change my vote on final passage of H.R. 1058, vote No. 295, the Securities Reform Act of 1995. I voted in favor of the passage of the bill. It was my intention to vote ''no.'' This change in vote will not alter the outcome of the vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I also ask unanimous consent that I be allowed to change my June 20, 1995, vote on the motion to table the Lautenberg amendment, vote No. 270, relating to highway speed limits during the debate on S. 440, the National Highway System designation bill. I had inadvertently voted in support of the motion to table the amendment. I wish to be recorded as having voted against the motion to table the Lautenberg amendment. This change in vote will not alter the outcome of the original vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PRIVATE SECURITIES LITIGATION REFORM ACT

Mr. ROCKEFELLER. Mr. President, today, I joined a large number of my Senate colleagues in voting for S. 240, the Private Securities Litigation Reform Act of 1995. The 70-to-29 vote for this bill in its revised form demonstrated strong bipartisan commitment to repairing and changing the country's securities litigation system.

Like any effort to change the status quo, especially through legislation that must win a majority of support from diverse corners, this final product cannot be called perfect. Compromises and tough judgment calls had to be made throughout the process of grappling with a very complex set of issues posed by securities and the legal system. After much consultation and reflection, today I felt the vote for a more rational, less costly, and improved system was a vote for this bill.

This bill's fundamental purpose is to reduce and deter frivolous and meritless lawsuits in the securities area. The idea is by no means just to protect potential defendants. the need for legislation is based on the costs and problems created by the current system for investors when they cannot get helpful information on investment opportunities; for working Americans when the legal costs of the current system saps jobs, capital, and growth; and for participants like accountants who are at risk of liability that's far beyond their fault. In other words, repairing the system is designed to resolve problems that are hurting small and large investors, workers and our communities, and specific people professionally involved in securities.

Thirty-one years ago I went to Emmons, WV, to be a VISTA worker because I wanted to make some small difference in the lives of other people. I quickly learned that West Virginians are people who value hard work, and are ready to earn their fair share of what society has to offer.

But there were not enough jobs in Emmons, or in many other places in West Virginia. After deciding to make public service my career and West Virginia my permanent home, I also made creating long-term, well-paying jobs for West Virginians one of my main goals. Three decades later, it is still my focus. Almost everything I do for West Virginia must be weighed against that goal of creating the opportunity for West Virginians to earn a living, and, through work, to achieve the quality of life they seek.

And when West Virginians are able to earn a decent living, and are able perhaps to invest a few dollars for their futures through savings or investment, I want to make sure that they are treated fairly and are protected.

It was for both of these reasons—protecting the small companies in West Virginia that create quality jobs and protect wage-earner investors—that I have sponsored the current legislation regarding securities litigation. The bill I sponsored would go a long way toward curtailing what I believe is an epidemic of frivolous securities fraud lawsuits that are brought by a small cadre of lawyers against often small and start-up companies, and against their lawyers and accountants who may have little to do with the operation of the company.

The stated purpose of S. 240, as introduced last January, was to facilitate the ability of companies to gather capital for investment, the underlying theory being that frivolous lawsuits against corporations make it very difficult to do so. While American securities markets have been very successful, the Banking Committee, after extensive hearings, reported that class action suits, as well as the fear of being sued in a class action by professional plaintiffs has the capital formation markets in terror. From this flows the need to come to a better balance between protecting the rights of investors and the standards of recovery. In my view, this is an appropriate goal.

When I was asked to cosponsor S. 240 in January, I carefully analyzed its provisions to make sure that it struck a fair balance, and I came to the conclusion that it did. Regarding frivolous lawsuits, the bill contained many important provisions to assure that meritless lawsuits can be dealt with in an expeditious and less costly way. And there were several important protections for investors as well, including a 1-year extension of the statute of limitations for securities suits, the creation of a self-disciplinary auditor oversight board to assure truthfulness of securities statements; and encouragement of alternative dispute resolution for both plaintiffs and defendants, rather than resorting to lengthy and costly litigation in the courts. Unfortunately, several of these investor protection provisions have been deleted from the bill.

The Banking Committee's action was not one-sided, however, and the bill contains a number of valuable provisions, and changes, to help deter frivolous lawsuits. A review of these changes reveals that the Committee did:

Lower the pleading requirements, somewhat, to a standard set by the leading Federal circuit.

Eliminate an onerous ''loser pays'' provision, but replaced it with a mandatory requirement that judges review pleadings in these cases under Federal Rule 11, which will most often mean that investor-plaintiffs, but not defendants, may be punished. Judges already have this responsibility under Rule 11, and it should be equally applied to plaintiffs and defendants—An amendment by Senator BINGAMAN has now made this provision more balanced.

Eliminate an investor-plaintiff ''steering committee'' to manage the securities class action, but replaced it with a troublesome lead plaintiff provision which will likely result in large institutional investors—to the exclusion of small investors—controlling class actions—An amendment by the Senator BOXER, which would have corrected this shortcoming was defeated during earlier consideration of the bill.

Eliminate a dollar threshold to be the named plaintiff.

Partially restore SEC enforcement against those who aid and abet the commission of a fraud by another, but failed to restore a private right of action.

Other changes included in the committee bill include:

Expanding the protections of the legislation to include the 1933 Securities Act.

Creating a legislative safe harbor for forward-looking economic statements about a company, thus ending an ongoing rulemaking on this subject by the SEC.

An extension of the proportional liability protections.

Providing that investors with the largest financial interest, will control securities class action suits.

Eliminating the loser pays provision, as stated earlier, and replacing it with a provision with a strong presumption of fee-shifting against investors only.

During the Senate's floor consideration of the legislation over the past week, a number of amendments were proposed by some of my colleagues from the Banking Committee. I strongly supported a number of these initiatives, and want to review each of them.

STATUTE OF LIMITATIONS AMENDMENT

In 1991, the Supreme Court decided in the Lampf versus Gilbertson case to establish a uniform statute of limitations applicable to implied private actions under the Securities Exchange Act of 1934. Before this decision, Federal courts had followed the statute of limitations in the applicable State.

The timeframe established was consistent with that for express causes of action for false statements, misrepresentation, and manipulation under the 1934 Act: One year from the date of discovery of the violation or discovery of the facts constituting the violation, or 3 years from the date of the violation.

In 1991, an extension of this statute of limitations was proposed as part of the FDIC Improvement Act. Its supporters sought to change the statute of limitations to 2 years after the plaintiff knew of the securities violation, but in no event more than 5 years after the violation occurred. This provision was dropped because of the argument that it should only be enacted as part of a bill with further reform of the securities litigation system, as we are now doing.

The extension of the statute of limitations was part of both the Domenici/Dodd bill from the 103d Congress, and the original version of S. 240 this year that I cosponsored.

The original S. 240 also provided that a violation that should have been discovered through the exercise of reasonable diligence would fall under the 2-year category.

An amendment rejected by the Senate would have returned the statute of limitation provision to that which was in the original version of S. 240. In the committee markup, the statute of limitation provision was taken out, returning to a shorter 1-year/3-year provision.

A good number of our colleagues believed that this provision was harmful to business in that it would establish, at least de facto, a 5-year statute of limitation; that 3 years is a reasonable cap because after that, cases become stale and more difficult to defend; that a 1-year minimum is enough time to get a suit ready; that there are other adequate remedies including State actions, blue sky laws, and occasionally awarding of disgorgement funds by the SEC; and that the amendment would invite claim speculation—allowing investors to sit back and see if they turn a profit before suing.

There were persuasive arguments put forth by supporters, as well. For example, the Senator from Nevada [Mr. BRYAN] argued that:

The bill as reported has a statute of limitations that is shorter than that in 31 states. Thirteen States also allow tolling of the statute until fraud is discovered.

Under current law, it is too easy for a claim to be barred through no fault of the investor, especially because fraud is difficult to detect.

I supported the amendment because I did not believe that it would adversely impact capital formation, and thus job creation.

AIDING AND ABETTING AMENDMENT

Prior to 1994, courts in every circuit supported the right of investors to sue those who aid and abet securities fraud. This right arose from common law, but was not specifically provided for in Federal securities statutes. For primarily this reason, the Supreme Court—in 1994—eliminated the right of investors to sue aiders and abettors of fraud.

The Senator from Connecticut [Mr. DODD] upon whose advice I depend heavily in this matter, as well as the SEC, the administration, and even the Supreme Court, has expressed the belief that the private right of action to pursue those who aid and abet should be replaced by statute. At the Committee hearing, Senator DODD said, ''This is conduct that must be deterred, and Congress should enact legislation to restore aiding and abetting liability in private actions.''

The SEC testified before the Banking Committee strongly in favor of restoring this investor right because of its deterrent effect on fraudulent behavior. Otherwise, those who knowingly or recklessly assist in a fraud will be shielded.

However, the committee failed to restore the private right of action, but did empower the SEC to bring aid and abet actions, although not authorizing any additional resources for the SEC to undertake this added responsibility.

In my opinion, protecting aiding and abetting has nothing to do with capital formation, since it is not applicable to the primary investment company. I thus supported an amendment, offered by the Senator from Nevada [Mr. BRYAN] which sought to restore this important right of investors to seek redress only against those who knowingly or recklessly provide substantial assistance to another who commits fraud.

SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS AMENDMENT

The term ''forward-looking statements'' is broadly defined in S. 240 to include financial projections on items such as revenues, income, and dividends, as well as statements of future economic performance required in documents filed with the SEC. As with any attempt to foresee the future, such statements always have an element of risk to them, and prudent investors must be careful in relying on them.

Up until 1979, the SEC prohibited disclosure of such forward-looking information because it felt that this information was unreliable, and it feared that investors would place too much emphasis on these materials. After extensive review, the SEC adopted a safe harbor regulation for forward-looking statements in 1979. This regulation—known as rule 175—offers protection for specified forward-looking statements when made in documents filed with the SEC. The theory for the safe harbor was to encourage voluntary disclosure by companies to the SEC. To sustain a fraud suit, a plaintiff/investor needed to show that the forward-looking information lacked a reasonable basis and was not made in good faith.

The effectiveness of this regulation has been widely criticized, and as recently as May 19, 1995, SEC Chairman Arthur Levitt acknowledged ''a need for a stronger safe harbor than currently exists.'' In fact, the SEC is currently conducting a rulemaking on its safe harbor regulation.

The original S. 240 bill required the SEC to consider adopting rules or making recommendations for expanding the safe harbor. This idea was strongly endorsed by SEC Chairman Levitt, among others.

However, the Banking Committee abandoned this approach in favor of enacting a statutory safe harbor provision. Many have argued that the SEC is in the best position. Many have argued that the SEC is in the best position to tailor rules for this issue. The SEC will be able to closely monitor the effects of any new policy and quickly modify it if need be. The SEC also has the advantage of having already examined this problem in great detail.

More important, however, is the way the committee did this. Under the committee version of S. 240, a forward-looking statement can only be the basis for fraud finding if the investor-plaintiff can prove that the statement is knowingly made with the expectation, purpose, and actual intent of misleading investors. Expectation, purpose, and actual intent are to be treated as separate elements, each of which must be proven independently. This is an extremely difficult standard to meet—an amendment adopted by voice vote removed the ''expectation'' requirement.

Any safe harbor provision, whether statutory or by regulation, places a greater burden on the investor to uncover fraudulent misrepresentations. However, in order to encourage companies to file information with the SEC, most believe it is important to have some safe harbor provision. Because I believed that the committee's changes to S. 240 might make it more difficult for investors to prove that forward-looking statements should be liable for fraud—and thus that the SEC promulgated rule currently is a much better standard and that the Congress should leave this to the SEC—I supported the amendment to return this provision to the original S. 240 version.

That amendment failed, and the Senator from Maryland, Mr. SARBANES, proposed an amendment to modify the standard for recovery for fraudulent forward looking statements to require a showing that it was made with actual knowledge it was false or actual intent of misleading. This was what I believed was a reasonable middle-ground standard between what all agreed to be an ineffective current rule on safe harbor—reasonable basis/good faith—and the stringent actual intent standard inserted in the bill by the committee. Unfortunately, this amendment was tabled.

PROPORTIONAL LIABILITY AMENDMENT

Under current law, each defendant who conspires to commit a securities violation is joint and severally liable, and thus can be held accountable for

100 percent of damages found by a court. Most agree that this unfairly treats defendants who have only a small percentage of responsibility.

As originally introduced, S. 240 provided for joint and several liability to be maintained only for primary wrongdoers, knowing violators, and those controlling knowing violators.

As the bill reported by the committee, only knowing violators are held joint and severally liable. Knowing securities fraud is defined in the bill to exclude reckless violators, whose liability would be reduced to proportional liability. Additionally, if the judgment is uncollectible, proportionally liable defendants can be held to pay an additional 50 percent of their share, and can be made to pay the uncollectible share to investors with net worth less than $200,000 and who have lost more 10 percent of their net worth. Under the 50 percent provision, a defendant could be liable for up to 150 percent of their proportional share.

The bill's proportionality provision is an improvement over current law, but may not fully protect investors when a judgment is uncollectible from a primary defendant. An exception was carved out so that those who have invested more than 10 percent of their net worth might still recover at least some portion of the damages even from the non-primary defendant.

An amendment proposed by Senators BRYAN and SHELBY would have allowed for full reallocation of uncollectible shares among culpable defendants, while maintaining a system of proportionality as contained in the committee bill, to protect minimally responsible defendants, who are usually the accountants and attorneys, but at the same time would have been, I believe, fairer to victims of investment fraud.

I supported this important amendment because I believed that it was a vast improvement over the current system of joint and several liability, but also as a stronger protection for investors.

To conclude, Mr. President, I am disappointed that the managers supporting S. 240 rejected the amendments offered that I voted for. Perhaps some further enlightenment and discussion will inspire the conferees to incorporate some of them to ensure the balance that I think the legal system also calls for.

Because the current system and its problems should not be left alone, I still came to the conclusion that a vote for the bill was in the interests of the people I represent and the country. Most of us may not be aware of the way the securities litigation system ultimately affects jobs, economic growth, and opportunity. The proponents of this bill have reminded us of these very real-life and serious effects. Today, I felt it was time to support action to revise and change the system so that it's more about common sense than a proliferation of lawyers and legal costs.

PRIVATE SECURITIES LITIGATION REFORM ACT

Mr. DODD. Mr. President, now that the Senate has completed action on S. 240, the Securities Litigation Reform Act, I wanted to take a few moments to focus on many of the salient provisions of this legislation that were not fully discussed during our 5 days of debate on 17 different amendments.

Of course, I am extremely pleased that the legislation received an overwhelming vote of support from my colleagues this morning, passing by a margin of 70 to 29.

This vote is yet another confirmation of the very strong bipartisan support that the bill has received in the Senate and it also reflects the broad coalition of investor groups and businesses that have supported these reform efforts for the past 4 years.

This is certainly an important day for American investors and the American economy. Passage of S. 240 puts us well on the road to restoring fairness and integrity to our securities litigation system.

To some, this may sound like a dry and technical subject, but in reality, it is crucial to our investors, our economy and our international competitiveness. We are all counting on our high-technology and bio-technology firms to fuel our economy into the 21st century. We are counting on them to create jobs and to lead the charge for us in the global marketplace.

But those are the same firms that are most hamstrung by a securities litigation system that works for no one—save plaintiffs' attorneys.

Over the past 1½ years, the intense scrutiny on the securities litigation system has dramatically changed the terms of debate, as we have seen on the floor for the past 5 days.

We are no longer arguing about whether the current system needs to be repaired; we are now focused on how best to repair it.

Even those who once maintained that the litigation system needed no reform are now conceding that substantive and meaningful changes are required if we are to maintain the fundamental integrity of private securities litigation.

The flaws in the current system are simply too obvious to deny. The record is replete with examples of how the system is being abused and misused.

While there has been much discussion of the position of the Securities and Exchange Commission, it is important to note that the Chairman of the SEC, Arthur Levitt, agrees with the fundamental notion that we must enact some meaningful reform:

> There is no denying that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.

The legislation under consideration today is based upon the bill that Senator DOMENICI and I have introduced for the last two Congresses.

There are some provisions from the original version of S. 240 that I would have liked to see included in this bill, such as an extension of the statute of limitations on private actions.

In fact, I strongly supported an amendment offered by my good friend, Senator BRYAN, that would have extended the statute of limitations from 1 year after the fraud is discovered to 2 years and from 3 years after the actual perpetration of the fraud to 5 years.

It is also important to note that the statute of limitations was decreased by the Supreme Court in last year's Central Bank decision, and not by any part of S. 240.

But I certainly understand why this provision was taken out of the committee's product. It is excruciatingly difficult to produce a balanced piece of legislation, especially in such a complex and contentious area.

But that is exactly what the Senate passed today, a bill that carefully and considerately balances the needs of our high-growth industries with the rights of investors, large and small. I am proud of the spirit of fairness and equity that permeates the legislation.

I am also proud of the fact that this legislation tackles a complicated and difficult issue in a thoughtful way that avoids excess and achieves a meaningful equilibrium under which all of the interested parties can survive and thrive.

As I stated earlier, this is a broadly bipartisan effort. This bill passed the Banking Committee with strong support from both sides of the aisle, and the 70 Senators from both parties who voted in favor of the bill this morning, represent all points on the so-called ideological spectrum.

I believe that this morning's strong show of support displays the desire of the Senate to stand in favor of the balanced approach of S. 240. In my view this vote also demonstrates the Senate's disagreement with the more extreme securities reform bill (H.R. 1058) that passed the other body in March.

Those of us who have supported this legislation must be very mindful of the close vote that occurred on the second SARBANES amendment to further limit the safe harbor provisions of the bill.

I, for one, am committed to ensuring that as we move to a conference with the other body, we retain a safe harbor provision that is truly meaningful but that gives no aid and comfort to those who would try to defraud investors.

And I would like to use this opportunity to reinforce the statement that I made earlier today: I will urge my colleagues to reject any conference report that includes safe harbor provisions —or any other provision for that matter—that are so broadly expanded that they breach the rights of legitimately aggrieved investors.

Mr. President, H.L. Mencken once said that every problem has a solution that is neat, simple, and wrong. Believe me, if there were a simple solution to the problems besetting securities litigation today, we would have been able