

Americans nationwide that participated. They include the Scots' Charitable Society (the oldest charitable society in the United States), the St. Andrew's Society of the City of Charleston, SC (the first St. Andrew's Society in the United States), the Saint Andrew's Society of New York, (the second oldest society in the United States); Scottish Society of Martha's Vineyard, MA; the American-Scottish Foundation, Inc.; the Association of Scottish Games and Festivals; the Caledonian Foundation, Inc.; the Clans of Scotland, USA; Council of Scottish Clans and Associations; Scottish Heritage USA, Inc.; the Illinois St. Andrew's Society; the Tartan Education and Cultural Association, Inc.; Highland Light Scottish Society, Massachusetts; Scottish Historic and Research Society of the Delaware Valley, PA, and numerous individual Scottish Americans including those from my own State of Mississippi.

Mr. President. I am proud to declare my Scottish-American ancestry and it is an honor to recognize the 677th anniversary of the Declaration of Arbroath. Tartan Day is indeed a significant day for all Americans.

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business Friday, April 4, 1997, the Federal debt stood at \$5,384,750,396,046.34.

One year ago, April 4, 1996, the Federal debt stood at \$5,137,761,000,000.

Twenty-five years ago, April 4, 1972, the Federal debt stood at \$428,814,000,000 which reflects a debt increase of nearly \$5 trillion (\$4,955,936,396,046.34) during the past 25 years.

#### HONORING THE REINSCHS ON THEIR 50TH WEDDING ANNIVERSARY

Mr. ASHCROFT. Mr. President, families are the cornerstone of America. The data are undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of "till death us do part" seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong.

For these important reasons, I rise today to honor Clarence and Helen Reinsch of Argyle, MO, who on April 9 will celebrate their 50th wedding anniversary. My wife, Janet, and I look forward to the day we can celebrate a similar milestone. The Reinschs' commitment to the principles and values of their marriage deserves to be saluted and recognized.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate, on March 21, 1997, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution, with amendment:

S. Con. Res. 14. Concurrent resolution providing for a conditional adjournment or recess of the Senate the House of Representatives.

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate, on March 21, 1997, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 514. An act to permit the waiver of the District of Columbia residency requirements for certain employees of the Office of the Inspector General of the District of Columbia.

S. 410. An act to extend the effective date of the Investment Advisers Supervision Coordination Act; to the Committee on Banking, Housing, and Urban Affairs.

Under the authority of the order of the Senate of January 7, 1997, the enrolled bills were signed on March 21, 1997, during the adjournment of the Senate by the President pro tempore [Mr. THURMOND].

#### MEASURE PLACED ON THE CALENDAR

The following measure was read the first and second times and ordered placed on the calendar.

S. 515. A bill to provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes.

#### ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on March 20, 1997 he had presented to the President of the United States, the following enrolled bill:

S. 410. An act to extend the effective date of the Investment Advisers Supervision Coordination Act.

#### REPORTS OF COMMITTEES SUBMITTED DURING ADJOURNMENT

Under the authority of the order of the Senate of March 27, 1997, the following reports of committees were submitted on April 2, 1997:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources, with amendments:

S. 4: A bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes (Rept. No. 105-11).

By Mr. JEFFORDS, from the Committee on Labor and Human Resources, without amendment:

S. 295: A bill to amend the National Labor Relations Act to allow labor management cooperative efforts that improve economic competitiveness in the United States to continue to thrive, and for other purposes (Rept. No. 105-12).

#### 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. ASHCROFT:

S. 514. A bill to provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes; to the Committee on the Judiciary.

S. 515. A bill to provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes; read twice.

By Mr. KENNEDY (for himself, Mr.

LEAHY, Mr. DODD, Mr. AKAKA, Mr. INOUE, Mr. ROBB, Mr. LAUTENBERG, Mr. MOYNIHAN, Mrs. BOXER, Mr. WELLSTONE, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. FEINGOLD, and Ms. MIKULSKI):

S. 516. A bill to amend section 1977A of the Revised Statutes to equalize the remedies available to all victims of intentional employment discrimination, and for other purposes; to the Committee on Labor and Human Resources.

S. 517. A bill to provide relief to agricultural producers who granted easements to, or owned or operated land condemned by, the Secretary of the Army for flooding losses caused by water retention at the dam site at Lake Redrock, Iowa, to the extent that the actual losses exceed the estimates of the Secretary; to the Committee on Agriculture, Nutrition, and Forestry.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ASHCROFT:

S. 514. A bill to provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes; to the Committee on the Judiciary.

## THE LIABILITY REFORM FOR VOLUNTEER SERVICES ACT

Mr. ASHCROFT. Mr. President, in his "Democracy in America," Alexis de Tocqueville observed "Americans of all ages, all stations in life \* \* \* are forever forming associations." Be it to repair a public thoroughfare or to promote temperance, de Tocqueville noted volunteer associations were Americans' best response to community needs and to cultural pathologies.

This observation, made over 150 years ago, certainly has been the case until a little over a decade ago. Volunteers have nurtured the elderly, they have coached generations of children, they have cleaned up our communities, they have supported and counseled those in need throughout American history.

I look back at my time as Governor of the State of Missouri when we started the Clean the Highways Program using volunteers. We had 5,000 groups of volunteers—5,000 groups, not 5,000 volunteers—who accepted responsibility. It is a sort of fulfillment of de Tocqueville's observation about America, that Americans of all ages, of all stations in life are forming associations to do good things.

These groups have been catalysts that interact with all elements of our culture. It is to volunteers that we owe a great deal of gratitude for our social cohesion—our sense of community in America. When things are done from the perspective of government, people view them as entitlements. When things are done by individuals because they volunteer, people know that we love one another. Basically, it is in our care and regard for each other—expressed when we do things on a voluntary basis—that is the real glue that binds us together as communities and holds us together as a culture.

It was in 1982 that the first warning signs went out that our intricate system of volunteers fulfilling social work was under attack. In Runnemede, NJ, a Little League coach volunteer was sued because he repositioned his Little League shortstop to the outfield, and in the outfield the Little League shortstop then misjudged a flyball and sustained an eye injury. A suit was filed on the allegation that the 10-year-old youngster was a born shortstop, but not an outfielder, and the courts found the volunteer coach negligent.

Over the next 5 years, liability rates for Little League baseball shot up from \$75 to \$795 forcing many leagues to stop playing.

In another example, a boy in a Scouting unit with the Boy Scouts of the Cascade Pacific Council suffered a paralyzing injury in a game of touch football. Several adults volunteered to supervise the trip. The youth filed a personal injury suit alleging that the Boy Scouts and the volunteers were negligent for failing to supervise him adequately.

I remember playing aggressive games as a Boy Scout. I remember playing a game we called fox over the hill. One

group was supposed to run from one line to the other line without getting tackled, pummeled, and roughed up. That is the way boys operate. That is part of boyhood. But the jury found that the volunteers were personally liable for some \$7 million. Oregon law caused the judgment to be reduced to around \$4 million, but few Boy Scout volunteers can afford that kind of a judgment.

The jury held the volunteers to a heightened standard of care, charging them with a meticulous constant supervision level of care in their supervision over activities that routinely have been permitted without oversight. Such a standard is impossible to uphold. Anyone who has been a Boy Scout or certainly tried to supervise Boy Scouts knows that such a standard would be very difficult, and such an impossible standard has basically caused a marked drop off in voluntarism across the country.

In fact, the Gallup organization studied voluntarism and, in a study titled the "Liability Crisis and the Use of Volunteers of Nonprofit Associations," the Gallup organization found that approximately 1 in 10 nonprofit organizations has experienced the resignation of a volunteer due to liability concerns and that 1 in 6 volunteers reported withholding services due to a fear of exposure to liability suits.

What we have basically done in the last two decades is to send a signal to people: If you volunteer to be helpful, you could jeopardize the well-being of your own family; you could make it very difficult to maintain the home and lifestyle to which you have become accustomed; in trying to help others, you might, as a matter of fact, hurt yourself. I think that is sad because it has reduced this good impulse of Americans.

The study also found that 1 of 7 nonprofit agencies had eliminated one or more of their valuable programs because of exposure to lawsuits. So, instead of having more programs to help more people, we have narrowed that because of the threat of lawsuits and the potential of liability. Sixteen percent of volunteer board members surveyed reported withholding their services to an organization out of fear of liability—16 percent. That is almost 1 out of every 6 volunteer board members said, "No, I'm going to think carefully about whether I'm going to be on the board, because I don't want to get sued, and I don't want to ruin the chances of my family to live properly just because some mistake is made somewhere."

The average reported increase for insurance premiums for nonprofits over the previous 3 years, from 1985 to 1988, was 155 percent. That was over the years prior to the study, a 155 percent increase in insurance. And one in eight organizations reported an increase of over 300 percent. So, nonprofits found an increase in their insurance premiums. These numbers demonstrate rather clearly that the cost of lawsuits

and the excessive unpredictable and often arbitrary nature of damage awards have a direct and a chilling effect on the spirit of voluntarism and on the nature of our communities.

I do not want to wring from the fabric of American society that healthy component that lubricates our social exchanges, the component of caring and loving and dealing with and helping each other, but if our legal system makes it dangerous to help each other and dangerous to care and dangerous to volunteer, we will have done this great country a tremendous disservice. Voluntarism is one of these defining characteristics of American culture. The understanding that people have been historically willing to help one another is a mainstay of who we are as Americans.

The hyperlitigious nature of the civil justice system is creating a barrier between the desire of Americans to help others and their ability to do so. So, Mr. President, today I rise to introduce a bill that will offer a new level of protection to volunteers who give selflessly of themselves to help others. The Liability Reform for Volunteer Services Act will reinstate reason, it will reinstate rationality, it will reinstate certainly and fairness to a judicial system with regard to voluntarism.

The Liability Reform for Volunteer Services Act covers volunteer services organizations which are defined as nonprofit organizations that are organized for the public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes. Health care providers, however, specifically are excluded from coverage. Many of them fly under the banner or nonprofit, but we all know that they are anything but volunteer organizations, and they are not, in many respects, charitable. Persons volunteering for service organizations or governmental entities are covered by the bill if they are acting in good faith, within the scope of their official duties, and not being compensated for their services. This really is an effort to say to that person that volunteers, "We are going to give you a fair situation in which to volunteer, and if you are not being compensated, we are still going to hold you to the standard which requires you to have good behavior, but we are not going to expose you to tremendous liability."

The bill establishes a standard for awarding punitive damages. It is a rather high standard for awarding punitive damages which is designed to punish defendants or defer others from engaging in the same activity against the volunteer services organization or the volunteer. An injured party would be required to establish by "clear and convincing evidence" that a volunteer organization or its volunteers acted with a "conscious and flagrant indifference" to the rights or safety of others and this conduct caused the harm for which the volunteer is being sued.

The clear and convincing standard is greater than the standard for most

civil cases, which is merely the preponderance of the evidence, but it is less than the criminal standard which is beyond a reasonable doubt. The clear and convincing standard is a higher standard than the more-likely-than-not or preponderance of the evidence standard, but, obviously, it is less than the criminal standard of beyond a reasonable doubt.

Punitive damages would be capped so that punitive damages could not exceed \$250,000, or twice the economic and noneconomic losses. So, actual damages would not be affected here. If there were real damages, they would be recoverable, but punitive damages would be capped. In other words, if there were to be punitive damages, not only would they be capped at a maximum of \$250,000, or twice the economic damages, you would have to be able to provide that there was clear and convincing evidence that there was a conscious and flagrant indifference to the rights or safety of others.

Given either party the right to separate any court's proceeding covered by the act into two parts, the first would determine whether the volunteer or service organization is liable to the injured party, and the second would be to determine whether punitive damages should be awarded.

A volunteer services organization or volunteer would only be responsible in proportion to its degree of fault. That would mean that there would not be the kind of joint liability. If the Salvation Army were 10 percent responsible and some other organization 90 percent responsible, and the organization that was 90 percent responsible did not cover all of their 90 percent in the case, the Salvation Army would not be asked to pick up the tab for the other organization. It would only be responsible for that damage that it had been found to have caused.

I do not single out one of the most virtuous organizations in America, suggesting that they might ever be liable, but if there were a case against a charitable organization like that, that would be the framework for adjudicating and awarding damages. A volunteer services organization or volunteer only would be responsible for damages in proportion to the degree of fault that was found on their part.

The protections provided for in this Bill would not apply if the activity for which damages were awarded constitutes a crime of violence or terrorism. If the volunteer commits a hate crime or is convicted of a civil rights violation these protections would not apply. If a volunteer is convicted of a sexual offense under State law, these protections would not apply. In addition, if a volunteer is found to have been under the influence of alcohol or drugs when the incident giving rise to the litigation occurs and that influence caused the harm, these protections would not apply. This is not a bill designed to authorize people to be high on drugs or alcohol or to commit

crimes when they are volunteering. In those instances, the sky would be the limit. We would be under the old system.

Let me just say that volunteers do play an integral part in America, in community service. They should not have to fear litigation. They should not have to withdraw from giving themselves to those in need. The Gallup study shows we have had a withdrawal of talent from the volunteer pool. This is the time when we need more Americans being involved in community in a sense of helping each other, not less.

In conclusion, let me just make the following observations. The basis for the American community and culture is, in large measure, the result of voluntarism. Alexis de Tocqueville said this is what makes America "America." America is great because America is benevolent—this goodness is the impetus within us to help each other.

We have had a development of a legal system which has made that very difficult and costly for volunteers. In a very focused and balanced way, we are trying to say to people that their liability for acts in the volunteer community should be limited only to economic damages unless there is a very flagrant disregard for the rights of others and, in those events, punitive damages should be limited.

I believe that this measure will help restore to the American people the capacity to be caring and giving people, to live with each other in a sense of community—bound together by the glue of mutual concern—in service to one another in valuable and selfless ways.

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. 514

*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 "Liability Reform for Volunteer Services Act".

#### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the increasingly litigious nature of the legal profession in the United States has created an unnecessary and ultimately harmful barrier between the traditional desire of individuals to help other individuals and their ability to act on those desires;

(2) the cost of lawsuits, excessive, unpredictable, and often arbitrary damage awards, and unfair allocations of liability have a direct and chilling effect on the spirit of volunteerism and the provision of charitable service in the United States;

(3) arbitrary and capricious damage awards against volunteers and charitable institutions have contributed considerably to the high cost of liability insurance, making it difficult and often impossible for volunteers and volunteer service organizations to be protected from liability as those volunteers and many volunteer service organizations serve the public without regard to receiving any personal or institutional economic benefits from that service;

(4) as a result, volunteer service organizations throughout the United States have been adversely affected and often debilitated as volunteers have refused to help because of a fear of frivolous lawsuits;

(5) without a resurgence in volunteerism, the essential services that volunteer service organizations provide, including crisis counseling, volunteer rescue services, coaches and referees for sports activities of children, and support for the elderly, will continue to diminish;

(6) clarifying and limiting the personal liability risks assumed by individuals and institutions who volunteer to help others without benefit to themselves is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits; and

(B) the citizens of the United States depend on, and the Federal Government expends funds on, numerous social programs that depend on the services of volunteers; and

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(7) liability reform for volunteer service organizations will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights and that liability reform is thus an appropriate use of the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, and the Fourteenth Amendment to the United States Constitution.

(b) PURPOSES.—The purposes of this Act are to provide protection from personal financial liability for volunteers and volunteer service organizations that provide volunteer services that are conducted in good faith—

(1) to promote the interests of social service program beneficiaries and taxpayers; and

(2) to sustain the availability of programs, volunteer service organizations, and governmental entities that depend on volunteer contributions and services; and

(3) to provide the protection by—

(A) placing reasonable limits on punitive damages;

(B) ensuring the fair allocation of liability in certain civil actions; and

(C) establishing greater fairness, rationality, and predictability in the civil justice system of the United States.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who asserts a claim for damages in an action covered by this Act and any person on whose behalf such a claim is asserted.

(B) CLAIMANTS FOR CERTAIN CLAIMS.—If a claim described in subparagraph (A) is asserted through or on behalf of—

(i) an estate, the term includes the claimant's decedent; or

(ii) a minor or incompetent, the term includes the claimant's legal guardian.

(2) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(3) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means damages awarded for economic and noneconomic loss.

(4) **ECONOMIC LOSS.**—The term “economic loss” means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(5) **HARM.**—The term “harm” means—

(A) any physical injury, illness, disease, or death;

(B) damage to property; or

(C) economic loss, including any direct or consequential economic loss.

(6) **HEALTH CARE PROVIDER.**—The term “health care provider” means any person, organization, or institution that—

(A) is engaged in the delivery of health care services in a State; and

(B) is required by the applicable laws (including regulations) of a State to be licensed, registered, or certified by the State to engage in the delivery of health care services in the State.

(7) **NONECONOMIC LOSS.**—The term “noneconomic loss” means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(8) **PERSON.**—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(9) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded against any person to punish or deter that person or any other person, from engaging in similar behavior in the future.

(10) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

(11) **VOLUNTEER SERVICE ORGANIZATION.**—The term “volunteer service organization” means a not-for-profit organization (other than a health care provider) organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(12) **VOLUNTEER SERVICES.**—The term “volunteer services” means services provided, in good faith, without compensation or other pecuniary benefit (other than reimbursement of expenses incurred in providing such services) inuring to the benefit of the service provider or any other person (other than the recipient of the volunteer service), and within the scope of the official functions and duties of the service provider with a volunteer service organization or governmental entity.

#### SEC. 4. APPLICABILITY.

(a) **IN GENERAL.**—

(1) **COVERED CLAIMS.**—Subject to paragraph (2), this Act governs any claim for damages in any civil action brought in any State or Federal court in any case in which the claim relates to—

(A) volunteer services performed by the defendant for a governmental entity or a volunteer service organization; or

(B) activities or services performed by a volunteer service organization.

(2) **ACTIONS EXCLUDED.**—The limitations on damages contained in this Act shall not apply in any action described in subparagraph (A) or (B) of paragraph (1) in any case in which—

(A) the misconduct for which damages are awarded—

(i) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or an act of international terrorism (as that term is defined in section 2331(1) of title 18, United States Code) for which the defendant has been convicted in any court;

(ii) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note)) for which the defendant has been convicted in any court;

(iii) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(iv) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law for which the defendant has been convicted in any court; or

(B) the defendant was found to be under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug, at the time of the misconduct for which damages are awarded and (such influence) was a proximate cause of the harm that is the subject of the action.

(b) **RELATIONSHIP TO STATE LAW.**—This Act supersedes State law only to the extent that State law applies to an issue covered by this Act. Any issue (including any standard of liability) that is not governed by this Act shall be governed by otherwise applicable State or Federal law.

(c) **EFFECT ON OTHER LAW.**—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any other Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8))).

#### SEC. 5. UNIFORM STANDARD FOR AWARD OF PUNITIVE DAMAGES.

Punitive damages may, to the extent permitted by applicable State or Federal law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any civil action for a claim described in subparagraph (A) or (B) of section 4(a)(1).

#### SEC. 6. LIMITATION ON THE AMOUNT OF PUNITIVE DAMAGES.

The amount of punitive damages that may be awarded in an action described in section 5 shall not exceed the lesser of—

(1) twice the sum of the amounts awarded to the claimant for economic loss and noneconomic loss; or

(2) \$250,000.

#### SEC. 7. PREEMPTION.

(a) **IN GENERAL.**—This Act does not—

(1) create a cause of action for punitive or compensatory damages; or

(2) preempt or supersede any State or Federal law to the extent that such law further limits the amount of an award of punitive or compensatory damages.

(b) **REMITTITUR.**—Nothing in this section shall modify or reduce the ability of courts to grant a remittitur.

#### SEC. 8. APPLICATION BY COURT.

The application of the limitation imposed by section 6 may not be disclosed to a jury by a court. Nothing in this section authorizes the court to enter an award of punitive damages in excess of the initial award of punitive damages awarded by a jury.

#### SEC. 9. BIFURCATION AT REQUEST OF ANY PARTY.

(a) **IN GENERAL.**—At the request of any party the trier of fact, in any action for punitive damages that is subject to this Act, shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(b) **INADMISSIBILITY OF EVIDENCE RELEVANT ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.**—If any party requests a separate proceeding under subsection (a), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

#### SEC. 10. LIABILITY FOR COMPENSATORY DAMAGES.

(a) **GENERAL RULE.**—In any action described in subparagraph (A) or (B) of section 4(a)(1) brought against more than one defendant, the liability of each defendant for compensatory damages shall be determined in accordance with this section.

(b) **AMOUNT OF LIABILITY FOR COMPENSATORY DAMAGES.**—

(1) **IN GENERAL.**—Each defendant shall be liable only for the amount of compensatory damages allocated by the trier of fact to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is found to be liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) **PERCENTAGE OF RESPONSIBILITY.**—For purposes of determining the amount of compensatory damages allocated to a defendant under this section, the trier of fact in an action described in subsection (a) shall determine the percentage of responsibility of each person responsible for the harm to the claimant, without regard to whether that person is party to the action.

By Mr. KENNEDY (for himself, Mr. LEAHY, Mr. DODD, Mr. AKAKA, Mr. INOUE, Mr. ROBB, Mr. LAUTENBERG, Mr. MOYNIHAN, Mrs. BOXER, Mr. WELLSTONE, Ms. MOSELEY-

BRAUN, Mr. HARKIN, Mr. FEINGOLD, and Ms. MIKULSKI):

S. 516. A bill to amend section 1977A of the Revised Statutes to equalize the remedies available to all victims of intentional employment discrimination, and for other purposes; to the Committee on Labor and Human Resources.

#### THE EQUAL REMEDIES ACT OF 1997

Mr. KENNEDY. Mr. President, I am proud to introduce the Equal Remedies Act of 1997, for myself and 13 other sponsors. The purpose of our legislation is to end a glaring inequality in the current Federal antidiscrimination laws.

The Civil Rights Act of 1991 gave women, religious minorities, and disabled persons the right to recover compensatory and punitive damages for intentional employment discrimination, but only up to specified monetary limits. By contrast, victims of such discrimination on the basis of race or national origin can recover damages without such limitations.

The Equal Remedies Act of 1997 will end this double standard by removing the caps on damages for victims of intentional job discrimination on the basis of sex, religion, or disability. No one should be subject to second-class remedies under our civil rights laws. Victims of discrimination who suffer injuries deserve a full remedy for those injuries, without arbitrary limits.

The caps serve no justifiable purpose. The standard of proof and the definition of intentional discrimination are identical under the Civil Rights Act of 1991 and the longstanding race discrimination statute. There is no reason to expect significantly more litigation, or significantly larger jury awards if the caps are removed.

For the vast majority of victims of intentional discrimination, the caps do not affect the amount of damages. But, for others—victims with the most serious injuries from intentional discrimination—the caps are an unfair barrier to recovering full damages for their injuries. Employers who have committed the most outrageous acts of discrimination will no longer be shielded from full responsibility.

The double standard in current law protects the worst lawbreakers and denies relief to those who have been harmed the most. By enacting the Equal Remedies Act of 1997, Congress will be affirming the basic principle of equal justice for all Americans.

Mr. President, I ask unanimous consent that the text of the legislation may be printed in the RECORD.

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

#### S. 516

*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 "Equal Remedies Act of 1997".

#### SEC. 2. EQUALIZATION OF REMEDIES.

Section 1977A of the Revised Statutes (42 U.S.C. 1981a) is amended—

(1) in subsection (b)—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3); and

(2) in subsection (c), by striking "section—" and all that follows through the period and inserting "section, any party may demand a jury trial.".

#### ADDITIONAL COSPONSORS

##### S. 71

At the request of Mr. DASCHLE, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 71, a bill to amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

##### S. 104

At the request of Mr. MURKOWSKI, the names of the Senator from Michigan [Mr. LEVIN] and the Senator from Nebraska [Mr. HAGEL] were added as cosponsors of S. 104, a bill to amend the Nuclear Waste Policy Act of 1982.

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 104, *supra*.

##### S. 184

At the request of Mr. D'AMATO, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 184, a bill to provide for adherence with the MacBride Principles of Economic Justice by United States persons doing business in Northern Ireland, and for other purposes.

##### S. 197

At the request of Mr. ROTH, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 197, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

##### S. 220

At the request of Mr. GRASSLEY, the names of the Senator from Virginia [Mr. ROBB], the Senator from South Dakota [Mr. JOHNSON], the Senator from North Dakota [Mr. CONRAD], and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 220, a bill to require the U.S. Trade Representative to determine whether the European Union has failed to implement satisfactorily its obligations under certain trade agreements relating to U.S. meat and pork exporting facilities, and for other purposes.

##### S. 269

At the request of Mr. ABRAHAM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 269, a bill to provide that the Secretary of the Senate and the Clerk of the House of Representatives shall include an estimate of Federal retirement benefits for each Member of Congress in their semiannual reports, and for other purposes.

##### S. 311

At the request of Mr. GRAHAM, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 311, a bill to amend title

XVIII of the Social Security Act to improve preventive benefits under the Medicare Program.

##### S. 348

At the request of Mr. MCCONNELL, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 348, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

##### S. 351

At the request of Mrs. MURRAY, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 351, a bill to provide for teacher technology training.

##### S. 352

At the request of Mr. BIDEN, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 352, a bill to require the U.S. Sentencing Commission to amend the Federal sentencing guidelines to provide an enhanced penalty for follow-on bombings.

##### S. 356

At the request of Mr. GRAHAM, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the titles XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the Medicare and Medicaid programs.

##### S. 370

At the request of Mr. GRASSLEY, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 370, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

##### S. 380

At the request of Mr. DURBIN, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 380, a bill to prohibit foreign nationals admitted to the United States under a nonimmigrant visa from possessing a firearm.

##### S. 385

At the request of Mr. CONRAD, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 385, a bill to provide reimbursement under the Medicare Program for telehealth services, and for other purposes.