I am not opposed to safety programs and I certainly support them. I am not opposed to the use of helmets. On the contrary, I am opposed to the Federal Government blackmailing States, as many other Senators are. It is not a good policy to force States to channel funds from one transportation activity to another, using threats of withholding Federal money for these programs.

This bill would give States the option of implementing their own safety programs, which they can tailor to the specific needs of their individual States. If they choose to design a safety program or already have such a program in place, it would not be subject to the section 153 penalties. They still would have the option of passing such laws if they want it. In fact, it would not mandate that any States repeal existing laws.

I believe encouraging and providing support to States and local communities to establish training programs would be a much more effective means of improving motorcycle safety on the roads and the highways. The Federal Government should redirect their role to establishing basic guidelines regarding the programs, rather than forcing States to dip from one transportation fund to another.

Mr. President, as the Senate has been debating the issue of unfunded mandates, I am introducing legislation that will provide options and relief to the 25 States which have been financially penalized under the Intermodal Surface Transportation Act of 1991 for not having passed laws mandating helmet use by the deadline of October 1, 1993. This is not only a burdensome Federal mandate placed on the backs of State legislatures, but also an erosion of civil liberties and personal freedom.

Twenty-five States face penalties in fiscal years 1995, 1996, and 1997. In accordance with ISTEA, they are required to transfer scarce transportation and construction dollars to section 402 safety programs.

This shift will force States to spend 10 to 20 times the amount they are currently spending on section 402 safety programs. These penalties are assessed regardless of whether the State already has funds dedicated to helmet safety programs and regardless of the State's individual safety record.

Initially, these States are being forced to shift 1.5 percent of their Federal highway dollars. This transfer effects three programs: the National Highway System, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Improvement Program. Those States which did not enact helmet laws by September 30, 1994, are required to shift 3 percent of their Federal highway funds from these important programs into safety programs.

My bill would repeal the section 153 penalties and, upon enactment of this legislation, gives States until fiscal year 1996 to either pass helmet laws, or establish motor safety programs, exempting those States which already have safety programs in place.

Mr. President, let me be clear. I am not opposed to people wearing helmets. Quite the contrary. What I am opposed to is the Federal Government blackmailing States to pass laws. It simply is not good policy to force States to funnel funds from one State transportation activity to another. It should be pointed out that the money the Federal Government wants to redirect, is tax revenue already paid by State residents.

Safety education programs are desirable. That is the point of my bill. I firmly believe, and I'm sure my colleagues would agree, that we must do everything we can to make our roads and highways safer.

My bill would give States the option of implementing safety programs, instead of mandating the use of helmets and remove the section 153 penalties.

My own State of Colorado has no helmet law. The Colorado Legislature has repeatedly shot down any attempt to implement one.

Colorado, however, has a motorcycle fatality rate almost 30 percent below the average for States with mandatory helmet laws. Of the top 12 States with the best motorcycle safety records, only one has a helmet law. On the other hand, half of the 12 States with the worst safety records have helmet laws.

Comparing States with and without mandatory helmet laws as a whole, figures show that for the 14-year period between 1977 and 1990, States with mandatory helmet laws had 12.5 percent more accidents and 2.3 percent more fatalities than States that did not mandate helmet usage.

In the past decade, motorcycle fatalities have decreased 38 percent and accidents have plummeted 41 percent. These figures are particularly impressive because the Federal Highway Administration estimates that the average vehicle miles traveled by motorcyclists has increased 85 percent since 1975. These statistics are unmatched by any other category of road user—passenger or commercial.

What can account for this decrease in accidents and fatalities? Evidence clearly indicates that the most effective way to reduce motorcycle accidents and motorcycle fatalities is through comprehensive education programs, as opposed to mandating helmet usage. Currently 42 States have established and funded some sort of safety program.

The national average of motorcycle fatalities per 100 accidents is 2.95.

States with rider education programs and no helmet laws, however, have the lowest average death rate, 2.56 fatalities per 100 accidents. States with mandatory helmet laws and no rider education programs have a significantly higher rate of 3.09 fatalities per 100 accidents.

Police accident reports indicate that well over 45 percent of motorcyclists involved in accidents did not have a motorcycle license, 92 percent did not have any rider training, and over 50 percent had less than 6 months riding experience. Some 62 percent of the accidents and 50 percent of the fatalities involved riders between the ages of 17 and 26. Clearly, mandating helmet use will not address the real problem of rider inexperience and lack of training.

I believe that encouraging and providing support to States and local communities to establish motorcycle training programs would be a much more effective means of improving motorcycle safety on our roads and highways. The Federal Government should redirect its role to providing uniform national guidelines regarding these safety programs, rather than mandating where the money to pay for them should come from.

I realize the motivations behind ISTEA and those who wish to force States into passing helmet and seatbelt laws are doing so out of concern for the safety of the traveling public, but I think their efforts are misguided.

Forcing States to pass laws, or throwing money at safety programs is not the answer. Throughout my career in politics, I have always strived to protect the interest of States and communities by allowing them to make the important decisions on how their affairs should be conducted. When Congress blackmailed the States regarding highway speed limits, I thought that was wrong. The same goes for helmet laws. I have stuck with the philosophy that each State and each community should, to the best of their abilities, be allowed to make its own policy decisions.

I own a motorcycle, that's no secret. Where helmets are required to be worn, I wear them. Where they are not, I don't. I make no bones about the fact that my dislike for the Federal mandate requiring States to pass helmet laws is in part inspired by my interest in motorcycling. But, I also think personal freedom is an issue. I am prochoice. I do not think the Federal Government should dictate to the States, or its citizens, on matters of individual liberty. The choice of wearing a helmet, or not doing so, should be left up to the individual—not forced by Government extortion. And those who contend that it is not simply a personal responsibility because motorcyclists who choose not to wear helmets can become a ''public burden,'' are using faulty logic. It would then follow that we should mandate helmets for skiers, horsemen, skateboarders, and automobile drivers.

Mr. President, in closing, I want to strongly encourage my colleagues to reconsider the position Congress took in ISTEA in mandating that States pass helmet and seatbelt laws. It is wrong to blackmail the States into passing laws. And, if motorcycle safety programs are desired, we should work toward establishing effective program guidelines, rather than force States to dip from one transportation pot to fill another.

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. 234

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

SECTION 1. USE OF A MOTORCYCLE HELMET AND MOTORCYCLE SAFETY PROGRAM.

Section 153(h) of title 23, United States Code, is amended—

(1) by striking ''(1) FISCAL YEAR 1994.—If,'' and inserting the following:

''(2) SAFETY BELTS.—

''(A) FISCAL YEAR 1994.—If,'';

(2) by striking ''(2) THEREAFTER.—If'' and inserting the following:

''(B) THEREAFTER.—If,''; and

(3) in paragraph (2) (as amended by paragraphs (1) and (2)), by striking ''subsection (a)(1) and a law described in'' each place it appears;

(4) by inserting under the subsection heading the following:

''(1) MOTORCYCLE HELMETS.—

''(A) FISCAL YEAR 1996.—If, at any time in fiscal year 1996, a State does not have in effect a law described in subsection (a)(1) or a motorcycle safety program administered or authorized by the State to reduce motorcycle accidents and fatalities, the Secretary shall transfer 1½ percent of the funds apportioned to the State for fiscal year 1997 under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

''(B) THEREAFTER.—If, at any time in a fiscal year beginning after September 30, 1996, a State does not have in effect a law described in subsection (a)(1) or a motorcycle safety program administered by the State to reduce motorcycle accidents and fatalities, the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.''.

By Mr. HOLLINGS:

S. 237. A bill to amend the Internal Revenue Code of 1986 to impose a value added tax and to use the receipts from the tax to reduce the Federal budget deficit and Federal debt and to finance health care reform; to the Committee on Finance.

THE DEFICIT AND DEBT REDUCTION AND HEALTH CARE FINANCING ACT OF 1995

Mr. HOLLINGS. Mr. President, I rise to introduce the Deficit Reduction and Health Care Financing Act of 1995. This bill would create a 5-percent national value-added tax, with all revenues set aside in a trust fund to finance deficit reduction and health care reform. Let me be clear, I offer this bill under duress. But it is the only way I know—in tandem with deeper spending cuts—to deal with the fiscal recklessness that has gotten out of hand in this city.

It's time we stopped running government based on the promise of pollisters and started thinking about performing for the people. Today, I propose a 5-percent national value-added tax without exemptions. The VAT is essentially like a national sales tax. Traditionally, there have been three principal objections to a VAT: First, it is regressive; second, it is too complicated; third, it raises too much money and would cause waste. Let me address each of these objections in turn.

First, the issue of regressivity. I agree, but all taxes are inherently regressive. With a consumption tax, the more you consume, the more you pay; the less you consume, the less you pay. The VAT does fall disproportionately on lower income brackets. But the VAT is not nearly as regressive as interest costs on the national debt. It is not nearly as regressive as the debt's inflationary impact on the economy, which disproportionately harms the poor.

Second, it is said that the VAT is too complicated. Well, it's certainly not too complicated for the Japanese, the Koreans, and every member of the European Economic Community. Moreover, we can draw on the lessons of these other countries as well as the experiences of the States with sales taxes in order to minimize such complications.

Third, some say that a VAT would raise too much money. This is a dream. We will need ever dime raised by a 5-percent VAT, plus savings from additional steep spending cuts, in order to eliminate the deficit. Even then, it will take years to pay down the debt and to put government back in the black.

A VAT will help us not only to eliminate the deficit but also to pay cash on the barrelhead for health reform. Additionally, moving to border-rebatable taxes will contribute to eliminating our other great deficit—the trade deficit. At present, our overseas competitors rebate to their manufacturers the VAT on all goods exported to the United States; those manufacturers' other in-country taxes are relatively low. In stark contrast, producers in the United States pay property taxes, income taxes, excise taxes, Social Security taxes and much more; then, when their goods are shipped overseas, the importing country slaps a fat VAT tax on top of all those other taxes. This does tremendous harm to the competitiveness of U.S. products abroad. It makes it financially attractive to produce outside the United States, and represents at least a 15-percent disadvantage in international trade. A U.S. VAT would eliminate this disadvantage. With good reason, Lester Thurow of MIT says that ''the rules of international trade make you stupid if you don't have a VAT.''

I have no illusions as to the political trauma involved in enacting a new tax.

There is never a good time to raise a tax. But as we continue to wait for a propitious moment, our financial crisis worsens every day. It's time to put government back on track with difficult belt-tightening and and honest taxes. I propose a single, ultra-simple reform—a reform that would transform the reputation of Congress in the eyes of the American people. That reform is to put the U.S. Government on a pay-as-you-go basis.

By Mr. HOLLINGS:

S. 238. A bill to create a legislative line-item veto by requiring separate enrollment of items in appropriations bills; to the Committee on Rules and Administration.

THE LEGISLATIVE LINE-ITEM VETO SEPARATE ENROLLMENT AUTHORITY

Mr. HOLLINGS. Mr. President, I rise today to introduce legislation which would provide Congress and the President with an additional weapon to eliminate wasteful and unnecessary appropriations and thereby reduce the Federal deficit. This bill, a statutory, separate enrollment line-item veto, is identical to a measure previously considered by the 99th and reported favorably by a bipartisan vote out of the Senate Budget Committee on July 25, 1990. During the 103d Congress, a similar amendment offered by myself and Senator BRADLEY received the support of 52 Senators.

Today, 43 States have, in one form or another, a line-item veto allowing the chief executive to limit legislative spending. As a former Governor who inherited a budget deficit in a poor State, I can testify that a line-item veto is invaluable in imposing fiscal restraints.

The fiscal problems of our Nation have been painfully documented. Our Government continues on annual deficit binges that have pushed our total deficit past $4.7 trillion. For years now, we have been toying with freezes, asset sales, and sham summits, but the deficit and debt continue to grow.

The American taxpayer, as well as the Congress, have grown weary of the smoke and mirrors and are past ready for new measures that will help to put our country back in the black. If every there was a problem that needed to be attacked from every particular angle, it is this deficit.

Mr. President, I welcome President Clinton's strong support for the line-item veto initiative and his continuing resolve to attack the burgeoning deficit monster. In order to hold him to that commitment, we should send him into battle well armed. By restoring accountability and responsibility throughout the appropriations process, the line-item veto would force Members of Congress and the President to stop fixing the blame and start fixing the problem.

In order to provide greater flexibility in the legislative process, this legislation provides that each item shall be enrolled as a separate bill and sent to the President for his approval. Therefore, each item of an appropriations bill would be subject to veto or approval, just like any other bill, and the override provisions found in article I of the Constitution would apply in the case of a veto. An item is defined as any numbered section and any unnumbered paragraph of an appropriations bill. The enrolling clerk would merely break an appropriations bill down into its component parts and send each separately enrolled provision to the President.

Finally, this legislation also contains a 2-year sunset provision allowing for a reasonable testing period and requiring an evaluation of the line-item veto's success. I have no question but that it will be demonstrated to be a modest, but effective, method of restraining fiscal profligacy. I hope that Senators will join me in this effort, and I ask unanimous consent the full text of the bill be printed in the RECORD.

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

S. 238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Impoundment Control Act of 1974 is amended by adding at the end thereof the following new title:

"TITLE XI—SEPARATE ENROLLMENT AUTHORITY LEGISLATIVE LINE ITEM VETO

"SEC. 1101. (a)(1) Notwithstanding any other provision of law, when any general or special appropriation bill or any bill or joint resolution making supplemental, deficiency, or continuing appropriations passes both Houses of the Congress in the same form, the Secretary of the Senate (in the case of a bill or joint resolution originating in the Senate) or the Clerk of the House of Representatives (in the case of a bill or joint resolution originating in the House of Representatives) shall cause the enrolling clerk of such House to enroll each item of such bill or joint resolution as a separate bill or joint resolution, as the case may be.

"(2) A bill or joint resolution that is required to be enrolled pursuant to paragraph (1)—

"(A) shall be enrolled without substantive revision;

"(B) shall conform in style and form to the applicable provisions of chapter 2 of title 1, United States Code (as such provisions are in effect on the date of the enactment of this title); and

"(C) shall bear the designation of the measure of which it was an item prior to such enrollment, together with such other designation as may be necessary to distinguish such bill or joint resolution from other bills or joint resolutions enrolled pursuant to paragraph (1) with respect to the same measure.

"(b) A bill or joint resolution enrolled pursuant to subsection (a)(1) with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States and shall be signed by the presiding officers of both Houses of the Congress and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

"(c) For purposes of this concurrent resolution, the term 'item' means any numbered section and any unnumbered paragraph of—

"(1) any general or special appropriation bill; and

"(2) any bill or joint resolution making supplemental, deficiency, or continuing appropriations.".

(b) The amendment made by subsection (a) shall apply to bills and joint resolutions agreed to by the Congress during the two-calendar-year period beginning with the date of the enactment of this Act.

By Mr. SHELBY (for himself, Mr. NICKLES, Mr. BURNS, Mrs. HUTCHISON, Mr. LOTT, Mr. PACKWOOD, Mr. PRESSLER, Mr. INHOFE, Mr. THOMAS, and Mr. BROWN):

S. 239. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

PRIVATE PROPERTY OWNERS BILL OF RIGHTS

Mr. SHELBY. Mr. President, today I am introducing a bill to address the continued deterioration of individual property rights. Environmental regulations are increasingly interfering with the ability of private property owners to use and develop their land. Contrary to popular belief, protecting the property rights of individuals and protecting our environment are not mutually exclusive principles.

All too often, I hear stories that landowners are being deprived of the ability to build a house because the Corps of Engineers has designated their property as a wetland; or the U.S. Fish and Wildlife Service has prohibited cultivation of land for fear it might jeopardize an endangered species. A landowner may even be required to pay exorbitant mitigation fees or fines in order to regain the use of their property. That is, of course, if they are lucky enough to regain the right to use their property.

Not only does the enforcement of such land use statutes abuse the rights of the property rights owners, but they impose the cost of enforcing these public goods on individual owners rather than the public at large. If the land is regulated in the name of a public good, surely we can distribute the cost among the public as well.

The mounting cases regarding regulatory takings necessitate Congressional action. The Domenigoni family experience is a good example. Cindy and Andy Domenigoni are fifth generation farmers in Riverside County, CA. First cultivated in 1879, their farm has traditionally been home to the Stephen's kangaroo rat, which was listed as an endangered species in 1988.

In 1990, Fish and Wildlife Service officials ordered them to stop cultivating their 800 tillable acres and warned them that disking this land would warrant their arrest. Punishment for disking land that had been cultivated for the previous 100 years would now result in jail time, a $50,000 fine, or both.

As a result, the Domenigonis' land lain idle, producing no crops for 4 years. They lost $75,000 in foregone crops each year and incurred another $100,000 loss in biological consultation fees, legal fees, and other costs associated with fighting this regulatory taking.

Ironically, on November 1, 1993, shortly after devastating southern California fires destroyed thousands of acres of kangaroo rat habitat, FWS biologist John Bradley determined that the rats had left the area before the fire, because the years of leaving the fields fallow had made the brush and weeds grow too thick for the rats.

I must say this kind of policy is reckless and haphazard. When elected to the Senate, we had to take an oath to uphold the Constitution of the United States. I do not believe confiscating the economic value of ones property would be considered upholding the Constitution. Indeed, I believe most would agree that such action is nothing less than the taking of property without compensation.

In another case, Mr. and Mrs. Howard Heck were denied building on their 25 acres of land because a federally threatened plant species was ''within 5 miles of the proposed project site.'' Mr. Heck has said, ''We were proud to be Americans in a land where * * * our children were to have the opportunity to achieve any goal we wanted. Now we are ashamed of our country and Government that allows the bureaucrats to steal from its citizens * * *.''

I, too, am ashamed the Government in this Nation can effectively steal the economic value of one's land and rob this elderly couple of their dignity and peace during their remaining years on this Earth.

In still another instance, a Corps field agent to the regional chief of enforcement signed a memo stating a particular family in Maine, ''would be a good one to squash and set an example * * *.''

The Government of the United States of America has no business ''squashing'' hard working Americans or plundering away their wealth. The very reason the Constitution was established was to protect individuals, not to harm them. The atrocities previously mentioned need to be addressed with a clearly defined policy for Federal agencies in order to stop the abuse of Government bureaucrats.

The two laws most responsible for imposing the heavy burden on property ownership are the Endangered Species Act and section 404 of the Clean Water Act.

Although the intention of these acts is commendable, they have created perverse incentives for private property ownership. Individuals are reluctant to develop or build on land for fear the Fish and Wildlife Service, the Corps of Engineers or the EPA will soon visit. A visit from the IRS is more welcome than a visit from these Federal agencies.

The negative impact of these perverse incentives directly affect the housing and agricultural industries as well as many others. Every house that is not built and every farm that is not cultivated costs us jobs. Not only do the present policies crush an individual's hopes and dreams, but it hinders those still trying to achieve them.

As a result of the inequities in the current policies, Senator NICKLES and I are reintroducing legislation entitled the, ''Private Property Owners Bill of Rights.'' This bill would insure that private property owners are protected by the Federal Government, its employees, agents, and representatives.

Our bill requires notice and consent from property owners before Federal agencies and their agents can enter a private property owners land for purposes of the Endangered Species Act or wetlands laws.

In addition, this legislation ensures that property owners rights are considered and respected when agency decisions or actions are taken pursuant to these two laws by providing an administrative appeals process. The process calls for the owner to be given access to the information collected, a description of the way the information was collected, and an opportunity to discuss the accuracy of the information.

Lastly, and most importantly, it requires the agency itself to determine whether a taking has occurred and if so to compensate the private property owner for the loss in fair market value of the property. A property owner who is deprived of at least 20 percent or more of the fair market value of $10,000 or more is entitled to receive compensation. The agency would be required to pay the fair market value of the property if purchased or the difference between the fair market value of the property without the restrictions and the fair market value of the property with restrictions.

I believe our legislation addresses the serious problem of property rights abuse. It will enhance the foundation necessary for contracts and commerce and in doing so, will foster an environment essential to achieving the American Dream.

I strongly urge my colleagues to cosponsor this legislation and support this cause on behalf of every property owner in America.

I ask unanimous consent that the following Senators be listed as original cosponsors of this legislation: Senator NICKLES, Senator BURNS, Senator HUTCHISON, Senator LOTT, Senator PACKWOOD, Senator PRESSLER, Senator INHOFE, Senator THOMAS, and Senator BROWN.

Mr. NICKLES. Mr. President, of all the freedoms we enjoy in this country, the ability to own, care for, and develop private property is perhaps the most crucial to our free enterprise economy. In fact, our economy would cease to function without the incentives provided by private property. So sacred and important are these rights, that our forefathers chose to specifically protect them in the fifth amendment to the U.S. Constitution, which says in part, ''nor shall private property be taken for public use, without just compensation.''

Unfortunately, Mr. President, some Federal environmental, safety, and health laws are encouraging Government violation of private property rights, and it is a problem which is increasing in severity and frequency. we would all like to believe the Constitution will protect our property rights if they are threatened, but today that is simply not true. The only way for a person to protect their private property rights is in the courts, and far too few people have the time or money to take such action. Thus many citizens lose their fifth amendment rights simply because no procedures have been established to prevent Government takings.

Mr. President, many people in the Federal bureaucracy believe that public protection of health, safety, and the environment is not compatible with protection of private property rights. I disagree. In fact, the terrible environmental conditions exposed in Eastern Europe when the cold war ended lead me to believe that property ownership enhances environmental protection. As the residents of East Berlin and Prague know all too well, private owners are more effective caretakers of the environment than communist governments.

Yet the question remains, how do we prevent overzealous bureaucrats from using their authority in ways which threaten property rights?

Mr. President, today I rise to join my colleague Senator RICHARD SHELBY of Alabama in introducing legislation which will strengthen every citizen's fifth amendment rights. Our bill, the Private Property Owners Bill of Rights, targets two of the worst property rights offenders, the Endangered Species Act and the wetlands permitting program established by Section 404 of the Clean Water Act.

Mr. President, our bill requires Federal agents who enter private property to gather information under either the Endangered Species Act or the wetlands permitting program to first obtain the written consent of the landowner. While it is difficult to believe that such a basic right should need to be spelled out in law, overzealous bureaucrats and environmental radicals too often mistake private resources as their own. Property owners are also guaranteed the right of access to that information, the right to dispute its accuracy, and the right of an administrative appeal from decisions made under those laws.

Most importantly, the Private Property Owners Bill of Rights guarantees compensation for a landowner whose property is devalued by 50 percent or more by a Federal action under the Endangered Species Act or wetlands permitting program. An administrative process is established to give property owners a simple and inexpensive way to seek resolution of their takings claims. If we are to truly live up to the requirements of our Constitution, Mr. President, we must make this commitment. I believe this provision will work both to protect landowners from uncompensated takings and to discourage Government actions which would cause such takings.

Mr. President, the time has come for farmers, ranchers, and other landowners to take a stand against violations of their private property rights by the Federal bureaucracy. The Private Property Owners Bill of Rights will help landowners take that stand.

Mr. BURNS. Mr. President, today I join my colleague from Alabama, Senator SHELBY in introducing a bill which would protect individual's private property rights.

This bill, the Private Property Owners Bill of Rights, would provide a consistent Federal policy to encourage, support, and promote the private ownership of property and to ensure the constitutional and legal rights of private property owners.

Private property rights are protected by the fifth amendment of the Constitution. Yet, many laws have been encroaching further and further on this right. The bill we are introducing today is very important to Montana because it makes the Federal Government respect and protect private property rights when enforcing the Endangered Species Act and the Clean Water Act. Montana's private property owners have been greatly impacted by these two laws.

In Montana a couple years ago, I saw a headline which read ''Judge Says Grizzlies Have 'People Rights'.'' This article ran in an agriculture trade publication. The story was about John Shuler of Choteau who shot a grizzly bear in 1989 after he found three of these bears in his sheep pen. He originally fired the shot to scare the bears away, but when one bear charged him, he was forced to shoot that bear. For those who may not be aware, the grizzly is protected under the Endangered Species Act.

The judge ruled that the Endangered Species Act's self-defense exception must meet the same requirements used in criminal law for humans. The judge then ruled that since this rancher had stepped off his porch, to protect his investment, he ''Purposefully placed himself in the zone of imminent danger of a bear attack''. According to this judge, the rancher didn't have the right to protect his property. Folks, that's wrong.

The Private Property Owners Bill of Rights would create an administrative appeals process for affected property owners. And the bill establishes a framework so private property holders can seek and obtain compensation.

In addition, before a Government official can enter private land, they must have consent from the land owner. If information is collected on private property, this information cannot be used unless the private individual has full access to the information and has the right to dispute the accuracy of the information. The bill also establishes the right to administratively appeal decisions regarding wetlands and critical habitat of a listed species.

Montanans believe that protecting private property is of utmost importance. And this bill reinforces the Government's responsibility to protect property rights and will help get the Federal Government off the backs of Montana's working men and women.

I believe strongly in every American's private property rights and this bill should be signed into law.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. CRAIG THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, and Mr. PELL):

S. 240. A bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act; to the Committee on Banking, Housing, and Urban Affairs.

THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

• Mr. DOMENICI. Mr. President, I introduce a bill on behalf of Senator DODD, myself and 15 other Senators on both sides of the aisle which will return some fairness and common sense to our broken securities class action litigation system. The system as it currently operates encourages the quick filing of frivolous complaints by entrepreneurial class action attorneys, and costs businesses countless amounts of time and money to defend against and settle these strike suits. In cases of real fraud, the system often leaves injured investors with pennies on the dollar for their losses, while plaintiffs' lawyers take a substantial amount of the settlement. In short, the current securities litigation system rarely benefits anyone except for plaintiffs' attorneys, and victimizes innocent companies and investors.

The list of companies that have been hit with frivolous securities suits reads like the who's who of high growth, high-technology businesses. In fact, 19 of the 30 largest companies in Silicon Valley have been sued since 1988. They are the backbone of our economy and the foundation of our ability to compete in the new global marketplace. During 2 days of hearings on securities litigation conducted by Senator Dodd back in 1993, we heard from CEO's who had been involved in frivolous securities class actions first hand. Their testimony indicated that:

Companies get sued when their stock price drops.

Companies also get sued by shareholders for settling securities suits.

Frivolous litigation is time consuming and distracts CEO's and other corporate officers from economically productive activity.

Defending a securities lawsuit often is as costly as starting up a new product line.

The general counsel for the Intel Corp. testified that if Intel had been sued when it was a start-up company, that such a suit probably would have bankrupted the company before it invented the microchip. We cannot afford to allow the current system to snuff out this sort of innovation.

Frivolous litigation also adversely affects investors by drawing scarce resources away from productive activity, which is then reflected in a company's stock price. Arthur Levitt, Chairman of the Securities and Exchange Commission, stated in testimony before the House in August 1994, that ''when issuers and others pay substantial sums to deal with frivolous lawsuits, significant costs are imposed on the process of capital-raising and on business, costs that ultimately will be borne by all shareholders''.

Instead we must put a stop to the race-to-the-courthouse game played by plaintiffs' class action attorneys, in which they file lawsuits within hours of news that a company came up short on an earnings projection or will be forced to delay the introduction of a new product line. Information provided to the Senate Securities Subcommittee by the National Association of Securities and Commercial Law Attorneys [NASCAT] suggests that 56 percent of the class actions that they hand-picked to provide to the subcommittee were filed within 30 days of a triggering event, like a missed earnings projection. Twenty-one percent of the cases were filed within 48 hours of the triggering. The stock price drops and class action suits are filed quickly with little due diligence done to investigate each of the elements necessary for a successful 10b–5 case.

Many academics and those familiar with our securities class action system also agree that the securities litigation system encourages the filing of frivolous suits. Jonathan Macey, a law professor at Cornell University believes that most securities class actions are frivolous. ''The facts show that every time a firm's share price drops by enough that it's profitable for plaintiffs' lawyers to bring a lawsuit, they do'', he said recently. Janet Cooper Alexander at Stanford University has proven that most class actions are settled without regard to whether the case has merit. Chairman Levitt has acknowledged that ''virtually all securities class actions are settled for some fraction of the claimed damages, and some allege that settlements often fail to reflect the underlying merits of the cases. If true, this means that weak claims are overcompensated and strong claims are undercompensated.''

In case you don't believe that class action attorneys are filing frivolous suits, take a look at the article the Wall Street Journal ran last week on January 11th. It provides an excellent example of the cookie-cutter complaints which often form the basis of these million dollar lawsuits. It documents a case against Philip Morris filed within 48 hours of the company's announcement of a price cut on one of its brands of cigarettes. The case was dismissed after the judge noticed that the plaintiffs' attorneys had filed two separate suits which alleged that Philip Morris had engaged in fraud to create and prolong the illusion of their success in the toy industry. As you might well know, Philip Morris doesn't make toys.

But this is how the current system works. Plaintiffs' lawyers race to the courthouse, file frivolous suits without any research into their validity, and companies normally may pay something to make them go away. Because usually, plaintiffs' lawyers don't make the glaring mistake they made in the Philip Morris case and forget to delete the word toy from their complaint. Judges rarely dismiss these cases without such a blunder. Companies continue to get sued and are forced to settle frivolous cases. Our bill will eliminate these poorly researched, kitchen sink complaints.

Plaintiffs' lawyers often sue not only the issuer company, but their officers and directors, accountants, lawyers, and underwriters. These cases are brought under joint and severable liability, which means that any one defendant could be made to pay the entire judgment even if he or she was only marginally responsible. This increases the pressure to settle even the most frivolous cases.

Our bill adopts the State law trend of imposing proportionate liability, liability according to relative fault. Our bill retains joint severable liability for the really bad actors, but provides proportionate liability for those parties only incidentally involved. However, our bill contains a provision which deals with the problem of insolvent defendants and small investors. We believe that this provision strikes the correct balance and returns fairness to the system.

Our bill also allows for alternative dispute resolution as an alternative to costly and time consuming litigation. One reason these cases settle regardless of the merits is that it costs so much to get through what lawyers call discovery, the process of exchanging information before a trial. By allowing for ADR, we hope to reduce those costs. Our bill also requires specificity in pleading securities fraud, a requirement imposed on every other fraud action under rule 9(b) of the Federal rules. This provision will reduce the number of fishing expedition lawsuits, like the one in the Philip Morris case.

Even in cases of real fraud, the current system allows investors to recover on average about 6 cents on the dollar, while plaintiffs' lawyers take on average between 30 and 33 percent of the settlement fund. One plaintiffs' class action lawyer boasted in Forbes magazine that securities class action cases are a great practice because there are no clients. Yet these clientless lawyers claim to be acting in the best interests of the class.

Once a settlement is reached, the entrepreneurial lawyer with no clients becomes an adversary of the plaintiffs' class. The lawyers' interest shifts to protecting the settlement. ''At its worst, the settlement process may amount to a covert exchange of a cheap settlement for a high award of attorney's fees'', according to John Coffee of Columbia University. Professor Coffee also has noted that plaintiffs' attorneys in many securities class actions appear to ''sell out their clients in return for an overly generous fee award''.

Under our bill, plaintiffs' lawyers will no longer be able to sell out their clients for huge fee awards. Our bill allows judges to appoint a plaintiff steering committee or guardian ad litem at the request of the class to ensure that the attorneys act in the best interests of their clients. Clients, not lawyers, will be in charge of the litigation, and will be able to make the important decisions like when to settle, when to dismiss their attorneys or when to proceed to trial.

Our bill also eliminates pet plaintiff fees, bonus awards plaintiffs' attorneys pay to individuals to act as class representatives, regardless of the number of shares they own or the amount of their actual losses. These fees reduce the amount of recovery available to the class as a whole and serve no purpose but to give attorneys an available stable of plaintiffs willing to sue at a moment's notice in exchange for a big payoff. This practice undermines the fairness of the system and should be eliminated.

Out current securities class action system obviously is broken and needs the types of reforms Senator DODD and I have proposed in this bill. Too many cases are pursued for the purpose of extracting settlements from corporations and other parties without regard to their merits. The business community is powerless to deal with these suits, and companies settle rather than bet the company. These settlements yield large fees for plaintiffs' lawyers but compensate investors only for a fraction of their actual losses.

We reject the notion that stock price volatility is fraud. Plaintiffs' lawyers must be made to stop, think, investigate, and research before they file these potentially devastating suits. Truly defrauded investors must have greater control over their litigation and receive a greater share of the settlement fund.

The spirit motivating this bill is the obligation that Chairman LEVITT has identified: ''to make sure that current system operates in the best interest of all investors. This means focusing not just on the interests of those who happen to be aggrieved in a particular case, but also on the interests of issuers and the markets as a whole''.

I would like to commend Senator DODD for tackling the difficult issue. Under his leadership in the last Congress, we developed a substantial hearing record in the Securities Subcommittee and collected as many facts and opinions as we could. This bill is the product of a great deal of work and deliberation, and I want to express my gratitude for the way he and his staff went about developing this legislation.

I ask unanimous consent that a copy of the Wall Street Journal article I mentioned earlier be printed in the RECORD. I also ask unanimous consent that a section-by-section description of the bill and the bill text itself be printed in the RECORD.

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

S. 240

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 ''Private Securities Litigation Reform Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—PRIVATE SECURITIES LITIGATION

SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) RECEIPT FOR REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)) is amended by adding at the end the following new paragraph:

''(7) RECEIPT OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept remuneration for assisting an attorney in obtaining the representation of any customer in any implied private action arising under this title.''.

(b) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(4) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court, funds disgorged as the result of an action brought by the Commission in Federal court, or of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

(c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS ACTIONS.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsections:

''(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS ACTIONS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the share of any final judgment or of any settlement that is awarded to class plaintiffs serving as the representative parties shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this subsection shall be construed to limit the award to any representative parties of reasonable compensation, costs, and expenses (including lost wages) relating to the representation of the class.

''(j) CONFLICTS OF INTEREST.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, if a party is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.

''(k) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the terms and provisions of any settlement agreement between any of the parties shall not be filed under seal, except that on motion of any of the parties to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. Good cause shall only exist if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any person.

''(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES FROM SETTLEMENT FUNDS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, attorneys' fees awarded by the court to counsel for the class shall be determined as a percentage of the amount of damages and prejudgment interest actually paid to the class as a result of the attorneys' efforts. In no event shall the amount awarded to counsel for the class exceed a reasonable percentage of the amount recovered by the class plus reasonable expenses.

''(m) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, a proposed settlement agreement that is published or otherwise disseminated to the class shall include the following statements, which shall not be admissible for purposes of any Federal or State judicial or administrative proceeding:

''(1) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(A) AGREEMENT ON AMOUNT OF DAMAGES AND LIKELIHOOD OF PREVAILING.—If the settling parties agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title and the likelihood that the plaintiff would prevail—

''(i) a statement concerning the amount of such potential damages; and

''(ii) a statement concerning the probability that the plaintiff would prevail on the claims alleged under this title and a brief explanation of the reasons for that conclusion.

''(B) DISAGREEMENT ON AMOUNT OF DAMAGES OR LIKELIHOOD OF PREVAILING.—If the parties do not agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title or on the likelihood that the plaintiff would prevail on those claims, or both, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(C) INADMISSIBILITY FOR CERTAIN PURPOSES.—Statements made in accordance with subparagraphs (A) and (B) shall not be admissible for purposes of any Federal or State judicial or administrative proceeding.

''(2) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought, and a brief explanation of the basis for the application.

''(3) IDENTIFICATION OF REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to class members.

''(4) OTHER INFORMATION.—Such other information as may be required by the court, or by any guardian ad litem or plaintiff steering committee appointed by the court pursuant to section 38.

''(n) SPECIAL VERDICTS.—In an implied private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

''(o) NAMED PLAINTIFF THRESHOLD.—In an implied private action arising under this title, in order for a plaintiff or plaintiffs to obtain certification as representatives of a class of investors pursuant to the Federal Rules of Civil Procedure, the plaintiff or plaintiffs must show that they owned, in the aggregate, during the time period in which violations of this title are alleged to have occurred, not less than the lesser of—

''(1) 1 percent of the securities which are the subject of the litigation; or

''(2) $10,000 (in market value) of such securities.''.

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE; TIME LIMITATION ON PRIVATE RIGHTS OF ACTION.

(a) RECOVERY OF COSTS AND ATTORNEYS' FEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.

''(a) IN GENERAL.—

''(1) OFFER TO PROCEED.—Except as provided in paragraph (2), in an implied private action arising under this title, any party may, before the expiration of the period permitted for answering the complaint, deliver to all other parties an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the rules of the court in which the action is maintained.

''(2) PLAINTIFF CLASS ACTIONS.—In an implied private action under this title which is brought as a plaintiff class action, an offer under paragraph (1) shall be made not later than 30 days after a guardian ad litem or plaintiff steering committee is appointed by the court in accordance with section 38.

''(3) RESPONSE.—The recipient of an offer under paragraph (1) or (2) shall file a written notice of acceptance or rejection of the offer with the court not later than 10 days after receipt of the offer. The court may, upon motion by any party made prior to the expiration of such period, extend the period for not more than 90 additional days, during which time discovery may be permitted by the court.

''(4) SELECTION OF TYPE OF ALTERNATIVE DISPUTE RESOLUTION.—For purposes of paragraphs (1) and (2), if the rules of the court establish or recognize more than 1 type of alternative dispute resolution, the parties may stipulate as to the type of alternative dispute resolution to be applied. If the parties are unable to so stipulate, the court shall issue an order not later than 20 days after the date on which the parties agree to the use of alternative dispute resolution, specifying the type of alternative dispute resolution to be applied.

''(5) SANCTIONS FOR DILATORY OR OBSTRUCTIVE CONDUCT.—If the court finds that a party has engaged in dilatory or obstructive conduct in taking or opposing any discovery allowed during the response period described in paragraph (3), the court may—

''(A) extend the period to permit further discovery from that party for a suitable period; and

''(B) deny that party the opportunity to conduct further discovery prior to the expiration of the period.

''(b) PENALTY FOR UNREASONABLE LITIGATION POSITION.—

''(1) AWARD OF COSTS.—In an implied private action arising under this title, upon motion of the prevailing party made prior to final judgment, the court shall award costs, including reasonable attorneys' fees, against a party or parties or their attorneys, if—

''(A) the party unreasonably refuses to proceed pursuant to an alternative dispute resolution procedure, or refuses to accept the result of an alternative dispute resolution procedure;

''(B) final judgment is entered against the party; and

''(C) the party asserted a claim or defense in the action which was not substantially justified.

''(2) DETERMINATION OF JUSTIFICATION.—For purposes of paragraph (1)(C), whether a position is 'substantially justified' shall be determined in the same manner as under section 2412(d)(1)(B) of title 28, United States Code.

''(3) LIMITED USE.—Fees and costs awarded under this paragraph shall not be applied to any named plaintiff in any action certified as a class action under the Federal Rules of Civil Procedure if such plaintiff has never owned more than $1,000,000 of the securities which are the subject of the litigation.''.

(b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.

''(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title shall be brought not later than the earlier of—

''(1) 5 years after the date on which the alleged violation occurred; or

''(2) 2 years after the date on which the alleged violation was discovered or should have been discovered through the exercise of reasonable diligence.

''(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings pending on or commenced after the date of enactment of this section.''.

SEC. 103. PLAINTIFF STEERING COMMITTEES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEERING COMMITTEES.

''(a) GUARDIAN AD LITEM.—Except as provided in subsection (b), not later than 10 days after certifying a plaintiff class in an implied private action brought under this title, the court shall appoint a guardian ad litem for the plaintiff class from a list or lists provided by the parties or their counsel. The guardian ad litem shall direct counsel for the class and perform such other functions as the court may specify. The court shall apportion the reasonable fees and expenses of the guardian ad litem among the parties. Court appointment of a guardian ad litem shall not be subject to interlocutory review.

''(b) CLASS ACTION STEERING COMMITTEE.—Subsection (a) shall not apply if, not later than 10 days after certifying a plaintiff class, on its own motion or on motion of a member of the class, the court appoints a committee of class members to direct counsel for the class (hereafter in this section referred to as the 'plaintiff steering committee') and to perform such other functions as the court may specify. Court appointment of a plaintiff steering committee shall not be subject to interlocutory review.

''(c) MEMBERSHIP OF PLAINTIFF STEERING COMMITTEE.—

''(1) QUALIFICATIONS.—

''(A) NUMBER.—A plaintiff steering committee shall consist of not less than 5 class members, willing to serve, who the court believes will fairly represent the class.

''(B) OWNERSHIP INTERESTS.—Members of the plaintiff steering committee shall have cumulatively held during the class period not less than—

''(i) the lesser of 5 percent of the securities which are the subject matter of the litigation or securities which are the subject matter of the litigation with a market value of $10,000,000; or

''(ii) such smaller percentage or dollar amount as the court finds appropriate under the circumstances.

''(2) NAMED PLAINTIFFS.—Class members who are named plaintiffs in the litigation may serve on the plaintiff steering committee, but shall not comprise a majority of the committee.

''(3) NONCOMPENSATION OF MEMBERS.—Members of the plaintiff steering committee shall serve without compensation, except that any member may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class.

''(4) MEETINGS.—The plaintiff steering committee shall conduct its business at one or more previously scheduled meetings of the committee at which a majority of its members are present in person or by electronic communication. The plaintiff steering committee shall decide all matters within its authority by a majority vote of all members, except that the committee may determine that decisions other than to accept or reject a settlement offer or to employ or dismiss counsel for the class may be delegated to one or more members of the committee, or may be voted upon by committee members seriatim, without a meeting.

''(5) RIGHT OF NONMEMBERS TO BE HEARD.—A class member who is not a member of the plaintiff steering committee may appear and be heard by the court on any issue in the action, to the same extent as any other party.

''(d) FUNCTIONS OF GUARDIAN AD LITEM AND PLAINTIFF STEERING COMMITTEE.—

''(1) DIRECT COUNSEL.—The authority of the guardian ad litem or the plaintiff steering committee to direct counsel for the class shall include all powers normally permitted to an attorney's client in litigation, including the authority to retain or dismiss counsel and to reject offers of settlement, and the preliminary authority to accept an offer of settlement, subject to the restrictions specified in paragraph (2). Dismissal of counsel other than for cause shall not limit the ability of counsel to enforce any contractual fee agreement or to apply to the court for a fee award from any common fund established for the class.

''(2) SETTLEMENT OFFERS.—If a guardian ad litem or a plaintiff steering committee gives preliminary approval to an offer of settlement, the guardian ad litem or the plaintiff steering committee may seek approval of the offer by a majority of class members if the committee determines that the benefit of seeking such approval outweighs the cost of soliciting the approval of class members.

''(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any person serving as a guardian ad litem or as a member of a plaintiff steering committee shall be immune from any liability arising from such service. The court may remove a guardian ad litem or a member of a plaintiff steering committee for good cause shown.

''(f) EFFECT ON OTHER LAW.—This section does not affect any other provision of law concerning class actions or the authority of the court to give final approval to any offer of settlement.''.

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

''(a) INTENT.—In an implied private action arising under this title in which the plaintiff may recover money damages from a defendant only on proof that the defendant acted with some level of intent, the plaintiff's complaint shall allege specific facts demonstrating the state of mind of each defendant at the time the alleged violation occurred.

''(b) MISLEADING STATEMENTS AND OMISSIONS.—In an implied action arising under this title in which the plaintiff alleges that the defendant—

''(1) made an untrue statement of a material fact; or

''(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the plaintiff shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

''(c) BURDEN OF PROOF.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff shall have the burden of proving that the misstatement or omission caused any loss incurred by the plaintiff.

''(d) DAMAGES.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff's damages shall not exceed the lesser of—

''(1) the difference between the price paid by the plaintiff for the security and the market value of the security immediately after dissemination to the market of information which corrects the misstatement or omission; and

''(2) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of information correcting the misstatement or omission.''.

SEC. 105. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting '', except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves fraud in the sale of securities'' before the period.

TITLE II—FINANCIAL DISCLOSURE

SEC. 201. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) CONSIDERATION OF REGULATORY OR LEGISLATIVE CHANGES.—In consultation with investors and issuers of securities, the Securities and Exchange Commission shall consider adopting or amending its rules and regulations, or making legislative recommendations, concerning—

(1) criteria that the Commission finds appropriate for the protection of investors by which forward-looking statements concerning the future economic performance of an issuer of securities registered under section 12 of the Securities Exchange Act of 1934 will be deemed not to be in violation of section 10(b) of that Act; and

(2) procedures by which courts shall timely dismiss claims against such issuers of securities based on such forward-looking statements if such statements are in accordance with any criteria under paragraph (1).

(b) COMMISSION CONSIDERATIONS.—In developing rules or legislative recommendations in accordance with subsection (a), the Commission shall consider—

(1) appropriate limits to liability for forward-looking statements;

(2) procedures for making a summary determination of the applicability of any Commission rule for forward-looking statements early in a judicial proceeding to limit protracted litigation and expansive discovery;

(3) incorporating and reflecting the scienter requirements applicable to implied private actions under section 10(b); and

(4) providing clear guidance to issuers of securities and the judiciary.

(c) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.), is amended by adding at the end the following new section:

''SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) IN GENERAL.—In any implied private action arising under this title that alleges that a forward-looking statement concerning the future economic performance of an issuer registered under section 12 was materially false or misleading, if a party making a motion in accordance with subsection (b) requests a stay of discovery concerning the claims or defenses of that party, the court shall grant such a stay until it has ruled on any such motion.

''(b) SUMMARY JUDGMENT MOTIONS.—Subsection (a) shall apply to any motion for summary judgment made by a defendant asserting that the forward-looking statement was within the coverage of any rule which the Commission may have adopted concerning such predictive statements, if such motion is made not less than 60 days after the plaintiff commences discovery in the action.

''(c) DILATORY CONDUCT; DUPLICATIVE DISCOVERY.—Notwithstanding subsection (a) or (b), the time permitted for a plaintiff to conduct discovery under subsection (b) may be extended, or a stay of the proceedings may be denied, if the court finds that—

''(1) the defendant making a motion described in subsection (b) engaged in dilatory or obstructive conduct in taking or opposing any discovery; or

''(2) a stay of discovery pending a ruling on a motion under subsection (b) would be substantially unfair to the plaintiff or other parties to the action.''.

SEC. 202. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

''SEC. 10A. AUDIT REQUIREMENTS.

''(a) IN GENERAL.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

''(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

''(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern during the ensuing fiscal year.

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

''(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(A)(i) determine whether it is likely that an illegal act has occurred; and

''(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

''(B) as soon as practicable, inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or have otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

''(A) the illegal act has a material effect on the financial statements of the issuer;

''(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement;

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

''(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

''(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

''(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law.''.

(b) EFFECTIVE DATES.—With respect to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S–K of the Securities and Exchange Commission (17 CFR 229.302(a)), the amendments made by subsection (a) shall apply to any annual report for any period beginning on or after January 1, 1994. With respect to any other registrant, the amendment shall apply for any period beginning on or after January 1, 1995.

SEC. 203. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY.

(a) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY IN IMPLIED ACTIONS.

''(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in an implied private action arising under this title. Nothing in this section shall affect the standards for liability associated with an implied private action arising under this title.

''(b) APPLICATION OF JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—A person against whom a judgment is entered in an implied private action arising under this title shall be liable jointly and severally for any recoverable damages on such judgment if the person is found to have—

''(A) been a primary wrongdoer;

''(B) committed knowing securities fraud; or

''(C) controlled any primary wrongdoer or person who committed knowing securities fraud.

''(2) PRIMARY WRONGDOER.—As used in this subsection—

''(A) the term 'primary wrongdoer' means—

''(i) any—

''(I) issuer, registrant, purchaser, seller, or underwriter of securities;

''(II) marketmaker or specialist in securities; or

''(III) clearing agency, securities information processor, or government securities dealer;

if such person breached a direct statutory or regulatory obligation or if such person otherwise had a principal role in the conduct that is the basis for the implied right of action; or

''(ii) any person who intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful; and

''(B) a defendant engages in 'knowing securities fraud' if such defendant—

''(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the defendant's material representations is false and knows that other persons are likely to rely on that misrepresentation or omission, except that reckless conduct by the defendant shall not be construed to constitute 'knowing securities fraud'; or

''(ii) intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful.

''(c) DETERMINATION OF RESPONSIBILITY.—In an implied private action in which more than 1 person contributed to a violation of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning the degree of responsibility of each person alleged to have caused or contributed to the violation of this title, including persons who have entered into settlements with the plaintiff. The interrogatories or findings shall specify the amount of damages the plaintiff is entitled to recover and the degree of responsibility, measured as a percentage of the total fault of all persons involved in the violation, of each person found to have caused or contributed to the damages incurred by the plaintiff or plaintiffs. In determining the degree of responsibility, the trier of fact shall consider—

''(1) the nature of the conduct of each person; and

''(2) the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

''(d) APPLICATION OF PROPORTIONATE LIABILITY.—Except as provided in subsection (b), the amount of liability of a person who is, or may through right of contribution become, liable for damages based on an implied private action arising under this title shall be determined as follows:

''(1) DEGREE OF RESPONSIBILITY.—Except as provided in paragraph (2), each liable party shall only be liable for the portion of the judgment that corresponds to that party's degree of responsibility, as determined under subsection (c).

''(2) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the obligation is uncollectible—

''(A) the remaining defendants shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

''(i) the plaintiff is an individual whose recoverable damages under a final judgment are equal to more than 10 percent of the plaintiff's net financial worth; and

''(ii) the plaintiff's net financial worth is less than $200,000; and

''(B) the amount paid by each of the remaining defendants to all other plaintiffs shall be, in total, not more than the greater of—

''(i) that remaining defendant's percentage of fault for the uncollectible share; or

''(ii) 5 times—

''(I) the amount which the defendant gained from the conduct that gave rise to its liability; or

''(II) if a defendant did not obtain a direct financial gain from the conduct that gave rise to the liability and the conduct consisted of the provision of deficient services to an entity involved in the violation, the defendant's gross revenues received for the provision of all services to the other entity involved in the violation during the calendar years in which deficient services were provided.

''(3) OVERALL LIMIT.—In no event shall the total payments required pursuant to paragraph (2) exceed the amount of the uncollectible share.

''(4) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant whose liability is reallocated pursuant to paragraph (2) shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

''(5) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to paragraph (2), that defendant may recover contribution—

''(A) from the defendant originally liable to make the payment;

''(B) from any defendant liable jointly and severally pursuant to subsection (b)(1);

''(C) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

''(D) from any other person responsible for the conduct giving rise to the payment who would have been liable to make the same payment.

''(e) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b)(1) and (c) and the procedure for reallocation of uncollectible shares under subsection (d)(2) shall not be disclosed to members of the jury.

''(f) SETTLEMENT DISCHARGE.—

''(1) IN GENERAL.—A defendant who settles an implied private action brought under this title at any time before 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 or indemnity arising out of the action—

''(A) by nonsettling persons against the settling defendant; and

''(B) by the settling defendant against any nonsettling defendants.

''(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to verdict or judgment, the verdict or judgment shall be reduced by the greater of—

''(A) an amount that corresponds to the degree of responsibility of that person; or

''(B) the amount paid to the plaintiff by that person.

''(g) CONTRIBUTION.—A person who becomes liable for damages in an implied private action arising under this title may recover contribution from any other person who, if joined in the original suit, would have been liable for the same damages. A claim for contribution shall be determined based on the degree of responsibility of the claimant and of each person against whom a claim for contribution is made.

''(h) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in an implied private action arising under this title determining liability, an action for contribution must be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d)(2) may be brought not later than 6 months after the date on which such payment was made.''.

(b) EFFECTIVE DATE.—Section 41 of the Securities Exchange Act of 1934, as added by subsection (a), shall only apply to implied private actions commenced after the date of enactment of this Act.

SEC. 204. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 13 the following new section:

''SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) PUBLIC ACCOUNTING FIRM.—The term 'public accounting firm' means a sole proprietorship, unincorporated association, partnership, corporation, or other legal entity that is engaged in the practice of public accounting.

''(2) BOARD.—The term 'Board' means the Public Auditing Self-Disciplinary Board designated by the Commission pursuant to subsection (b).

''(3) ACCOUNTANT'S REPORT.—The term 'accountant's report' means a document in which a public accounting firm identifies a financial statement, report, or other document and sets forth the firm's opinion regarding such financial statement, report, or other document, or an assertion that an opinion cannot be expressed.

''(4) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—The term 'person associated with a public accounting firm' means a natural person who—

''(A) is a partner, shareholder, employee, or individual proprietor of a public accounting firm, or who shares in the profits of a public accounting firm; and

''(B) engages in any conduct or practice in connection with the preparation of an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any securities law.

''(5) PROFESSIONAL STANDARDS.—The term 'professional standards' means generally accepted auditing standards, generally accepted accounting principles, generally accepted standards for attestation engagements, and any other standards related to the preparation of financial statements or accountant's reports promulgated by the Commission or a standard-setting body recognized by the Board.

''(b) ESTABLISHMENT OF BOARD.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Commission shall establish a Public Auditing Self-Disciplinary Board to perform the duties set forth in this section. The Commission shall designate an entity to serve as the Board if the Commission finds that—

''(A) such entity is sponsored by an existing national organization of certified public accountants that—

''(i) is most representative of certified public accountants covered by this title; and

''(ii) has demonstrated its commitment to improving the quality of practice before the Commission; and

''(B) control over such entity is vested in the members of the Board selected pursuant to subsection (c).

''(2) ALTERNATIVE ELECTION OF MEMBERS.—If the Commission designates an entity to serve as the Board pursuant to paragraph (1), the entity shall conduct the election of initial Board members in accordance with subsection (c)(1)(B)(i).

''(c) MEMBERSHIP OF BOARD.—

''(1) IN GENERAL.—The Board shall be composed of 3 appointed members and 4 elected members, as follows:

''(A) APPOINTED MEMBERS.—Three members of the Board shall be appointed in accordance with the following:

''(i) INITIAL APPOINTMENTS.—The Chairman of the Commission shall make the initial appointments, in consultation with the other members of the Commission, not later than 90 days after the date of enactment of this section.

''(ii) SUBSEQUENT APPOINTMENTS.—After the initial appointments under clause (i), members of the Board appointed to fill vacancies of appointed members of the Board shall be appointed in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members shall be appointed by the Board, subject to the approval of the Commission.

''(B) ELECTED MEMBERS.—Four members, including the member who shall serve as the chairperson of the Board, shall be elected in accordance with the following:

''(i) INITIAL ELECTION.—Not later than 120 days after the date on which the Chairman of the Commission makes appointments under subparagraph (A)(i), an entity designated by the Commission pursuant to subsection (b) shall conduct an election of 4 initial elected members pursuant to interim election rules proposed by the entity and approved by the 3 interim members of the Board and the Commission. If the Commission is unable to designate an entity meeting the criteria set forth in subsection (b)(1), the members of the Board appointed under subparagraph (A)(i) shall adopt interim rules, subject to approval by the Commission, providing for the election of the 4 initial elected members. Such rules shall provide that such members of the Board shall be elected—

''(I) not later than 120 days after the date on which members are initially appointed under subparagraph (A)(i);

''(II) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

''(III) subject to the approval of the Commission.

''(ii) SUBSEQUENT ELECTIONS.—After the initial elections under clause (i), members of the Board elected to fill vacancies of elected members of the Board shall be elected in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members of the Board shall be elected—

''(I) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

''(II) subject to the approval of the Commission.

''(2) QUALIFICATION.—Four members of the Board, including the chairperson of the Board, shall be persons who have not been associated with a public accounting firm during the 10-year period preceding appointment or election to the Board under paragraph (1). Three members of the Board who are elected shall be persons associated with a public accounting firm registered with the Board.

''(3) FULL-TIME BASIS.—The chairperson of the Board shall serve on a full-time basis, severing all business ties with his or her former firms or employers prior to beginning service on the Board.

''(4) TERMS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Board shall hold office for a term of 4 years or until a successor is appointed, whichever is later, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

''(B) INITIAL BOARD MEMBERS.—Beginning on the date on which all members of the Board have been selected in accordance with this subsection, the terms of office of the initial Board members shall expire, as determined by the Board, by lottery—

''(i) for 1 member, 1 year after such date;

''(ii) for 2 members, 2 years after such date;

''(iii) for 2 members, 3 years after such date; and

''(iv) for 2 members, 4 years after such date.

''(5) RULES.—Following selection of the 7 initial members of the Board in accordance with subparagraphs (A)(i) and (B)(i) of paragraph (1), the Board shall propose and adopt rules, which shall provide for—

''(A) the operation and administration of the Board, including—

''(i) the appointment of members in accordance with paragraph (1)(A)(ii);

''(ii) the election of members in accordance with paragraph (1)(B)(ii); and

''(iii) the compensation of the members of the Board;

''(B) the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this title;

''(C) the registration of public accounting firms with the Board pursuant to subsections (d) and (e); and

''(D) the matters described in subsections (f) and (g).

''(d) REGISTRATION AND ANNUAL FEES.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall assess and collect a registration fee and annual dues from each public accounting firm registered with the Board. Such fees and dues shall be assessed at a level sufficient to recover the costs and expenses of the Board and to permit the Board to operate on a self-financing basis. The amount of fees and dues for each public accounting firm shall be based upon—

''(1) the annual revenues of such firm from accounting and auditing services;

''(2) the number of persons associated with the public accounting firm;

''(3) the number of clients for which such firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission; and

''(4) such other criteria as the Board may establish.

''(e) REGISTRATION WITH BOARD.—

''(1) REGISTRATION REQUIRED.—Beginning 1 year after the date on which all initial members of the Board have been selected in accordance with subsection (c), it shall be unlawful for a public accounting firm to furnish an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law, unless such firm is registered with the Board.

''(2) APPLICATION FOR REGISTRATION.—A public accounting firm may be registered under this subsection by filing with the Board an application for registration in such form and containing such information as the Board, by rule, may prescribe. Each application shall include—

''(A) the names of all clients of the public accounting firm for which the firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission;

''(B) financial information of the public accounting firm for its most recent fiscal year, including its annual revenues from accounting and auditing services, its assets and its liabilities;

''(C) a statement of the public accounting firm's policies and procedures with respect to quality control of its accounting and auditing practice;

''(D) information relating to criminal, civil, or administrative actions or formal disciplinary proceedings pending against such firm, or any person associated with such firm, in connection with an accountant's report furnished by such firm;

''(E) a list of persons associated with the public accounting firm who are certified public accountants, including any State professional license or certification number for each such person; and

''(F) such other information that is reasonably related to the Board's responsibilities as the Board considers necessary or appropriate.

''(3) PERIODIC REPORTS.—Once in each year, or more frequently as the Board, by rule, may prescribe, each public accounting firm registered with the Board shall submit reports to the Board updating the information contained in its application for registration and containing such additional information that is reasonably related to the Board's responsibilities as the Board, by rule, may prescribe.

''(4) EXEMPTIONS.—The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any public accounting firm or any accountant's report, or any class of public accounting firms or any class of accountant's reports, from any provisions of this section or the rules or regulations issued hereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

''(5) CONFIDENTIALITY.—The Board may, by rule, designate portions of the filings required pursuant to paragraphs (2) and (3) as privileged and confidential.

''(f) DUTIES OF BOARD.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall have the following duties and powers:

''(1) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—The Board shall establish fair procedures for investigating and disciplining public accounting firms registered with the Board, and persons associated with such firms, for violations of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission.

''(2) INVESTIGATION PROCEDURES.—

''(A) IN GENERAL.—The Board may conduct an investigation of any act, practice, or omission by a public accounting firm registered with the Board, or by any person associated with such firm, in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission that may violate any applicable provision of the Federal securities laws, the rules and regulations issued thereunder, the rules adopted by the Board, or professional standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the Board.

''(B) POWERS OF BOARD.—For purposes of an investigation under this paragraph, the Board may, in addition to such other actions as the Board determines to be necessary or appropriate—

''(i) require the testimony of any person associated with a public accounting firm registered with the Board, with respect to any matter which the Board considers relevant or material to the investigation;

''(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the Board, or any person associated with such firm, wherever domiciled, that the Board considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy of any documents or information so supplied; and

''(iii) request the testimony of any person and the production of any document in the possession of any person, including a client of a public accounting firm registered with the Board, that the Board considers relevant or material to the investigation.

''(C) SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE.—The refusal of any person associated with a public accounting firm registered with the Board to testify, or the refusal of any such person to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for suspending or barring such person from associating with a public accounting firm registered with the Board, or such other appropriate sanction as the Board shall determine. The refusal of any public accounting firm registered with the Board to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for the suspension or revocation of the registration of such firm, or such other appropriate sanction as the Board shall determine.

''(D) REFERRAL TO COMMISSION.—

''(i) IN GENERAL.—If the Board is unable to conduct or complete an investigation under this section because of the refusal of any client of a public accounting firm registered with the Board, or any other person, to testify, produce documents, or otherwise cooperate with the Board in connection with such investigation, the Board shall report such refusal to the Commission.

''(ii) INVESTIGATION.—The Commission may designate the Board or one or more officers of the Board who shall be empowered, in accordance with such procedures as the Commission may adopt, to subpoena witnesses, compel their attendance, and require the production of any books, papers, correspondence, memoranda, or other records relevant to any investigation by the Board. Attendance of witnesses and the production of any records may be required from any place in the United States or any State at any designated place of hearing. Enforcement of a subpoena issued by the Board, or an officer of the Board, pursuant to this subparagraph shall occur in the manner provided for in section 21(c). Examination of witnesses subpoenaed pursuant to this subparagraph shall be conducted before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

''(iii) REFERRALS TO COMMISSION.—The Board may refer any investigation to the Commission, as the Board deems appropriate.

''(E) IMMUNITY FROM CIVIL LIABILITY.—An employee of the Board engaged in carrying out an investigation or disciplinary proceeding under this section shall be immune from any civil liability arising out of such investigation or disciplinary proceeding in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

''(3) DISCIPLINARY PROCEDURES.—

''(A) DECISION TO DISCIPLINE.—In a proceeding by the Board to determine whether a public accounting firm, or a person associated with such firm, should be disciplined, the Board shall bring specific charges, notify such firm or person of the charges, give such firm or person an opportunity to defend against such charges, and keep a record of such actions.

''(B) SANCTIONS.—If the Board finds that a public accounting firm, or a person associated with such firm, has engaged in any act, practice, or omission in violation of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards, the Board may impose such disciplinary sanctions as it deems appropriate, including—

''(i) revocation or suspension of registration under this section;

''(ii) limitation of activities, functions, and operations;

''(iii) fine;

''(iv) censure;

''(v) in the case of a person associated with a public accounting firm, suspension or bar from being associated with a public accounting firm registered with the Board; and

''(vi) any other disciplinary sanction that the Board determines to be appropriate.

''(C) STATEMENT REQUIRED.—A determination by the Board to impose a disciplinary sanction shall be supported by a written statement by the Board setting forth—

''(i) any act or practice in which the public accounting firm or person associated with such firm has been found to have engaged, or which such firm or person has been found to have omitted;

''(ii) the specific provision of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards which any such act, practice, or omission is deemed to violate; and

''(iii) the sanction imposed and the reasons therefor.

''(D) PROHIBITION ON ASSOCIATION.—It shall be unlawful—

''(i) for any person as to whom a suspension or bar is in effect willfully to be or to become associated with a public accounting firm registered with the Board, in connection with the preparation of an accountant's report on any financial statement, report, or other document filed with the Commission, without the consent of the Board or the Commission; and

''(ii) for any public accounting firm registered with the Board to permit such a person to become, or remain, associated with such firm without the consent of the Board or the Commission, if such firm knew or, in the exercise of reasonable care should have known, of such suspension or bar.

''(4) REPORTING OF SANCTIONS.—If the Board imposes a disciplinary sanction against a public accounting firm, or a person associated with such firm, the Board shall report such sanction to the Commission, to the appropriate State or foreign licensing board or boards with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

''(A) the name of the public accounting firm, or person associated with such firm, against whom the sanction is imposed;

''(B) a description of the acts, practices, or omissions upon which the sanction is based;

''(C) the nature of the sanction; and

''(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the Board deems appropriate.

''(5) DISCOVERY AND ADMISSIBILITY OF BOARD MATERIAL.—

''(A) DISCOVERABILITY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, and the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section shall not be subject to any form of civil discovery, including demands for production of documents and for testimony of individuals, in connection with any proceeding in any State or Federal court, or before any State or Federal administrative agency. This subparagraph shall not apply to any information provided to the Board that would have been subject to discovery from the person or entity that provided it to the Board, but is no longer available from that person or entity.

''(ii) EXEMPTION.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be exempt from discovery to the same extent as the material described in clause (i), whether in the possession of the Board or any other person, if such submission—

''(I) is prepared specifically for the purpose of the Board proceeding; and

''(II) addresses the merits of the issues under investigation by the Board.

''(iii) CONSTRUCTION.—Nothing in this subparagraph shall limit the authority of the Board to provide appropriate public access to disciplinary hearings of the Board, or to reports or memoranda received by the Board in connection with such proceedings.

''(B) ADMISSIBILITY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section, the fact that an investigation or disciplinary proceeding has been commenced, and the Board's determination with respect to any investigation or disciplinary proceeding shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

''(ii) TREATMENT OF CERTAIN DOCUMENTS.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be inadmissible to the same extent as the material described in clause (i), if such submission—

''(I) is prepared specifically for the purpose of the Board proceedings; and

''(II) addresses the merits of the issues under investigation by the Board.

''(C) AVAILABILITY AND ADMISSIBILITY OF INFORMATION.—

''(i) IN GENERAL.—All information referred to in subparagraphs (A) and (B) shall be—

''(I) available to the Commission and to any other Federal department or agency in connection with the exercise of its regulatory authority to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation;

''(II) available to Federal and State authorities in connection with any criminal investigation or proceeding;

''(III) admissible in any action brought by the Commission or any other Federal department or agency pursuant to its regulatory authority, to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation and in any criminal action; and

''(IV) available to State licensing boards to the extent authorized in paragraph (6).

''(ii) OTHER LIMITATIONS.—Any documents or other information provided to the Commission or other authorities pursuant to clause (i) shall be subject to the limitations on discovery and admissibility set forth in subparagraphs (A) and (B).

''(D) TITLE 5 TREATMENT.—This subsection shall be considered to be a statute described in section 552(b)(3)(B) of title 5, United States Code, for purposes of that section 552.

''(6) PARTICIPATION BY STATE LICENSING BOARDS.—

''(A) NOTICE.—When the Board institutes an investigation pursuant to paragraph (2)(A), it shall notify the State licensing boards in the States in which the public accounting firm or person associated with such firm engaged in the act or failure to act alleged to have violated professional standards, of the pendancy of the investigation, and shall invite the State licensing boards to participate in the investigation.

''(B) ACCEPTANCE BY STATE BOARD.—

''(i) PARTICIPATION.—If a State licensing board elects to join in the investigation, its representatives shall participate, pursuant to rules established by the Board, in investigating the matter and in presenting the evidence justifying the charges in any hearing pursuant to paragraph (3)(A).

''(ii) REVIEW.—In the event that the State licensing board disagrees with the Board's determination with respect to the matter under investigation, it may seek review of that determination by the Commission pursuant to procedures that the Commission shall specify by regulation.

''(C) PROHIBITION ON CONCURRENT INVESTIGATIONS.—A State licensing board shall not institute its own proceeding with respect to a matter referred to in subparagraph (A) until after the Board's determination has become final, including completion of all review by the Commission and the courts.

''(D) STATE SANCTIONS PERMITTED.—If the Board or the Commission imposes a sanction upon a public accounting firm or person associated with such a firm, and that determination either is not subjected to judicial review or is upheld on judicial review, a State licensing board may impose a sanction on the basis of the Board's report pursuant to paragraph (4). Any sanction imposed by the State licensing board under this clause shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency, except to the extent provided in paragraph (5)(D).

''(E) SANCTIONS NOT PERMITTED.—If a sanction is not imposed on a public accounting firm or person associated with such a firm, and—

''(i) a State licensing board elected to participate in an investigation referred to in subparagraph (A), the State licensing board may not impose a sanction with respect to the matter; and

''(ii) a State licensing board elected not to participate in an investigation referred to in subparagraph (A), subparagraphs (A) and (B) of paragraph (5) shall apply with respect to any investigation or proceeding subsequently instituted by the State licensing board and, in particular, the State licensing board shall not have access to the record of the proceeding before the Board and that record shall be inadmissible in any proceeding before the State licensing board.

''(g) ADDITIONAL DUTIES REGARDING QUALITY CONTROL.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall have the following duties and powers in addition to those set forth in subsection (f):

''(1) IN GENERAL.—The Board shall seek to promote a high level of professional conduct among public accounting firms registered with the Board, to improve the quality of audit services provided by such firms, and, in general, to protect investors and promote the public interest.

''(2) PROFESSIONAL PEER REVIEW ORGANIZATIONS.—

''(A) MEMBERSHIP REQUIREMENT.—The Board shall require each public accounting firm subject to the disciplinary authority of the Board to be a member of a professional peer review organization certified by the Board pursuant to subparagraph (B).

''(B) CRITERIA FOR CERTIFICATION.—The Board shall, by rule, establish general criteria for the certification of peer review organizations and shall certify organizations that satisfy those criteria, or such amended criteria as the Board may adopt. To be certified, a peer review organization shall, at a minimum—

''(i) require a member public accounting firm to undergo peer review not less than once every 3 years and publish the results of the peer review; and

''(ii) adopt standards that are acceptable to the Board relating to audit service quality control.

''(C) PENALTIES.—Violation by a public accounting firm or a person associated with such a firm of a rule of the peer review organization to which the firm belongs shall constitute grounds for—

''(i) the imposition of disciplinary sanctions by the Board pursuant to subsection (f); and

''(ii) denial to the public accounting firm or person associated with such firm of the privilege of appearing or practicing before the Commission.

''(3) CONFIDENTIALITY.—Except as otherwise provided by this section, all reports, memoranda, and other information provided to the Board solely for purposes of paragraph (2), or to a peer review organization certified by the Board, shall be confidential and privileged, unless such confidentiality and privilege are expressly waived by the person or entity that created or provided the information.

''(h) COMMISSION OVERSIGHT OF THE BOARD.—

''(1) PROPOSED RULE CHANGES.—

''(A) IN GENERAL.—The Board shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of the Board (hereafter in this subsection collectively referred to as a 'proposed rule change') accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning the proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with this subsection.

''(B) APPROVAL OR DISAPPROVAL.—

''(i) IN GENERAL.—Not later than 35 days after the date on which notice of the filing of a proposed rule change is published in accordance with subparagraph (A), or such longer period as the Commission may designate (not to exceed 90 days after such date, if it finds such longer period to be appropriate and publishes its reasons for such finding or as to which the Board consents) the Commission shall—

''(I) by order approve such proposed rule change; or

''(II) institute proceedings to determine whether the proposed rule change should be disapproved.

''(ii) DISAPPROVAL PROCEEDINGS.—Proceedings for disapproval shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of the proceedings for disapproval, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for—

''(I) not more than 60 days, if the Commission finds good cause for such extension and publishes its reasons for such finding; or

''(II) such longer period to which the Board consents.

''(iii) APPROVAL.—The Commission shall approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Federal securities laws, and the rules and regulations issued thereunder, applicable to the Board. The Commission shall disapprove a proposed rule change if it does not make such finding. The Commission shall not approve any proposed rule change prior to the expiration of the 30-day period beginning on the date on which notice of the filing of a proposed rule change is published in accordance with this subparagraph, unless the Commission finds good cause to do so and publishes its reasons for such finding.

''(C) EFFECT OF PROPOSED RULE CHANGE.—

''(i) EFFECTIVE DATE.—Notwithstanding subparagraph (B), a proposed rule change may take effect upon filing with the Commission if designated by the Board as—

''(I) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board;

''(II) establishing or changing a due, fee, or other charge imposed by the Board; or

''(III) concerned solely with the administration of the Board or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify.

''(ii) SUMMARY EFFECT.—Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors. Any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with this paragraph.

''(iii) ENFORCEMENT.—Any proposed rule change which has taken effect pursuant to clause (i) or (ii) may be enforced by the Board to the extent that it is not inconsistent with the Federal securities laws, the rules and regulations issued thereunder, and applicable Federal and State law. During the 60-day period beginning on the date on which notice of the filing of a proposed rule change if filed in accordance with this paragraph, the Commission may summarily abrogate the change in the rules of the Board made thereby and require that the proposed rule change be refiled in accordance with subparagraph (A) and reviewed in accordance with subparagraph (B), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this Act nor deemed to be 'final agency action' for purposes of section 704 of title 5, United States Code.

''(2) AMENDMENT BY COMMISSION OF RULES OF THE BOARD.—The Commission, by rule, may abrogate, add to, and delete from (hereafter in this subsection collectively referred to as 'amend') the rules of the Board as the Commission deems necessary or appropriate to ensure the fair administration of the Board, to conform its rules to requirements of the Federal securities laws, and the rules and regulations issued thereunder applicable to the Board, or otherwise in furtherance of the purposes of the Federal securities laws, in the following manner:

''(A) PUBLICATION OF NOTICE.—The Commission shall notify the Board and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the Board and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

''(B) COMMENTS.—The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

''(C) INCORPORATION.—A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the Board and a statement of the Commission's basis for and purpose in so amending such rules. Such statement shall include an identification of any facts on which the Commission considers its determination to so amend the rules of the Board to be based, including the reasons for the Commission's conclusions as to any of the facts that were disputed in the rulemaking.

''(D) REGULATIONS.—

''(i) TITLE 5 APPLICABILITY.—Except as otherwise provided in this paragraph, rulemaking under this paragraph shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

''(ii) CONSTRUCTION.—Nothing in this subsection shall be construed to impair or limit the Commission's power to make, modify, or alter the procedures the Commission may follow in making rules and regulations pursuant to any other authority under the Federal securities laws.

''(iii) INCORPORATION OF AMENDMENTS.—Any amendment to the rules of the Board made by the Commission pursuant to this subsection shall be considered for purposes of the Federal securities laws to be part of the rules of the Board and shall not be considered to be a rule of the Commission.

''(3) NOTICE OF DISCIPLINARY ACTION TAKEN BY THE BOARD; REVIEW OF ACTION BY THE COMMISSION.—

''(A) NOTICE REQUIRED.—If the Board imposes a final disciplinary sanction on a public accounting firm registered with the Board or on any person associated with such a firm, the Board shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of the Federal securities laws.

''(B) REVIEW.—An action with respect to which the Board is required by subparagraph (A) to file notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby, filed not later than 30 days after the date on which such notice is filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(4) DISPOSITION OF REVIEW; CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—

''(A) IN GENERAL.—In any proceeding to review a final disciplinary sanction imposed by the Board on a public accounting firm registered with the Board or a person associated with such a firm, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the Board and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

''(i) if the Commission finds that—

''(I) such firm or person associated with such a firm has engaged in such acts or practices, or has omitted such acts, as the Board has found them to have engaged in or omitted;

''(II) such acts, practices, or omissions, are in violation of such provisions of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards as have been specified in the determination of the Board; and

''(III) such provisions were applied in a manner consistent with the purposes of the Federal securities laws;

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the Board, modify the sanction in accordance with paragraph (2), or remand to the Board for further proceedings; or

''(ii) if the Commission does not make the findings under clause (i), it shall, by order, set aside the sanction imposed by the Board and, if appropriate, remand to the Board for further proceedings.

''(B) CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with subparagraph (A) that a sanction imposed by the Board upon a firm or person associated with a firm imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Federal securities laws or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

''(5) COMPLIANCE WITH RULES AND REGULATIONS.—

''(A) DUTIES OF BOARD.—The Board shall—

''(i) comply with the Federal securities laws, the rules and regulations issued thereunder, and its own rules; and

''(ii) subject to subparagraph (B) and the rules thereunder, absent reasonable justification or excuse, enforce compliance with such provisions and with professional standards by public accounting firms registered with the Board and persons associated with such firms.

''(B) RELIEF BY COMMISSION.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of the Federal securities laws, may relieve the Board of any responsibility under this section to enforce compliance with any specified provision of the Federal securities laws, the rules or regulations issued thereunder, or professional standards by any public accounting firm registered with the Board or person associated with such a firm, or any class of such firms or persons associated with such a firm.

''(6) CENSURE; OTHER SANCTIONS.—

''(A) IN GENERAL.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that the Board has—

''(i) violated or is unable to comply with any provision of the Federal securities laws, the rules or regulations issued thereunder, or its own rules; or

''(ii) without reasonable justification or excuse, has failed to enforce compliance with any such provision or any professional standard by a public accounting firm registered with the Board or a person associated with such a firm.

''(B) REMOVAL FROM OFFICE.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate, in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to remove from office or censure any member of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that such member has—

''(i) willfully violated any provision of the Federal securities laws, the rules or regulations issued thereunder, or the rules of the Board;

''(ii) willfully abused such member's authority; or

''(iii) without reasonable justification or excuse, failed to enforce compliance with any such provision or any professional standard by any public accounting firm registered with the Board or any person associated with such a firm.

''(i) FOREIGN ACCOUNTING FIRMS.—A foreign public accounting firm that furnishes accountant's reports on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law shall, with respect to those reports, be subject to the provisions of this section in the same manner and to the same extent as a domestic public accounting firm. The Commission may, by rule, regulation, or order and as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions, exempt from one or more provisions of this section any foreign public accounting firm. Registration pursuant to this subsection shall not, by itself, provide a basis for subjecting foreign accounting firms to the jurisdiction of the Federal or State courts.

''(j) RELATIONSHIP WITH ANTITRUST LAWS.—

''(1) TREATMENT UNDER ANTITRUST LAWS.—In no case shall the Board, any member thereof, any public accounting firm registered with the Board, or any person associated with such a firm be subject to liability under any antitrust law for any act of the Board or any failure to act by the Board.

''(2) DEFINITION.—For purposes of this subsection, the term 'antitrust law' means the Federal Trade Commission Act and each statute defined by section 4 thereof as 'Antitrust Acts' and all amendments to such Act and such statutes and any other Federal Acts or State laws in pari materia.

''(k) APPLICABILITY OF AUDITING PRINCIPLES.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall be conducted in accordance with generally accepted auditing standards, as may be modified or supplemented from time-to-time by the Commission. The Commission may defer to professional standards promulgated by private organizations that are generally accepted by the accounting or auditing profession.

''(l) COMMISSION AUTHORITY NOT IMPAIRED.—Nothing in this section shall be construed to impair or limit the Commission's authority—

''(1) over the accounting profession, accounting firms, or any persons associated with such firms;

''(2) to set standards for accounting practices, derived from other provisions of the Federal securities laws or the rules or regulations issued thereunder; or

''(3) to take, on its own initiative, legal, administrative, or disciplinary action against any public accounting firm registered with the Board or any person associated with such a firm.''.

SUMMARY OF DOMENICI-DODD PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

The ''Private Securities Litigation Reform Act of 1995'' is designed to address several broad areas of concern about private securities litigation: plaintiffs' ability to control their cases and recover damages; abuses of securities litigation by some lawyers; the impact of private securities litigation on financial disclosure by companies; and better methods for deterring fraud.

1. LITIGATION ABUSES AND INVESTOR CONTROL

Plaintiffs' lawyers often race each other to the courthouse in order to be the first to file a case and win control over the case and any resulting legal fees. In some instances plaintiffs' lawyers and defendants tacitly agree to settle a case for a small amount with little regard to whether the case is strong or weak, in order to assure payment to plaintiffs' counsel. In addition, lawyers have filed securities cases without having a real client, or have sued based simply based on a price drop, without bothering to investigate whether any wrongdoing might have occurred.

The bill addresses these abuses by ensuring that investors, not lawyers, decide whether to bring a case, whether to settle, and how much the lawyers should receive. It also contains provisions intended to ensure that lawyers look at the facts before they sue:

The bill requires courts to appoint a plaintiff steering committee or a guardian to directly control lawyers for the class.

The bill requires that notices of settlement agreements sent to investors spell out clearly important facts such as how much investors are giving up by settling, and how much their lawyers will receive in the settlement.

The bill requires that courts tie awards of lawyers' fees directly to how much is recovered by investors, rather than simply how many hours the lawyers billed or how many pages of briefs they filed.

The bill establishes an alternative dispute resolution procedure to make it easier to prosecute a case without the necessity of slow and expensive federal court proceedings.

The bill requires that in order to bring a securities case as a class action, the plaintiffs in whose name the case is brought must have held either 1 per cent of the securities which are the subject of the litigation or $10,000 worth of securities. This should help stop a problem pointed to by several courts, in which ''professional plaintiffs'' who own small amounts of stock in many companies try to bring class action lawsuits whenever one of their investments goes down.

The bill clarifies how a lawyer should plead a securities fraud claim. Plaintiffs' lawyers should have no trouble meeting these standards if they have legitimate cases and have looked at the facts.

These provisions should ensure that defrauded investors can recover damages more quickly, with less of their recovery drained off in lawyers' fees.

2. SECURITIES LITIGATION AND FINANCIAL REPORTING

Certain professional, like accountants, are singled out under the current litigation system simply because they are a deep pocket. Their liability exposure under the current system could drive them away from providing auditing services to many companies, especially new companies and ''high tech'' companies. The bill establishes a liability system for less culpable defendants that is more fair and is linked to degree of fault. Defendants who have acted egregiously would still be fully liable. Plaintiffs who have a net worth of less than $200,000 and lose more than 10 percent of their net worth.

At the same time, the bill establishes a self-disciplinary organization for accountants under the direct supervision of the SEC. This entity would be somewhat like self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers. The net effect should be a more direct and rational way of dealing with ''bad apples'' in the accounting profession without punishing the entire profession.

The bill also contains a provision which gives companies more freedom to make forward-looking statements in good faith. This responds to concerns expressed by many companies that litigation ''chills'' voluntary predictive statements about a company's future economic performance, even though that is exactly the sort of information that is good for investors and the market.

3. ENHANCING DETERRENCE OF FRAUD

The bill extends the statute of limitations for implied actions to five years from the date of the violation, or two years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. The bill also incorporates pending legislation concerning the responsibility of auditors to search for and report fraud. A similar bill in the House is supported by the SEC and the AICPA.

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SECTION-BY-SECTION ANALYSIS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

TITLE I—PRIVATE SECURITIES LITIGATION

Section 1. Short Title

Section 1 provides that the title of this Act shall be the ''Private Securities Litigation Reform Act of 1995 (the ''Act'').

Section 101—Elimination of Certain Abusive Practices

Section 101 amends the Securities and Exchange Act of 1934 (the ''Exchange Act'') by adding new paragraphs to Sections 15(c) and 21 of the Exchange Act. Section 101 eliminates certain litigation practices.

Subsection 101(a) amends Section 15(c) of the Exchange Act. Subsection 101(a) prohibits brokers or dealers from soliciting or accepting compensation from attorneys for assisting them in obtaining the representation of any customer of the broker or dealer in an implied action.

Subsection 101(b) amends Section 21(d) of the Exchange Act to prevent distribution of funds disgorged pursuant to an action by the Securities and Exchange Commission (''Commission'' or ''SEC'') as attorneys' fees or expenses unless otherwise ordered by the court.

Subsection 101(c) amends Section 21 of the Exchange Act and adds seven new subsections. New subparagraph (i) of Section 21 requires that the named plaintiffs of the class action be compensated in the same manner as other members of the class. This provision is not intended to bar reasonable compensation of such plaintiffs out of any common fund established for the class for costs and expenses relating to representation of the class, such as lost wages or out-of-pocket expenses incurred due to deposition or trial testimony.

New subparagraph (j) requires a court to determine whether an attorney who owns or has a beneficial interest in the securities that are the subject of the litigation may represent the class or whether such ownership or interest constitutes a conflict of interest which would disqualify the attorney.

New subparagraph (k) prohibits settlements under seal except by motion of one or more of the settling parties if those parties can show good cause why the court should file under seal. ''Good cause'' exists only if publication of a term or provision of the settlement would cause direct and substantial harm to any person. This subparagraph is necessary because it is not always possible to determine the outcome of class action cases. Since class action litigation is imbued with a public purpose, information concerning the terms on which such cases are settled should be publicly available in most instances.

New subparagraph (l) requires courts to determine attorneys' fees as a percentage of the amount of damages and prejudgment interest actually recovered by the class as a result of the attorneys' efforts. The amount awarded to class counsel cannot exceed a reasonable percentage of the amount recovered by the class plus reasonable expenses. This provision is intended to encourage courts to link the amount of attorneys' fee awarded to the result achieved for the class and the degree of skill and effort required to achieve that result.

New subparagraph (m) requires proposed settlement agreements distributed to the class to contain certain information. Subpart (1)(A) requires that if the settling parties agree on the amount of damages which the plaintiff class would recover if the class prevailed in litigation, and if they agree on the likelihood that the class could prevail, the notice should contain a brief statement about the potential damages per share, a statement concerning the probability that the plaintiff would prevail on the claims alleged, and a brief explanation of the reasons for that conclusion. Subpart (B) requires that if the settling parties do not agree on the amount of damages that would be recoverable by the plaintiff on each alleged claim, or on the probability that the plaintiff would prevail on the claims alleged, the notice must contain a brief statement by each party containing the elements specified in subparagraph (A), concerning the issues on which the parties disagree. If any of the settling parties or their counsel intend to apply to the court for attorneys' fees or costs from any fund to be established under the settlement, subpart (2) requires a statement concerning the amount of fees and costs to be sought by each such party or attorney, and a brief explanation of the reasons for the application. Subpart (3) requires the settlement agreement to contain the name, address and telephone number of a representative of counsel for the plaintiff class who will be reasonably available to answer class members' questions on any matter contained in the notice of settlement distributed to class members. Subpart (4) permits the court, or a guardian ad litem or plaintiff steering committee apointed by the court in accordance with new Section 38 of the Exchange Act, to require additional information in the notice sent to class members.

New subparagraph (n) requires the court to submit to the jury a written interrogatory on the issue of each defendant's state of mind at the time of the alleged violation. This provision applies only in actions in which the plaintiff, in order to recover money damages, must prove that the defendant acted with some degree of intent.

New subparagraph (o) requires that any plaintiffs who wish to obtain certification as representatives of a class of investors must collectively have owned during the period in which the violations occurred the lesser of 1 percent or $10,000 market value of the securities which are the subject matter of the litigation. This requirement is comparable to a rule of the SEC concerning the minimum holding required in order to seek to place a shareholder proposal on an issuer's proxy statement.[1] However, that rule differs in that it applies to shareholders who own the lesser of 1 percent of the securities or $1,000 market value of the securities, and it also contains minimum holding period requirements which are not included in this bill.

Class certification is a significant step in many securities cases, because it places a small group of investors in charge of claims asserted on behalf of a much larger group. This may create an incentive for plaintiffs with nominal claims to seek class certification as a means of coercing other parties into settlement. Moreover, some cases have called attention to investors who appear to buy small amounts of stock in a number of companies with the apparent intent of using those investments to mount class action lawsuits.[2]

The purpose of this provision is to create a minimum ''standing'' requirement for securities class actions in order to ensure that

Footnotes at end of article.

the representatives of investor class members are not individuals who have only a nominal interest in the outcome of the litigation. This provision does not create any obstacle to filing a lawsuit as a class action, but simply addresses the standard for certifying a particular group of plaintiffs as investor class representatives.

Section 102—Alternative Dispute Resolution Procedure; Time Limitation on Private Rights of Action

Subsection 102(a) amends the Exchange Act by adding a new Section 36, which creates an alternative dispute resolution procedure for securities litigation under Rule 10(b) of the Exchange Act. The section allows any party to offer to proceed pursuant to any voluntary nonbinding ADR procedure established or recognized by the courts within the time period for answering the complaint, or, in cases certified as class actions, within 30 days after a guardian ad litem or plaintiff steering committee is appointed. The court may extend the period for responding to an ADR offer for up to 90 days to permit discovery.

If the courts recognize more than one type of ADR, the parties may stipulate to the type of ADR to be used. If the parties cannot agree, the court must decide within 20 days which method of ADR the parties will use. If any party engages in dilatory or obstructive conduct during the response period, the court may extend the discovery period, deny the party further discovery or impose reasonable fees and costs upon the party.

Should any party reject an offer to proceed via ADR, or refuse to abide by the result of an ADR proceeding, that party can exercise its right to litigate the case in federal court. However, the subsection requires the court to award fees and costs against that party if the court enters judgment against the party and the party asserted a claim or defense which was not substantially justified. As with Section 36(a), this fee-shifting provision would not apply to a named plaintiff in a class action case if he or she had never owned more than $1,000,000 of the securities that are the subject of the dispute.

The purpose of this section is to create a stronger incentive to use ADR in multiparty securities litigation. Greater use of ADR should result in faster recoveries for defrauded investors, and should also result in smaller attorneys' fees for all parties.[3]

Subsection 102(b) adds a new Section 37 to the Exchange Act. Section 37(a) creates a new limitations period for implied private rights of action under the Exchange Act. The subsection requires implied private rights of action to be brought not later than the earlier of five years after the violation occurred or two years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. Subsection 38(b) requires the new limitations period to apply to all proceedings pending on or commenced after the date its enactment.

Section 103—Guardians Ad Litem and Plaintiff Steering Committees

Section 103 adds a new Section 38 to the Exchange Act. Section 38 requires courts to ensure that a plaintiff class has adequate control over its attorneys by either appointing a guardian ad litem when a plaintiff class is certified, or creating a plaintiff steering committee in securities class actions to give the class greater control over the lawsuit.

Section 38(a) requires courts to appoint a guardian ad litem within 10 days of certifying a plaintiff class. The guardian ad litem is to direct counsel for the plaintiff class or perform such other functions as the court may specify. The guardian ad litem is to be selected from one or more lists submitted by the parties or their counsel. The guardian's reasonable fees and expenses are to be apportioned by the court among the parties. In doing so, the Court may permit the guardian to recover his or her reasonable fees and expenses from any fund established for the benefit of the class, but the guardian is to recover reasonable fees and expenses whether or not such a fund is established. This should prevent any possibility that the guardian might have a financial interest in supporting or opposing a settlement offer. This provision also states that appointment of a guardian shall not be subject to interlocutory review.

Section 38(b) permits the Court, as an alternative to appointing a guardian ad litem, appoints a steering committee of class members within 10 days after class certification, with the same powers as a guardian. Appointment of the committee is also not subject to interlocutory review.

Section 38(c) provides that the plaintiff steering committee shall consist of at least 5 willing class members who the court believes will fairly represent the class. Committee members must have cumulatively held the lesser of 5 per cent of the securities which are the subject of the litigation, or securities which are the subject of the litigation with a market value of $10,000,000. ''Securities which are the subject matter of the litigation'' means securities which were held during any time period when the class alleges that fraud was committed against any class members. The $10,000,000 market value can be measured at any time between the time when the class alleges that violations first occurred until the date the class is certified. If the court determines that appointment of a committee which meets these requirements is impractical, the court may appoint a committee which meets a smaller percentage test or dollar amount test which the court believes is reasonable.

Under subsection 38(c)(2), named plaintiffs may serve on the committee, but may not comprise a majority of the committee. Under subsection 38(c)(3), committee members shall serve without compensation, but may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class. This differs from the compensation scheme for guardians, who can receive compensation for their services. The reason for this distinction from guardians is two-fold: Committee members should be sufficiently motivated to serve on the Committee by their economic interest in the litigation and by their desire to obtain justice for themselves and other class members. Second, since the Committee involves a larger number of people than a single guardian, compensating the Committee would be substantially more burdensome on the class and on other parties than would compensating a guardian.

Under subsection 38(c)(4), the committee would conduct previously scheduled meetings with at least a majority of committee members present in person or by electronic communication. All matters must be decided by majority vote of all members, except decisions on matters other than whether to accept or reject a settlement offer or to hire or fire counsel. Those decisions may be delegated to one or more members of the committee or voted upon by members seriatim, without a meeting. Subsection 38(5) allows any class member who is not a member of the committee to appear and be heard by the court on any issue in the case.

Section 38(d) enumerates the functions of guardians ad litem and plaintiff steering committees. Guardians and Committees have the same powers permitted to clients in other litigation, including the power to hire and fire counsel, reject settlement offers and accept settlement offers, pursuant to some restrictions. However, counsel dismissed other than for cause would be able to enforce any contractual fee agreement or to apply to the Court for a fee award from any common fund established for the class. Section 38(d)(2) allows the committee to give preliminary approval to settlement offers and to seek approval of the settlement by a majority of the class if the benefit of seeking such approval outweighs the cost of soliciting approval from class members.

Section 38(e) provides that any person who is appointed as a guardian ad litem or member of a plaintiff steering committee shall be immune from any liability as a result of such service. This immunity includes liability for breach of fiduciary duty, liability under any provision of the Exchange Act or any other federal statute or rule imposing sanctions for conduct in the course of litigation, or any other action taken in the course of acting as a fiduciary. This immunity would not apply to any action taken by the former guardian or committee member following resignation or removal by the court.

Section 38(f) clarifies that this section does not override any other provision relating to class actions or the authority of the court to approve final settlements, such as under Rule 23 of the Federal Rules of Civil Procedure.

Section 104—Requirements for Securities Fraud Actions

Section 104 adds a new Section 39 to the Exchange Act. Section 39 specifies certain pleading requirements for implied actions, as well as damage calculations to be utilized in securities fraud suits. The overall purpose of this section is to provide a filter at the pleading stage to screen out allegations that have no factual basis, to provide a clearer statement of the plaintiff's claims, and to provide greater clarity about the scope of the case. This section should not provide any barrier to meritorious cases, although in some instances it may require attorneys for plaintiffs to exercise greater care in drafting their complaint. By requiring more specificity in pleading, the amount of motions to dismiss and the amount of discovery should be reduced. For plaintiffs with strong cases, this should encourage faster recoveries with less expenditure for attorneys' fees.

Section 39(a), which applies to implied actions in which the plaintiff may recover money damages only on proof that the defendant acted with some degree of intent, requires the plaintiff to allege in its complaint specific facts demonstrating why the plaintiff believes that each such defendant had such an intent. Blanket assertions of intent unconnected to any facts would be insufficient.

Section 39(b) requires that a plaintiff who alleges that the defendant made an untrue statement of a material fact or omitted to state a material fact necessary to make statements made not misleading must specify in the complaint each statement alleged to have been misleading, the reason or reasons why the plaintiff believes the statement was misleading, and, if an allegation regarding such statements is made on information and belief, the plaintiff must state all information on which his or her belief is formed.

Section 39(c) clarifies that in implied actions based on the ''fraud in the market'' theory, while the plaintiff need not show that he or she specifically relied on any alleged misstatement or omission, plaintiff has the burden of showing that the misstatement or omission caused the loss. This means that plaintiff must establish that it was the defendant's misstatement or omission, rather than some intervening factor, which established the market price at which the plaintiff purchased or sold the securities in question.

Subsection 39(d) sets out an upper limit for damage calculations to be used in cases of material misstatements or omissions where the plaintiff claims to have bought or sold based upon the ''fraud on the market'' theory. Plaintiff's damages in these cases may not exceed the lesser of (i) the difference between the price paid by the plaintiff for the security and the market value immediately after dissemination to the market of information which corrects the misstatement or omission, or (ii) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of correcting information. The purpose of this provision is to provide greater certainty about the upper limit of damage exposure for cases in which the range of possible damage calculations tends to be substantial, leading to complex battles between expert witnesses over damage estimates. This provision also takes into account the fact that plaintiffs' damages are sometimes mitigated when the stock price recovers soon after an adverse announcement.

Section 105—Amendment to the Racketeer Influenced and Corrupt Organizations Act

Section 105 amends Section 1964(c) of Title 18 of the United States Code (the ''Racketeer Influenced and Corrupt Organization Act'' or ''RICO''). Section 106 eliminates private actions for securities fraud under the ''civil RICO'' provisions of Title 18.

TITLE II—FINANCIAL DISCLOSURE

Section 201—Safe Harbor for Forward-Looking Statements

Subsection 201(a) requires the SEC, in consultation with investors and issuers of securities, to consider adopting or amending rules, or making legislative recommendations, concerning criteria which the Commission finds are appropriate for the protection of investors, and which issuers may rely upon to ensure that their forward-looking statements concerning their future economic performance will be deemed not to violate the Exchange Act. This provision also requires the Commission to consider rule-making or legislative recommendations for procedures by which courts shall timely dismiss claims based on forward-looking statements of issuers of such statements meet any criteria set by the Commission pursuant to this subsection.

Subsection 201(b) amends the Exchange Act by adding a new Section 40. Under new Section 40(a), an implied private action under the Exchange Act alleging that a forward-looking statement concerning the future economic performance of an issuer was materially false or misleading, the court would be required to grant a stay of discovery concerning the claims or defenses of a party if that party made a motion for such a stay in accordance with Section 40(b). Section 40(a) also sets out certain matters to be considered by the Commission in developing any such rules or legislative recommendations.

Section 40(b) states that such a stay shall apply in connection with any motion for summary judgment made by a defendant asserting that the forward-looking statement was within the coverage of any rule of the Commission concerning such statements. However, Section 40(b) requires that plaintiff have at least 60 days to conduct discovery before such a summary judgment motion is made. Section 40(c) permits the court to extend the time for plaintiff to conduct discovery, or to deny a stay of proceedings, if the party making the motion engaged in dilatory or obstructive conduct, or if a stay of discovery would be substantially unfair to the plaintiff or any other party.

Section 202—Fraud Detection and Disclosure

Section 202(a) amends the Exchange Act to create a new Section 10A. Section 10A would codify certain auditing standards for the detection of financial fraud by auditors, and would require auditors to report directly to the Commission any financial fraud discovered during an audit engagement. This provision also would shield auditors from private liability for the contents of such a report. This provision is substantially similar to H.R. 574 and S. 630, both titled the ''Financial Fraud Detection and Disclosure Act.''

Section 203. Proportionate Liability and Joint and Several Liability

Section 203(a) amends the Exchange Act to create a new Section 41. Section 41(a) specifies that this provision only applies to the allocation of damages among persons who are or may become liable in an implied right of action under the Exchange Act.

Section 41(b) applies joint and several liability against primary wrongdoers, persons who commit knowing securities fraud, and those who control any primary wrongdoer or person who commits knowing securities fraud. Section 41(b)(2) defines the terms ''primary wrongdoer'' and ''knowing securities fraud.''

In cases where more than one person is found to have contributed to an act of securities fraud, subsection 41(c) requires the finder of fact to determine the degree of responsibility of each party. The finder of fact must specify the plaintiff's total amount of damages, and the degree of responsibility of each defendant, measured as a percentage of the total fault of all those liable for the violation. In determining the degree of responsibility, the subsection requires the finder of fact to consider the nature and conduct of each person and the causal relationship between the conduct and the plaintiff's damages.

Subsection 41(d) creates a system of proportionate liability for those who are not jointly and severally liable under section 41(b). Section 41(d) holds such defendants liable for their proportionate share of damages. If a plaintiff is unable to collect the proportionate share of any defendant's liability within six months after the final judgment, subsection 41(d) reallocates the uncollectible share. If the plaintiff is an individual with a net worth of under $200,000, and his or her recoverable damages are more than 10 per cent of that net worth, all of the remaining defendants are jointly and severally liable for all of the plaintiff's damages.

Otherwise, where damages are uncollectible from one or more defendants, the defendants as to whom proportionate liability applies will be liable for their proportionate share of plaintiff's damages, plus the greater of (i) their proportionate share of the uncollectible damages, or (ii) five times the amount which that defendant gained from the conduct which gave rise to the liability. If the defendant did not obtain a direct financial gain from its conduct, and the conduct giving rise to its liability consisted of deficient services, the latter measurement would be five times the defendant's gross revenues from its entire economic relationship with any other entity involved in the violation during the calendar years in which the defendant provided deficient services. Under Section 41(d)(4) and (5), defendants who become liable for another defendant's uncollectible share would have a right of contribution against the defendant originally liable for the payment or any other person responsible for the fraudulent conduct.

Subsection 41(e) prevents disclosure of the formula for allocation of damages and the procedure for reallocation of uncollectible shares to the jury.

Subsection 41(f) provides that a defendant who enters into a settlement of an implied right to action is discharged from any claim for contribution by any other potential defendants. This subsection also clarifies that a settlement prior to a verdict or judgment shall reduce the verdict or judgment against other defendants by the greater of (i) the amount that corresponds to the settling person's degree of responsibility, and (ii) the amount paid to the plaintiff by that person.

Section 41(g) clarifies that contribution shall be determined based on the degree of responsibility of the claimant and each person against whom a right of contribution is asserted. Subsection 41(h) requires liable defendants to bring contribution actions within six months after the date that the judgment against the defendant becomes final unless the defendant made additional payments of uncollectible liability under subsection 41(d). In cases where the defendant made additional payments, the defendant must bring the contribution action within six months after the additional payment was made.

Section 203(b) provides that Section 41 shall only apply to actions commenced after the enactment date of this Act.

Section 204—Public Auditing Self-Disciplinary Board

Section 204 amends the Exchange Act and adds a new Section 13A. Section 13A creates a self-disciplinary board for public auditors.

Section 13A(a) supplies definitions for key terms to be used throughout the section.

Subsection 13A(b) requires the SEC to establish a Public Auditing Self-Disciplinary Board (''Board'') within 90 days after the date of the enactment of section 13A. The Commission shall designate an entity to serve as the Board if control of such entity is vested in members of the Board selected under Section 13A(c) and if the entity meets other enumerated criteria.

Subsection 13A(c) specifies that the Board will be composed of three SEC-appointed members and four elected members. For the appointed members, the Chairman of the SEC shall make the initial appointments in consultation with other members of the Commission within ninety days after enactment. After initial appointments, the Board will appoint members to fill vacancies in these three slots, subject to SEC approval.

For elected members, subsection 13A(c)(1), paragraph (B) requires that within 120 days after the 3 initial Board members are appointed, if an entity has been designated as the Board under Section 13A(b), that entity shall conduct an election of 4 initial Board members. The election shall be conducted under interim election rules proposed by the entity and approved by the 3 appointed members and the Commission. If no entity has been designated by the Commission under Section 13A(b), the 3 appointed members shall adopt interim rules providing for the election of the 4 initial elected members. In either event, the election of the 4 elected members shall occur within 120 days after the appointment of the 3 initial members, the initial election shall be by persons who are certified public accountants and who are associated with public accounting firms, and the persons elected shall be subject to approval by the Commission. After the initial elections, elections for the 4 elected member slots must be by persons associated with public accounting firms who are certified public accountants, and the persons elected are subject to SEC approval.

Subsection 13A(c)(2) requires that four members of the Board, including the Chairman, must not have been associated with a public accounting firm during the 10-year period preceding their appointment. Three of the elected members are required to be associated with a public accounting firm registered with the Board.

Subsection 13A(c)(3) requires the Chairman of the Board to serve on a full-time basis, unless the SEC otherwise authorizes, and to sever all business ties with his or her former firms prior to serving on the Board.

Subsection 13A(c)(4) requires that each member of the Board will serve a four-year term or until a successor is appointed, whichever is later. However, those members appointed to fill a vacancy created by a member's departure prior to the expiration of her term will only be appointed for the remainder of the term. Pursuant to section 13A(c)(4), initially selected Board members' terms will expire on a staggered basis until all initial members have been replaced by members appointed according to the terms of the section.

Section 13A(c)(5) requires the Board to propose and adopt rules providing for the administration and operation of the Board, including appointment and election of members, the selection of a chairperson, and compensation of Board members. The Board also must adopt rules concerning the appointment and compensation of other employees, attorneys and consultants deemed necessary and appropriate to carry out the board's functions. The Board must create rules for the registration of public accounting firms, and rules governing the Board's duties.

Subsection 13A(d) provides the Board with power to assess and collect registration fees and annual dues from each public accounting firm registered with the Board. These fees must be sufficient to cover the costs and expenses of the Board and permit the Board to operate on a self-financed basis, and will be based upon the annual revenues of each firm from accounting and auditing services, the number of persons associated with the firm, the number of clients the firm furnishes with accountant's reports, and other criteria the Board establishes.

Subsection 13A(e) requires all public accounting firms which furnish accountants reports with respect to documents filed with the SEC to register with the Board within one year after all members of the Board have been selected.

Each public accounting firm that performs such services must apply for registration with the Board. Each application must contain the names of all clients of the firm for which the firm provides accountant's reports.

The application must also list financial information of the firm for the most recent fiscal year, including assets, liabilities and annual revenues from accounting and auditing services, a statement of the firm's policies and procedures with respect to quality control of its accounting and auditing practice, information relating to criminal, civil or administrative actions or disciplinary proceedings pending against the firm or any of its members and any other information the Board deems necessary or appropriate that is reasonably related to the Board's responsibilities.

The registered firms must update their application information annually. Finally, the subsection allows the Board or SEC to exempt any firm or class of firms, accountant's report or class of reports from any provision of the section, if the SEC finds the exemption consistent with the public interest, the protection of investors and the purposes of the section. The Board may designate portions of the filings as confidential and privileged.

Section 13A(f) sets out the duties of the Board. The Board must establish fair procedures for investigating and disciplining registered firms and persons associated with them for violations of the Federal securities laws, their rules and regulations, the Board's rules or professional standards in connection with the preparation of an accountant's report on a financial statement, report or other document filed with the SEC.

Section 13A(f)(2) allows the Board to conduct an investigation of any illegal act, practice or omission by a registered firm or an associated person in connection with the preparation of documents filed with the SEC.

Section 13A(f)(2), paragraph (B) empowers the Board to require the testimony of any person associated with a firm with respect to any matter the Board considers material or relevant. The Board also can require the production of audit workpapers or any other document possessed by a registered firm or any associated person that the Board considers relevant or material, including the books and records of the firm to verify the accuracy of any document supplied. The Board also has the power to request the testimony of any person, including a firm's client, and the production of any documents they possess that the Board deems material or relevant.

Section 13A(f)(2), paragraph (C) provides that if any person associated with a public accounting firm refuses to produce documents or otherwise comply with a Board request, the Board may suspend or bar the person from associating with any registered firm or hand down any other sanction the Board deems appropriate. The refusal of any registered public accounting firm to produce documents or otherwise cooperate with the Board also is cause for suspension or revocation of the registration.

If the Board cannot complete or conduct its investigation because of the refusal of any client to comply, Section 13A(f)(2), paragraph (D) requires the Board to report the refusal to the SEC. The SEC then may designate one or more officers of the Board to be granted nationwide subpoena power. This Section also authorizes the Board to refer any investigation to the SEC.

Section 13A(f)(2), paragraph (E) grants immunity to any Board member who carries out an investigation or disciplinary proceeding under this Section from civil liability arising out of the investigation or disciplinary proceeding in the same manner as any other federal Government employee in similar circumstances.

Section 13A(f)(3) allows the Board to implement procedures to determine if disciplinary measures should be taken against a firm or its associated persons. In determining whether a person or firm should be disciplined, the Board must bring specific charges, notify the firm or associated persons of the charges, give the parties an opportunity to defend against the charges, and keep a record of such actions. Upon a finding of a violation, the Board may impose any disciplinary sanctions as it deems appropriate, including those enumerated in subsection 13A(f)(3), part (B).

Section 13A(f)(3), paragraph (C) requires the Board to file a written statement in support of a determination to impose sanctions. The statement must set forth the illegal act or practice, the specific law, regulation, Board rules or professional standards violated, the sanction imposed, and the reasons therefor.

Section 13A(f)(3), paragraph (D) prohibits any person suspended or barred by the Board from willfully associating with a registered firm without Board or SEC permission. Firms may not knowingly permit suspended or barred persons to become or remain associated with the firm without Board or SEC approval.

Section 13A(f)(4) requires the Board to report sanctions to the SEC, the appropriate foreign or state licensing boards or any boards with which the firm or person is licensed or certified to practice public accounting, and to the public. The report must include the name of the firm or associated person, a description of the acts, practice or omissions, the nature of the sanctions, and any other information on the circumstances of the disciplinary action as the Board deems appropriate.

Section 13A(f)(5) concerns the discoverability and admissibility of material related to the Board's disciplinary process in civil litigation. It is intended to ensure that the Board's disciplinary process does not interfere with private actions for damages relating to conduct within the Board's jurisdiction and, at the same time, that private damages actions do not interfere with the Board's disciplinary process. The intention of this section is that plaintiffs should not be deprived of access to any material that they can obtain from public accounting firms under current law. Similarly, the Board itself, and materials specifically created by others in connection with the Board's disciplinary procedure, would be kept separate from the civil liability system.

Section 13A(f)(5)(A) provides that except as provided in subparagraph (B), all documents prepared, collected or received by the Board and the deliberations of the Board in connection with an investigation or disciplinary proceeding are not subject to any form of compulsory discovery. This subparagraph does not apply to information provided to the Board that would have been subject to discovery from the person or entity that provided it to the Board, but is no longer available from that person or entity. This does not limit the Board's authority to provide public access to disciplinary proceedings.

Section 13A(f)(5)(B) provides that all documents prepared, collected or received by the Board and the deliberations and other proceedings of the Board in connection with an investigation or disciplinary proceeding shall be inadmissible in any state or federal court or any administrative agency.

Section 13A(f)(5)(C) creates an exception to subparagraphs (A) and (B) so that all information referred to in those subparagraphs is available to the SEC and any other Federal agency and admissible in any action brought by the Commission or other Federal agency to the same extent it would be available and admissible under current law. This information shall also be available to state licensing boards under certain circumstances.

Section 13A(f)(6) allows state licensing boards limited participation in Board actions. When the Board institutes an investigation it shall notify the State licensing board in the States in which the public accounting firm or auditor engaged in the act or failure to act that is the subject matter of the investigation and invite the state licensing boards to participate. If the state licensing board elects to participate, it shall do so pursuant to rules established by the Board.

If the State board disagrees with the Board's determination, it may seek review of that determination by the Commission pursuant to procedures that the Commission shall specify by regulation. However, this Section prohibits state licensing boards from instituting its own proceeding until after the Board's determination has become final.

Section 13A(f)(6), paragraph (C) provides that if the State board elects not to participate in the Board's investigation, it shall not institute its own investigation or proceeding in the matter until after the Board's determination has become final.

Section 13A(f)(6), paragraph (D) provides that if the Board or Commission imposes a sanction upon a public accounting firm or auditor, and that determination either is not subjected to judicial review or is upheld on judicial review, the state licensing board may impose a sanction on the basis of the Board's report. Any sanction imposed by the state licensing board on this basis shall be inadmissible in any proceeding in any State or Federal court or administrative agency except to extent provided in paragraph (5)(D).

Section 13A(f)(6), paragraph (E) provides that if no sanction is imposed by the Board or the SEC, the state licensing board may not impose a sanction if it chose to participate in the investigation. If the State board chose not to participate in the investigation, paragraph (5)'s rules on discovery and admissibility apply to subsequent State board proceedings. The Section also denies State boards access to the record of the proceeding before the Board, and that record is inadmissible in any State board proceeding.

Section 13A(g) requires the Board to promote a high level of professional conduct among registered public accounting firms, to improve the quality of audit services those firms provide, and to protect investors and promote the public interest.

Section 13A(g)(2) mandates that the Board require public accounting firms subject to its disciplinary authority to be members of a Board-certified professional peer review organization. To qualify the peer review organization must require a public accounting firm to undergo peer review at least once every three years and publish the results of the peer review. It must have standards relating to audit service quality control that are acceptable to the Board. Violation by a public accounting firm or auditor of a rule of the peer review organization shall constitute grounds for imposition of disciplinary sanctions and denial to the public accounting firm or auditor the privilege of appearing before the SEC.

Section 13A(g)(3) provides that all reports, memoranda and other information provided to the Board for the purpose of creating the procedures are confidential unless confidentiality and privilege are expressly waived by the proper parties.

Section 13A(h) gives the SEC oversight of the Board. Section 13A(h), paragraph (1) requires the Board to file copies of proposed Board rule changes or deletions with the SEC pursuant to rules to be promulgated by the SEC, along with a concise statement of the basis and purpose of the proposed change. The SEC then must publish notice of the change and give interested persons an opportunity to submit comments. The Board cannot make changes without Commission approval.

Not later than 35 days after the SEC publishes notice of the change, or within 90 days if the SEC so designates, the SEC must approve the change or institute proceedings to determine whether the change should be disapproved. Disapproval proceedings must include notice of the grounds for disapproval under consideration and an opportunity for a hearing. The proceedings must be concluded not later than 180 days after the publication of notice and filing of the proposed change. At the end of the proceedings, the SEC must approve or disapprove the change or extend the time for conclusion of the proceedings pursuant to subsection 13A(h), paragraphs (1)(B)(ii) (I) and (II).

Section 13A(h)(1), paragraph (B)(iii) requires the SEC to approve the change if it finds that it is consistent with the Federal securities laws and disapprove it if it does not make such a finding. The SEC may not approve a rule change until the 30-day period after the notice of the proposed change is filed, unless the SEC finds good cause to do so and publishes its reasons.

Section 13A(h)(1), paragraph (C) allows a proposed rule change to take effect upon filing with the SEC if the Board designates it as constituting a stated policy, practice or interpretation of an existing Board rule, establishing or changing a due, fee or other Board-imposed charge, or concerned solely with the administration of the Board. The SEC may put a change into effect summarily if such action is necessary to protect investors. The Board may enforce such changes to the extent they are not inconsistent with the Federal securities laws, their rules and regulations, and applicable State and Federal law. The SEC may summarily abrogate changes in the rules by the Board if it appears to the SEC that such action is necessary to the public interest, for the protection of investors, or in furtherance of federal or state laws.

Section 13A(h)(2) also allows the SEC to amend the Board's rules if the SEC deems the action necessary or appropriate to the fair administration of the Board, to conform its rules to requirements of the Federal securities laws by following certain procedures adopted from the Administrative Procedure Act. The SEC must publish notice of the proposed rulemaking in the Federal Register, give interested persons an opportunity to comment, and incorporate the text of its amendment to the rules of the Board with a statement of the basis and purpose of the amendment.

The SEC also may adopt regulations pursuant to section 553 of title 5 of the United States Code for rulemaking not on the record. Amendments to the Board's rules by the SEC are deemed Board rules and not rules of the SEC.

Section 13A(h)(3) requires the Board to promptly notify the SEC if the Board imposes a final disciplinary sanction on a registered firm or associated person. The Commission may review the action on its own motion or the motion of any aggrieved party filed within 30 days after the Board's notice is filed with the SEC and received by the aggrieved party.

Section 13A(h)(4) requires the Commission to affirm the Board's sanction, modify it or remand to the Board for further proceedings if upon review of the sanctions, the SEC determines that the firm or person engaged in the acts, practices or omissions that the Board alleges, that such acts, practices or omissions violated the Federal securities laws, the Board's rules or professional standards, and such laws are consistent with the purposes of the Federal securities laws. If the SEC does not make such findings, it must set aside the sanctions and remand to the Board if appropriate. If the SEC finds that a sanction imposed by the Board burdens competition unnecessary or inappropriate in furtherance to the purposes of the Federal securities laws or is excessive or oppressive, the SEC may cancel, reduce or require the remission of the sanctions.

Section 13A(h)(5) requires the Board to comply with Federal securities laws and its own rules and enforce compliance with those laws and with professional standards. The SEC may relieve the Board of any responsibility under Section 13A to enforce compliance with the above laws or standards.

Section 13A(h)(6) allows the SEC to censure or limit the activities, functions or operations of the Board if the SEC finds that the Board violated or is unable to comply or has failed to enforce compliance by a registered firm or associated persons with any provision of the Federal securities laws, the Board's rules or professional standards of conduct. The SEC also may remove a Board member from office if, after notice and opportunity for hearing, the SEC determines that the member willfully violated any provision of the Federal securities laws or the Board's rules, abused the member's authority or failed to enforce compliance with any professional standard of conduct by any firm or associated person without reasonable justification or excuse.

Section 13A(i) requires foreign accounting firms to register with the Board if they furnish the same types of services as domestic firms required to register under Section 13A. The SEC may exempt foreign firms from the provisions of this section if exemption is deemed consistent with the public interest and the protection of investors.

Registration pursuant to this subsection shall not be itself provide a basis for subjecting foreign accounting firms to the jurisdiction of the federal or state courts.

Under Section 13A(j), neither the Board, any member of the Board nor any person associated with a public accounting firm shall be subject to suit under any antitrust law for any act of the Board of any failure to act by the Board. ''Antitrust law'' means the Federal Trade Commission Act and each statute defined by Section 4 thereof as ''Antitrust Acts'' and all amendments to such act and such statutes and any other federal Acts or state laws in pari materia.

Section 13A(k) provides that all audits of an issuer's financial statements required under the Exchange Act shall be in accordance with generally accepted auditing standards. It also clarifies that the Commission can modify or supplement such standards, and that the Commission may defer to professional standards promulgated by private-sector organizations that are generally accepted by the accounting or auditing profession.

Section 13A(*l*) declares that nothing in Section 13A impairs or limits the SEC's authority over accountants, to set standards for accounting or auditing standards or to take action against any firm or associated person.

FOOTNOTES

[1] *See* 17 C.F.R. §240.14a-8.

[2] For example, in one such case the Court found that due to a ''consistent pattern of purchasing a few shares in troubled companies [and] Plaintiff's involvement in over two dozen lawsuits,'' ''the Court finds clear evidence that Plaintiff's purchasing stock in troubled companies to possibly pursue litigation is a serious defense likely to become the focus of the litigation to the detriment of the class.'' *Shields v. Smith*, [1991–92 Transfer binder] Fed. Sec. L. Rep. (CCH) ¶97,007, at 91,967–68 (N.D. Cal. Nov. 4, 1991). *See also Cooperman v. Fairfield Communities, Inc.*, No. LR–C–90–164, slip op. at 9 n.1 (E.D. Ark., filed June 26, 1991); *Hoexter v. Simmons*, 140 F.R.D. 416, 422–23 (D. Ariz. 1991).

[3] The Committee on Commerce, Science, and Transportation recently voted out of Committee a comparable measure concerning alternative dispute resolution procedures. *See* the ''Product Liability Fairness Act,'' S. 687 [Report No. 103–203], November 20, 1993. The report accompanying S. 687 stated that its provision on Alternative Dispute Resolution was intended to reduce delay and undercompensation of victims. *See* Product Liability Reform Act, Report of the Senate Committee on Commerce and Transportation, [Report No. 103–203], November 20, 1993, at 6–7.

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[From the Wall Street Journal, Jan. 11, 1995]

JUDGES SHOW GROWING SKEPTICISM IN CLASS-ACTION SECURITIES CASES

(By Junda Woo)

The dismissal last week of a shareholder suit against Philip Morris Cos. is the latest sign that some judges are growing impatient with securities class action litigation.

In dismissing allegations that Philip Morris misled shareholders in the months before announcing its 1993 Marlboro price cut, U.S.

District Judge Richard Owen in Manhattan criticized the plaintiffs' attorneys. Two separate suits, later consolidated with eight others, ''contained identical allegations, apparently lodged in counsel's computer memory of 'fraud' from complaints that the defendants here engaged in conduct ''to create and prolong the illusion of (Philip Morris') success in the *toy industry*,'' he said.

Judge Owen also noted with disapproval that the original suits, in which plaintiffs had sought class-action status, were filed either on the day of Philip Morris's announcement, known as Marlboro Friday, or the following Monday. He expressed disbelief that shareholders of the tobacco, food and beer giant would have landed on attorney's doorsteps so quickly.

And he quoted from similar rulings by other judges, including a 1991 ruling dismissing a complaint against Citicorp that said, ''The complaint creates the strong impression that when Citicorp announced a cut in dividends, plaintiff's counsel simply stepped to the nearest computer console, conducted a global Nexis search, pressed the 'Print' button, and filed the product as their complaint.'' Judge Owen couldn't be reached for comment.

But Melvyn L. Weiss, a partner at one of the firms that filed the Philip Morris suit, said the plaintiffs plan an appeal. ''The law is very clear that an investor is entitled to know all facts that they would want to know in making their decision,'' he said. ''You can remain silent, but when you speak, you have to tell the whole truth.'' The plaintiffs had contended that New York-based Philip Morris led analysts to believe that it wouldn't cut the price of its flagship Marlboro brand.

''I have enough of a reputation without going around filing suits that I don't believe in,'' Mr. Weiss added. ''I would never pursue a case like this, especially against a worthy adversary, without a profound belief in the integrity of the case.''

In addition to Mr. Weiss's firm, Milberg Weiss Bershad Hynes & Lerach, other law firms representing the plaintiffs were Abbey & Ellis and Barrack, Rodos & Bacine.

Nevertheless, Judge Owen isn't the only one worried about class-action securities suits. Sens. Pete Domenici, a New Mexico Republican, and Christopher Dodd, a Connecticut Democrat, are expected to reintroduce a bill that would put the brakes on some alleged abuses in securities litigation. Its provisions include a higher legal standard for claiming securities fraud and a nonbinding arbitration mechanism for securities litigation.

''In my opinion, it's most of them that are frivolous—not just a lot, but most,'' said Jonathan R. Macey, a Cornell University law professor who advocates having plaintiffs' lawyers bid to work on such cases, with the money going to the plaintiffs. ''The facts show that every time a firm's share price drops by enough that it's profitable for plaintiffs lawyers to bring a lawsuit, they do.''

John L. Coffee, Jr., a Columbia University law professor, says ''some of the judges are very skeptical of particular law firms'' because some of them bring so many shareholder suits. He adds that ''about nine firms'' bring more than half of the suits that are filed.

Federal judges sometimes try to dismiss shareholder suits early on because they are so time-consuming, Prof. Coffee said, but appellate courts have reined in any attempts to broadly throw out securities suits.●

● Mr. DODD. Mr. President, I introduce the Private Securities Litigation Reform Act of 1995. This bipartisan proposal is identical to the legislation I introduced in the 103d Congress with my good friend Senator DOMENICI. eighteen of our colleagues are joining us as original cosponsors.

In the year since we last introduced this legislation, the process by which private individuals bring securities lawsuits has received enormous scrutiny. I am happy to say that as a result of this increased focus in the media and in the investor and business community, the debate has shifted. We are no longer arguing about whether the current system is in need of repair. The discussion is now centered on how best to fix it.

Even those who 1 year ago were unwilling to admit that the system needed to be reformed, now concede that substantial changes are needed. In my view, the fact that there is finally consensus about the need for securities litigation reform is enormously significant. Because this consensus now exists, I believe we will see comprehensive legislation enacted this Congress. With the introduction of this bill, we begin the process to develop the best legislative solutions.

This bill is by no means the final word on the matter. In the last year, hearings have been held in both Houses of Congress. Numerous studies of have been completed, including a comprehensive report by my securities Subcommittee staff. Every word of the legislation has received in-depth analysis. In addition, there have been a number of judicial decisions which have altered the private securities litigation landscape. The most significant of these was the U.S. Supreme Court Decision last year in Central Bank of Denver versus First Intereststate Bank of Denver, which eliminated private liability for those who aid and abet securities fraud.

Many constructive suggestions have been made about ways to improves the legislation. The fact that we have not incorporated these changes to last years proposal should not be taken as a sign that we are unwilling to modify our bill. We simply preferred to begin this year where we left off last year so as not to create additional controversy or confusion. I am eager to work with my colleagues to refine and perfect the proposal as it moves through the process. As I have stated before, I would be willing to address the Bank of Denver decision as part of our deliberations.

I cannot overstate how critical securities lawsuits brought by private individuals are to ensuring the integrity of our capital markets. As an important back-up to Government enforcement actions, these privnate actions help deter wrongdoing. When the system is working well, it helps to ensure that corporate officers, auditors, directors, lawyers and others properly perform their jobs. Private litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely on Government action.

Private securities litigation has evolved over the years mainly as a result of court decisions rather than legislative action. The most important private right of action for defrauded investors has long been section 10(b) of the Securities Exchange Act. Private actions under that provision were never expressly set out by Congress, but have been construed and refined by courts, with the tacit consent of Congress.

This lack of congressional involvement in shaping the contours of private litigation has created uncertainty about legal standards and unwarranted opportunities for abuse of investors and companies. Last Congress, my Securities Subcommittee held several days of hearing on securities litigation. These hearings documented a number of glaring problems with the current system.

First, securities class action cases are vulnerable to abuses by ''entrepreneurial'' lawyers who put their own interests ahead of their clients. Many critics charge that plaintiffs' attorneys appear to control the settlement of the case with little or no influence from either the named plaintiffs or the larger class of investors.

For example, in one case which was cited to the subcommittee by a lawyer as a showcase of how the system works, the case was settled before trial for $33 million. The lawyers asked the court for more than $20 million of that amount in fees and costs. The court awarded the plaintiffs' lawyers over $11 million and lawyers for the company $3 million. Investors recovered only 6.5 percent of their recoverable damages.

A second area of abuse is frivolous litigation. We have heard complaints from companies, especially in the high-technology sectors, that they face groundless securities litigation days or even hours after adverse earnings announcements. Courts have echoed this concern. As the Supreme Court pointed out in Blue Chip Stamps versus Manor Drug Store:

> [I]n the field of federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial so long as he may prevent the suit from being resolved against him by dismissal or summary judgment. The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

The net effect of private litigation under the Federal securities laws has been to weaken the financial disclosure system on which our capital markets depend. The accounting profession, which is at the heart of the Financial Disclosure System, has warned that because of the doctrine of joint and several liability, accountants face potential liability which could destroy the ability of independent auditors to review financial disclosure by companies.

We need to rationalize the current framework for assessing liability so it is fairer and doesn't simply create an incentive to sue those with the deepest pockets. Unlimited liability is simply not the most effective deterrent of wrongdoing. We need to more directly police the conduct of professionals like accountants and do so in a more effective manner.

LEGISLATIVE SOLUTIONS

The bill contains three major initiatives to deal with these problems:

First, it empowers investors so that they—not their lawyers—have greater control over class action cases.

Second, it limits opportunities for frivolous litigation.

Third, it rationalizes the professional liability of accountants in exchange for stronger regulation.

In addition, the bill incorporates measures previously proposed in Congress to strengthen the obligation of auditors to search for fraud and to lengthen the statute of limitations for fraud actions.

1. EMPOWERING INVESTORS

The bill addresses abuses of investors by their lawyers by ensuring that investors, not lawyers, decide whether to bring a case, whether to settle, and how much the lawyers should receive.

The bill requires courts to appoint a plaintiff steering committee or a guardian to directly control lawyers for the class.

The bill requires that notices of settlement agreements sent to investors spell out clearly important facts such as how much investors are giving up by settling, and how much their lawyers will receive in the settlement.

The bill requires that courts tie awards of lawyers' fees directly to how much is recovered by investors, rather than simply how many hours the lawyers billed or how many pages of briefs they filed.

The bill establishes an alternative dispute resolution procedure to make it easier to prosecute a case without the necessity of slow and expensive Federal court proceedings. This idea is very similar to a provision in the products liability bill passed by the Commerce Committee last fall, and like that bill it is intended to speed up the recovery process for plaintiffs who have strong cases.

These provisions should ensure that defrauded investors are not cheated a second time by their lawyers. It also should help victims of fraud to recover damages more quickly, with less of their recovery drained off in lawyers' fees.

2. FRIVOLOUS LITIGATION

The bill requires that in order to bring a securities case as a class action, the plaintiffs in whose name the case is brought must have held either 1 percent of the securities which are the subject of the litigation or $10,000 worth of securities. This should help stop a problem pointed to by several courts, in which professional plaintiffs who own small amounts of stock in many companies try to bring class action lawsuits whenever one of their investments goes down.

The bill clarifies how a lawyer should plead a securities fraud claim. Plaintiffs' lawyers should have no trouble meeting these standards if they have legitimate cases and have looked at the facts.

These and other reforms should end the race to the courthouse by lawyers eager to file a case without investigating the facts or finding a real client.

3. SECURITIES LITIGATION AND FINANCIAL REPORTING

The accounting profession has argued that accounting firms are unfairly singled out under the current litigation system simply because they are a deep pocket. They claim that their liability exposure under the current system could drive them away from providing auditing services to many companies, especially new companies and high-technology companies.

The bill establishes a liability system for less culpable defendants that is linked to degree of fault. At the same time, the bill establishes a self-disciplinary organization for accountants under the direct supervision of the SEC. This entity would be somewhat like self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers. The net effect should be a more direct and rational way of dealing with bad apples in the accounting profession without punishing the entire profession.

3. ENHANCING DETERRENCE OF FRAUD

The bill would extend the statute of limitations for implied actions to 5 years from the date of the violation, or 2 years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. The bill also incorporates pending legislation concerning the responsibility of auditors to search for and report fraud. A similar bill in past Congresses has been supported by the SEC and the AICPA.

There is tremendous support for this legislation within Congress and from a large variety of private organizations. I look forward to working with my colleagues to enact comprehensive reform as soon as possible.●

● Ms. MIKULSKI. Mr. President, I am pleased to work on a bipartisan basis with my colleagues Senator DODD and Senator DOMENICI to cosponsor and renew my commitment to reforming securities litigation.

This bill addresses the problem of bounty hunters racing to the courthouse to be the first to file a lawsuit based on nothing more than a change in stock price—and then coerce innocent businesses to settle these lawsuits.

This bill eliminates the payment of bonus awards or bounties to representative plaintiffs in class actions. It gives people who are harmed extra time to consider who really harmed them before they have to file their case at the courthouse, by extending the statute of limitations to 2 years after the violation was or should have been discovered, and 5 years after the violation occurred. It also puts the investor in the driver's seat to control the litigation and recover more of their damages.

My constituents have told me that some attorneys are paying stock brokers and others a bounty in return for identifying who they should sue. High-technology companies, their accountants, and others are being lumped into these securities lawsuits that are filed at the courthouse just hours after a change in the stock price.

I am opposed to the race-to-the courthouse mentality that ends up in needless lawsuits that have huge litigation costs for firms that should be focused on creating jobs.

I want to see the courthouse door kept open for the little guy, but let's get this bounty hunter law under control.

These needless lawsuits hit these firms through: expensive liability insurance premiums; disruption to the lives of those people who have been drawn into the suit—and is a tremendous distraction from the company's achieving its mission, contributing to the economy, and creating jobs.

I am concerned about these costs to the private sector, and to communities across America—and especially the costs to the high-technology community who are our hope for jobs in the 21st century.

I am hearing loud and clear that the current bounty hunter mentality is putting these jobs at risk.

Rather than creating jobs, these high-technology jobs are having to put their efforts and their dollars into expensive litigation and insurance.

I know how the system works with these lawsuits. It doesn't matter who's right or who's wrong. Both the guilty and the innocent end up settling at some big cost, even if just to avoid the risk and to get on with life.

So, the good guys cut their losses and the bad guys get off the hook.

I am pleased to work on a bipartisan basis with Senators DOMENICI and DODD and support this legislation that helps take care of the good guys.●

By Mr. D'AMATO:

S. 241. A bill to increase the penalties for sexual exploitation of children, and for other purposes; to the Committee on the Judiciary.

THE PREVENTION OF SEXUAL EXPLOITATION OF CHILDREN ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce the Prevention of the Sexual Exploitation of Children's Act. There is a large and growing threat to the welfare and safety of our children being caused by the advent of the computer age. The ''information superhighway,'' while a boon to our standard of living and economic growth, also contains hidden dangers which must be addressed to protect our children from debauched sexual predators. The ''information superhighway'' has become a safe haven for pedophiles to entice children into acts of sexual depravity with little chance of exposure. Pedophiles and other sexual miscreants historically would position themselves outside of schools, playgrounds, and other public areas where children would congregate in order to satisfy their own depraved appetites. Now through the use of bulletin boards, major on-line services such as Prodigy, America Online, Compuserve, Internet, and a host of other computer conduits, these individuals can ply their trade with much less exposure to parental supervision or law enforcement. While many State and local authorities are addressing this problem, the use of the ''information superhighway'' makes the role of the Federal Government even more critical. The use of the computer conduits allow for the defendants to cross State, local and even international boundaries with impunity. These miscreants can be extremely violent and cause irreparable harm to the children they come into contact with. This violence must be answered with stiff judicial penalties.

In addition to the physical depravity that is a direct result of the computer age, there has been a noted increase in pornographic material involving children being distributed and sold over computer lines. This pornographic material not only acts as a stimulus to the pedophiles but the simple possession of this material by people creates a demand for it, and these people should share in the responsibility of the exploitation of children by the pornography producers. This circular motion of supply and demand fuels the proliferation of more and more pornographic material.

My legislation will raise the judicial penalties which would deter the proliferation of pornographic material available and remove the defendants from society. By enacting harsher judicial penalties, Congress will be sending a strong message that our society will not tolerate these forms of criminal behavior.

I ask my fellow colleagues to join me in support of this legislation. These violations are a growing concern both within the law enforcement community and the family structure, and we must deal with them now.

Mr. President, I ask for unanimous consent that the text of this legislation and additional material be printed in the RECORD.

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

S. 241

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 ''Prevention of Sexual Exploitation of Children Act''.

SEC. 2. PENALTIES.

(a) SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended—

(1) by striking ''10 years'' and inserting ''15 years''; and

(2) by striking ''more than 15 years'' and inserting ''more than 20 years''.

(b) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(b)(1) of title 18, United States Code, is amended—

(1) by striking ''ten years'' and inserting ''15 years''; and

(2) by striking ''more than fifteen'' and inserting ''more than 20 years''.

U.S. SENATE,
Washington, DC, January 18, 1995.

DEAR COLLEAGUE: I am writing to invite you to join me as a cosponsor of ''The Prevention of Sexual Exploitation of Children's Act''.

Technological advances, while a boon to our standard of living and our economic growth, contain hidden dangers that directly effect the welfare of our children. Computer conduits, or the ''information superhighway'', is being used extensively to entice children into acts of sexual depravity by pedofiles and other deviants. These sexual predators will often depict themselves as children and arrange a meeting with their victims, with the child being sexually abused as the ultimate outcome. In addition to the luring of children through the ''information superhighway'', these conduits are also being used to transport child pornography. The influx and availability of the child pornography only prompt these sexual deviants into further preying on our children.

Pedofiles and other sexual miscreants historically would position themselves outside of schools, playgrounds and other public areas where children would congregate in order to satisfy their own depraved appetites. Now through the use of bulletin boards, major on-line services, such as Prodigy, America Online, Compuserve, Internet, and a host of other computer conduits, these individuals can ply their trade with much less exposure to parental supervision or law enforcement. These deviants are often very violent and cause the children irreparable harm.

This legislation will raise the judicial penalties which would deter the proliferation of pornographic material available and remove the defendants from society. By enacting harsher judicial penalties, Congress will be sending a strong message that our society will not tolerate these forms of criminal behavior.

If you would like to help me stem this burgeoning problem by cosponsoring the ''Prevention of Sexual Exploitation of Children's Act'', please contact Greg Regan of my office at 4–8349.

Sincerely,

ALFONSE M. D'AMATO,
Senator

[From the New York Post, Jan. 9, 1995]

MOLESTERS WITH A MODEM—KIDDIE-SEX PERVERTS USING COMPUTERS TO LURE VICTIMS

(By Lou Lumenick and Kieran Crowley)

City cops are about to start patrolling the information superhighway to hunt down child pornographers and pedophiles who are luring kids through high-tech computer bulletin boards, The Post has learned.

''The bulletin boards are a total haven for pedophiles,'' said Sgt. Richard Perrine, who's forming a new computer investigation unit.

''There are no names and faces, and a 33-year-old man can pass himself off as a 10-year-old kid.''

Perrine said the new unit, in the NYPD's Organized Crime Control Bureau, plans to include computer child-pornographers and pedophiles among its targets.

''We haven't really solidified our strategy yet,'' he told The Post.

''This is something that's so new, law enforcement is not quite ready for it.''

Law-enforcement officials say pedophiles are lurking on the nation's three major online services, America Online, Prodigy and Compuserve—as well as on the worldwide Internet, smaller on-line services, and locally-operated computer bulletin boards.

On-line services are an easy way for pedophiles to meet children anonymously, noted Dyanne Greer, a senior lawyer with the National Center for the Prosecution of Child Abuse.

''Many cases are not reported, so I'm not sure anybody is really aware how much this is going on,'' she said.

A Post probe uncovered these on-line horror stories:

Westchester computer expert George Telesha pretended to be a 14-year-old girl on America Online and was quickly besieged by perverts sending dirty pictures.

A Manhattan computer expert allegedly got a 13-year-old New Jersey boy he met online to go skating with him.

Cops said the man lured the youth into the woods near the boy's home and sexually abused him six times between last July and September.

An unemployed Brooklyn computer programmer tried to sodomize a Nevada teenager he met on a computer bulletin board.

A 27-year-old computer engineer in Cupertino, Calif., allegedly met a 14-year-old boy through America Online.

He is charged with handcuffing, shackling and blindfolding the boy and then taking him to his apartment, where he whipped him with a belt, shaved his pubic hair and had sex with him.

A California man sent pornographic photos via computer to a teen-ager, then sought to have the teen killed to silence him.

Such crimes are not easy to investigate or prosecute, officials note.

''It's a bigger problem than most people realize,'' said Mike Brick, director of the Orlando bureau of the Florida State Office of Law Enforcement.

''There's a lot of people out there who want to have sex with children. If they hang out at a real playground, a teacher or someone might see them. In the computer playground, they can more or less hide in the bushes.''

A handful of agencies have staffers pose as youngsters to solicit dirty pictures and come-ons, but many don't have the manpower, equipment or inclination to do so on a regular basis.

And even if they did, experts say there's probably no way to completely stop on-line perverts—who constitute a tiny fraction of overall on-line communicators—short of shutting down the services.

And that is not only unlikely, but would rob children and others of a valuable educational resource.

The service say they're concerned—but in no position to play the role of police.

AOL spokeswoman Pam McGraw said computer-privacy laws keep her company's hands tied when it comes to the person-to-person type of communication in which porn can be exchanged in electronic ''private chat rooms.''

''Federal law prevents us from monitoring E-mail,'' McGraw said. ''We do our best to prevent misuse of our service.''

She urged AOL customers to report offensive communications which are prohibited under company rules so the company can warn offenders or eject them from the system.

Law enforcement officials say on-line companies are quick to cut off perverts and help track down and prosecute pedophiles and pornographers.

But the crimes still flourish because computers make life simpler for the perverts.

Pedophilies can easily pretend to be a child on-line, or even someone of the opposite sex, to help draw a child into a trap. And they can elude detection by using false names and post office boxes.

''Offenders can say they're other kids, then arrange for face-to-face meetings.'' Greer said ''It's pretty scary when you find out you're dealing with a 47-year-old man instead of the 14-year-old you expected.●

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. REID, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. FORD, Mr. DODD, and Mr. KERRY):

S. 242. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans; to the Committee on Finance.

HIGHER EDUCATION TAX RELIEF ACT

Mr. DASCHLE. Mr. President, earlier today, several of my distinguished colleagues and I announced our intention to introduce another important element of our Democratic plan to help middle-class Americans who are squeezed between prices that are rising and incomes that are not.

Today Senators BREAUX, KENNEDY, REID, ROCKEFELLER, MIKULSKI, FORD, DODD, KERRY, and I are introducing the Higher Education Tax Relief Act of 1995. This legislation will provide tax relief for middle-income families who are trying to send their children to college or vocational or professional school, as well as to individuals who seek such educational opportunities.

As I have noted on many occasions, our highest priority in the 104th Congress is to strengthen the financial security of working middle-income families. One of our greatest concerns is the increasing inability of many families to afford to send their children to college or vocational school.

Pressures on State budgets are forcing public colleges and universities to increase the tuition and fees they charge to new students. Many private institutions are trying to fill the student aid gap by taking on the task themselves, but they are finding it more and more costly to do so.

Our legislation will provide a tax deduction of up to $10,000 for tuition and fees associated with attending public and non-profit colleges and universities or vocational and professional schools. This aspect of the proposal is identical to the tuition deduction advanced by President Clinton in his middle-class bill of rights package. We think the President was right to focus on education in that package because it is one of the highest priorities—and biggest expenses—of middle-income families.

In addition, our tax deduction would be available up to the same amount for interest incurred on student loans. Ever since the deduction for student loan interest was eliminated in the Tax Reform Act of 1986, we have heard an ever-louder cry from middle-income Americans that they want it back. And for good reason. As more and more forms of direct student aid are eliminated, these families are having to incur debt in order to finance the costs of higher education, especially since their incomes simply are not rising commensurate with the cost of living.

The deduction we are proposing, whether taken for tuition and fees or for student loan interest, is available to families with incomes of up to $100,000 per year or individuals with incomes of up to $70,000 per year. Moreover, the deduction may be taken whether or not the taxpayer is in a position to itemize on his or her return, providing greater assurance that those at the lower end of the middle-income range will benefit.

Our proposal provides a choice to middle-income Americans and complements the various forms of student aid currently available to those with the lowest incomes. Middle-income taxpayers, most of whom no longer qualify for other forms of student aid, may deduct amounts they are able to pay for tuition and fees at the time they or their children are attending an institution of higher education. If, however, they must finance their own or their children's education, they may deduct the interest on student loans later when they begin paying back the loans.

Mr. President, the Higher Education Tax Relief Act of 1995, along with the President's tuition deduction proposal, identifies a major difference between the Republican and Democratic views of middle-income tax relief. The Republican Contract With America does not contain tax relief directed at helping middle-income families pay for education. In fact, it contains numerous measures that will further harm the ability of middle-income Americans to obtain the education they seek.

For example, one of the spending cuts contemplated by Republicans is the repeal of the in-school interest subsidy for student loans. Right now, the interest clock on many student loans does not start ticking until a student has finished college. The Republicans want to start charging interest immediately. We believe that's an attack on middle-income families who cannot afford to send their children to college without borrowing the money.

College already is too expensive for many families, and we shouldn't limit the number who can afford it by raising the costs even more. Democrats believe opportunities should be open to everyone willing to earn them with hard work. We believe education is necessary and should be affordable to anyone who wants it—that we should not tax the income necessary for middle-income families to send their children to college or vocational and professional schools.

These are Democratic values.

Let me point out that none of us introducing this legislation today have any intention of increasing the deficit as a result of this proposal. We have asked the Joint Committee on Taxation to estimate the cost of this proposal and, at the appropriate time, we intend to offer ways to pay for it.

Mr. President, I ask that a copy of our legislation be printed in the RECORD.

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

S. 242

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 ''Higher Education Tax Relief Act of 1995''.

SEC. 2. DEDUCTION FOR HIGHER EDUCATION EXPENSES.

(a) DEDUCTION ALLOWED.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

''SEC. 220. HIGHER EDUCATION TUITION AND FEES; INTEREST ON STUDENT LOANS.

''(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction an amount equal to the sum of—

''(1) the qualified higher education expenses, plus

''(2) interest on qualified higher education loans,

paid by the taxpayer during the taxable year.

''(b) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of this section—

''(1) QUALIFIED HIGHER EDUCATION EXPENSES.—

''(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

''(i) the taxpayer,

''(ii) the taxpayer's spouse, or

''(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

as an eligible student at an institution of higher education.

''(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies unless such expenses—

''(i) are part of a degree program, or

''(ii) are deductible under this chapter without regard to this section.

''(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include any student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

''(D) ELIGIBLE STUDENT.—For purposes of subparagraph (A), the term 'eligible student' means a student who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)).

''(2) DOLLAR LIMITATION.—

''(A) IN GENERAL.—The amount taken into account under paragraph (1) for any taxable year shall not exceed $10,000.

''(B) PHASE-IN.—In the case of taxable years beginning in 1996, 1997, 1998, and 1999, the following amounts shall be substituted for '$10,000' in subparagraph (A):

''For taxable years beginning in:	The substitute amount is:
1996	$2,000
1997	4,000
1998	6,000
1999	8,000.

''(3) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $70,000 ($100,000 in the case of a joint return), the amount which would (but for this paragraph) be taken into account under paragraph (1) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be taken into account as such excess bears to $20,000.

''(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1996, the $70,000 and $100,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '1995' for '1992'.

''(C) ROUNDING.—If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

''(D) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

''(i) without regard to this section and sections 911, 931, and 933, and

''(ii) after the application of sections 86, 135, 219, and 469.

''(4) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution which—

''(A) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), and

''(B) is eligible to participate in programs under title IV of such Act.

''(c) QUALIFIED HIGHER EDUCATION LOAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified higher education loan' means a loan to a student which is—

''(A) made, insured, or guaranteed by the Federal Government,

''(B) made by a State or a political subdivision of a State,

''(C) made from the proceeds of a qualified student loan bond under section 144(b), or

''(D) made by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))).

''(2) LIMITATION.—

''(A) IN GENERAL.—The amount of interest on a qualified higher education loan which is taken into account under subsection (a)(2) shall be reduced by the amount which bears the same ratio to such amount of interest as—

''(i) the proceeds from such loan used for qualified higher education expenses, bears to

''(ii) the total proceeds from such loan.

''(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A), the term 'qualified higher education expenses' has the meaning given such term by subsection (b), except that—

''(i) such term shall include reasonable living expenses while away from home, and

''(ii) the limitations of paragraphs (2) and (3) of subsection (b) shall not apply.

''(d) COORDINATION WITH OTHER PROVISIONS.—

''(1) NO DOUBLE BENEFIT.—

''(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for qualified higher education expenses or interest on qualified higher education loans with respect to which a deduction is allowed under any other provision of this chapter.

''(B) SAVINGS BOND EXCLUSION.—A deduction shall be allowed under subsection (a)(1) for qualified higher education expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135 for the taxable year.

''(2) QUALIFIED RESIDENCE INTEREST.—If a deduction is allowed under subsection (a)(2) for interest which is also qualified residence interest under section 163(h), such interest shall not be taken into account under section 163(h).

''(e) SPECIAL RULES.—

''(1) ELECTION.—If a deduction is allowable under more than one provision of this chapter with respect to qualified higher education expenses, the taxpayer may elect the provision under which the deduction is allowed.

''(2) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

''(A) IN GENERAL.—A deduction shall be allowed under subsection (a)(1) for any taxable year only to the extent the qualified higher education expenses are in connection with attendance at an institution of higher education during the taxable year.

''(B) CERTAIN PREPAYMENTS ALLOWED.—Subparagraph (A) shall not apply to qualified higher education expenses paid during a taxable year which are in connection with attendance at an institution of higher education which begins during the first 2 months of the following taxable year.

''(3) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a)(1) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

''(A) a qualified scholarship which under section 117 is not includable in gross income,

''(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or

''(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States.

''(4) NO DEDUCTION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

''(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.''

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) of such Code is amended by inserting after paragraph (15) the following new paragraph:

''(16) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 219.''

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 220 and inserting:

''Sec. 220. Higher education tuition and fees.

''Sec. 221. Cross reference.''

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Mr. KENNEDY. Mr. President, a college education is a building block of the American dream. But with college costs rising, higher education is increasingly out of reach for many families.

President Clinton deserves credit for acting on this problem, and the legislation we are introducing today will carry out the President's proposal to make college education more affordable for working families. The bill provides a tax deduction of up to $10,000 a year for college tuition costs, and it restores the deduction for interest on student loans.

The deduction for tuition will be available for families earning up to $100,000 a year and individuals earning up to $70,000. It will be available for tuition at traditional 4-year colleges and universities, community colleges, and vocational and professional schools offering job training in a variety of fields.

The deduction for interest on student loans is equally important, and will offer significant help to students who must borrow to go to college and who are struggling to pay off their loans and establish themselves in the working world.

By contrast, the Republican contract proposes to cut over $10 billion in Federal financial aid for students over the next 5 years. In Massachusetts alone, that would mean a loss of over $100 million a year. In reality, when you read the fine print, the Contract With America is a contract against college education.

Families across the country know that education is the best investment they can make in their children's future. We must do more to ease the burden of that investment, not make it harder for families to obtain it.

I look forward to working with my colleagues on both side of the aisle to ensure that this important legislation becomes law.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 20. A joint resolution granting the consent of Congress to a compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, MD and Mineral County, WV, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

THE JENNINGS RANDOLPH LAKE PROJECT COMPACT

Mr. SARBANES. Mr. President, today I am reintroducing legislation together with my colleagues Senators BYRD, ROCKEFELLER, and MIKULSKI to grant congressional consent to a compact entered into between the States of

West Virginia and Maryland, with concurrence of the U.S. Army Corps of Engineers, to provide for joint management and enforcement of laws and regulations pertaining to natural resources and boating at Jennings Randolph Lake. This legislation was approved by the Senate in the closing days of the 103d Congress, but was not considered in the House.

Jennings Randolph Lake is located on the north branch of the Potomac River in Garrett County, MD and Mineral County, WV. Construction of the dam, which created the lake, was authorized by the Flood Control Act of 1962 and the project was specifically designed to improve the water quality of the Potomac River, reduce flood damage, provide water supply, and opportunities for recreation. Completed in 1982, the dam is one of the largest dams east of the Mississippi—approximately 6.6 miles long, with a surface area of 952 acres and a drainage area of 263 square miles. Originally named Bloomington Lake, the project was rededicated in May 1987 in honor of former West Virginia Senator Jennings Randolph.

The lake and surrounding area are extraordinarily beautiful and include some of the most picturesque countryside in the Nation. The lake and the north branch of the Potomac River below the dam support a recreational trout fishery that is regarded as one of the best in America. Other recreational opportunities including boating, downstream whitewater rafting, hiking, and picnicing are drawing increasing numbers of visitors to the lake. The Army Corps of Engineers currently operates and maintains five recreation sites at the project and the State of Maryland, in cooperation with the corps, is in the process of developing a boat launch and support facilities on the Maryland side of the project.

Unfortunately, the creation of the lake removed the natural boundary between West Virginia and Maryland and the meandering nature of the former river and the depth of the lake have made it virtually impossible to reestablish the precise location of the boundary. As a consequence, enforcement of natural resources and boating laws and regulations on the lake has been tentative at best and at worst, nonexistent. As recreational uses of the lake continue to increase, it is anticipated that enforcement problems will become increasingly difficult.

The compact legislation I am introducing today provides the State of West Virginia and Maryland with concurrent jurisdiction over the project area to enable them to jointly enforce natural resource and boating laws and regulations. This approach eliminates the need to redefine the boundary between the two States for law enforcement purposes. As required before congressional action can be taken, the compact was approved by the respective legislatures of Maryland and West Virginia in their 1993 legislative sessions.

Mr. President, this legislation will address the ongoing problems associated with the management and enforcement of laws and regulations relating to natural resources and boating at the Jennings Randolph Lake Project. It has been long awaited by both States and I urge its swift enactment.

I ask unanimous consent that the legislation be printed in the RECORD.

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

S.J. RES. 20

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

The Congress hereby consents to the Jennings Randolph Lake Project Compact entered into between the States of West Virginia and Maryland which compact is substantially as follows:

"COMPACT

"Whereas the State of Maryland and the State of West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, have approved and desire to enter into a compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they seek the approval of Congress, and which compact is as follows:

"Whereas the signatory parties hereto desire to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they have a joint responsibility; and they declare as follows:

"1. The Congress, under Public Law 87–874, authorized the development of the Jennings Randolph Lake Project for the North Branch of the Potomac River substantially in accordance with House Document Number 469, 87th Congress, 2nd Session for flood control, water supply, water quality, and recreation; and

"2. Section 4 of the Flood Control Act of 1944 (Ch 665, 58 Stat. 534) provides that the Chief of Engineers, under the supervision of the Secretary of War (now Secretary of the Army), is authorized to construct, maintain and operate public park and recreational facilities in reservoir areas under control of such Secretary for the purpose of boating, swimming, bathing, fishing, and other recreational purposes, so long as the same is not inconsistent with the laws for the protection of fish and wildlife of the State(s) in which such area is situated; and

"3. Pursuant to the authorities cited above, the U.S. Army Engineer District (Baltimore), hereinafter 'District', did construct and now maintains and operates the Jennings Randolph Lake Project; and

"4. The National Environmental Policy Act of 1969 (P.L. 91–190) encourages productive and enjoyable harmony between man and his environment, promotes efforts which will stimulate the health and welfare of man, and encourages cooperation with State and local governments to achieve these ends; and

"5. The Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) provides for the consideration and coordination with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation; and

"6. The District has Fisheries and Wildlife Plans as part of the District's project Operational Management Plan; and

"7. In the respective States, the Maryland Department of Natural Resources (hereinafter referred to as 'Maryland DNR') and the West Virginia Division of Natural Resources (hereinafter referred to as 'West Virginia DNR') are responsible for providing a system of control, propagation, management, protection, and regulation of natural resources and boating in Maryland and West Virginia and the enforcement of laws and regulations pertaining to those resources as provided in Annotated Code of Maryland Natural Resources Article and West Virginia Chapter 20, respectively, and the successors thereof; and

"8. The District, the Maryland DNR, and the West Virginia DNR are desirous of conserving, perpetuating and improving fish and wildlife resources and recreational benefits of the Jennings Randolph Lake Project; and

"9. The District and the States of Maryland and West Virginia wish to implement the aforesaid acts and responsibilities through this Compact and they each recognize that consistent enforcement of the natural resources and boating laws and regulations can best be achieved by entering this Compact:

"Now, therefore, be it *Resolved*, That the States of Maryland and West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by The Congress of the United States and by the respective state legislatures, to the Jennings Randolph Lake Project Compact, which consists of this preamble and the articles that follow:

"Article I—Name, Findings, and Purpose

"1.1 This compact shall be known and may be cited as the Jennings Randolph Lake Project Compact.

"1.2 The legislative bodies of the respective signatory parties, with the concurrence of the U.S. Army Corps of Engineers, hereby find and declare:

"1. The water resources and project lands of the Jennings Randolph Lake Project are affected with local, state, regional, and national interest, and the planning, conservation, utilization, protection and management of these resources, under appropriate arrangements for inter-governmental cooperation, are public purposes of the respective signatory parties.

"2. The lands and waters of the Jennings Randolph Lake Project are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact that, notwithstanding any boundary between Maryland and West Virginia that preexisted the creation of Jennings Randolph Lake, the parties will have and exercise concurrent jurisdiction over any lands and waters of the Jennings Randolph Lake Project concerning natural resources and boating laws and regulations in the common interest of the people of the region.

"Article II—District Responsibilities

"The District, within the Jennings Randolph Lake Project,

"2.1 Acknowledges that the Maryland DNR and West Virginia DNR have authorities and responsibilities in the establishment, administration and enforcement of the natural resources and boating laws and regulations applicable to this project, provided that the laws and regulations promulgated by the

States support and implement, where applicable, the intent of the Rules and Regulations Governing Public Use of Water Resources Development Projects administered by the Chief of Engineers in Title 36, Chapter RI, Part 327, Code of Federal Regulations,

''2.2 Agrees to practice those forms of resource management as determined jointly by the District, Maryland DNR and West Virginia DNR to be beneficial to natural resources and which will enhance public recreational opportunities compatible with other authorized purposes of the project,

''2.3 Agrees to consult with the Maryland DNR and West Virginia DNR prior to the issuance of any permits for activities or special events which would include, but not necessarily be limited to: fishing tournaments, training exercises, regattas, marine parades, placement of ski ramps, slalom water ski courses and the establishment of private markers and/or lighting. All such permits issued by the District will require the permittee to comply with all State laws and regulations,

''2.4 Agrees to consult with the Maryland DNR and West Virginia DNR regarding any recommendations for regulations affecting natural resources, including, but not limited to, hunting, trapping, fishing or boating at the Jennings Randolph Lake Project which the District believes might be desirable for reasons of public safety, administration of public use and enjoyment,

''2.5 Agrees to consult with the Maryland DNR and West Virginia DNR relative to the marking of the lake with buoys, aids to navigation, regulatory markers and establishing and posting of speed limits, no wake zones, restricted or other control areas and to provide, install and maintain such buoys, aids to navigation and regulatory markers as are necessary for the implementation of the District's Operational Management Plan. All buoys, aids to navigation and regulatory markers to be used shall be marked in conformance with the Uniform State Waterway Marking System,

''2.6 Agrees to allow hunting, trapping, boating and fishing by the public in accordance with the laws and regulations relating to the Jennings Randolph Lake Project,

''2.7 Agrees to provide, install and maintain public ramps, parking areas, courtesy docks, etc., as provided for by the approved Corps of Engineers Master Plan, and

''2.8 Agrees to notify the Maryland DNR and the West Virginia DNR of each reservoir drawdown prior thereto excepting drawdown for the reestablishment of normal lake levels following flood control operations and drawdown resulting from routine water control management operations described in the reservoir regulation manual including releases requested by water supply owners and normal water quality releases. In case of emergency releases or emergency flow curtailments, telephone or oral notification will be provided. The District reserves the right, following issuance of the above notice, to make operational and other tests which may be necessary to insure the safe and efficient operation of the dam, for inspection and maintenance purposes, and for the gathering of water quality data both within the impoundment and in the Potomac River downstream from the dam.

''Article III—State Responsibilities

''The State of Maryland and the State of West Virginia agree:

''3.1 That each State will have and exercise concurrent jurisdiction with the District and the other State for the purpose of enforcing the civil and criminal laws of the respective States pertaining to natural resources and boating laws and regulations over any lands and waters of the Jennings Randolph Lake Project;

''3.2 That existing natural resources and boating laws and regulations already in effect in each State shall remain in force on the Jennings Randolph Lake Project until either State amends, modifies or rescinds its laws and regulations;

''3.3 That the Agreement for Fishing Privileges dated June 24, 1985 between the State of Maryland and the State of West Virginia, as amended, remains in full force and effect;

''3.4 To enforce the natural resources and boating laws and regulations applicable to the Jennings Randolph Lake Project;

''3.5 To supply the District with the name, address and telephone number of the person(s) to be contacted when any drawdown except those resulting from normal regulation procedures occurs;

''3.6 To inform the Reservoir Manager of all emergencies or unusual activities occurring on the Jennings Randolph Lake Project;

''3.7 To provide training to District employees in order to familiarize them with natural resources and boating laws and regulations as they apply to the Jennings Randolph Lake Project; and

''3.8 To recognize that the District and other Federal Agencies have the right and responsibility to enforce, within the boundaries of the Jennings Randolph Lake Project, all applicable Federal laws, rules and regulations so as to provide the public with safe and healthful recreational opportunities and to provide protection to all federal property within the project.

''Article IV—Mutual Cooperation

''4.1 Pursuant to the aims and purposes of this Compact, the State of Maryland, the State of West Virginia and the District mutually agree that representatives of their natural resource management and enforcement agencies will cooperate to further the purposes of this Compact. This cooperation includes, but is not limited to, the following:

''4.2 Meeting jointly at least once annually, and providing for other meetings as deemed necessary for discussion of matters relating to the management of natural resources and visitor use on lands and waters within the Jennings Randolph Lake Project;

''4.3 Evaluating natural resources and boating, to develop natural resources and boating management plans and to initiate and carry out management programs;

''4.4 Encouraging the dissemination of joint publications, press releases or other public information and the interchange between parties of all pertinent agency policies and objectives for the use and perpetuation of natural resources of the Jennings Randolph Lake Project; and

''4.5 Entering into working arrangements as occasion demands for the use of lands, waters, construction and use of buildings and other facilities at the project.

''Article V—General Provisions

''5.1 Each and every provision of this Compact is subject to the laws of the States of Maryland and West Virginia and the laws of the United States, and the delegated authority in each instance.

''5.2 The enforcement and applicability of natural resources and boating laws and regulations referenced in this Compact shall be limited to the lands and waters of the Jennings Randolph Lake Project, including but not limited to the prevailing reciprocal fishing laws and regulations between the States of Maryland and West Virginia.

''5.3 Nothing in this Compact shall be construed as obligating any party hereto to the expenditure of funds or the future payment of money in excess of appropriations authorized by law.

''5.4 The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of the Jennings Randolph Lake Project Compact is declared to be unconstitutional or inapplicable to any signatory party or agency of any party, the constitutionality and applicability of the Compact shall not be otherwise affected as to any provision, party, or agency. It is the legislative intent that the provisions of the Compact be reasonably and liberally construed to effectuate the stated purposes of the Compact.

''5.5 No member of or delegate to Congress, or signatory shall be admitted to any share or part of this Compact, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

''5.6 When this Compact has been ratified by the legislature of each respective State, when the Governor of West Virginia and the Governor of Maryland have executed this Compact on behalf of their respective States and have caused a verified copy thereof to be filed with the Secretary of State of each respective State, when the Baltimore District of the U.S. Army Corps of Engineers has executed its concurrence with this Compact, and when this Compact has been consented to by the Congress of the United States, then this Compact shall become operative and effective.

''5.7 Either State may, by legislative act, after one year's written notice to the other, withdraw from this Compact. The U.S. Army Corps of Engineers may withdraw its concurrence with this Compact upon one year's written notice from the Baltimore District Engineer to the Governor of each State.

''5.8 This Compact may be amended from time to time. Each proposed amendment shall be presented in resolution form to the Governor of each State and the Baltimore District Engineer of the U.S. Army Corps of Engineers. An amendment to this Compact shall become effective only after it has been ratified by the legislatures of both signatory States and concurred in by the U.S. Army Corps of Engineers, Baltimore District. Amendments shall become effective thirty days after the date of the last concurrence or ratification.''.

SEC. 2. The right to alter, amend or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of the compact.

ADDITIONAL COSPONSORS

S. 91

At the request of Mr. COVERDELL, the names of the Senator from Mississippi [Mr. LOTT] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 91, a bill to delay enforcement of the National Voter Registration Act of 1993 until such time as Congress appropriates funds to implement such Act.

S. 98

At the request of Mr. BRADLEY, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of S. 98, a bill to amend the Congressional Budget Act of 1974 to establish a process to identify and control tax expenditures.