(c) EFFECTIVE DATE.—
(1) IN GENERAL.—The amendments made by this section shall apply to weeks beginning after December 31, 1997.
(2) SPECIAL RULE.—In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not successive) between the date of the enaction of this Act and December 31, 1997, the amendments made by this section shall apply to weeks beginning after the date which is 30 calendar days after the first day on which such legislative is in session on or after December 31, 1997.

By Mr. KERRY (for himself and Mr. COATS):

S. 1124. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on the Judiciary.

WORKPLACE RELIGIOUS FREEDOM ACT

Mr. KERRY. Mr. President, I send a bill to the desk and I ask for its appropriate referral.

Mr. President, I am introducing today a bipartisan bill, together with Senator COATS of Indiana. This is the Workplace Religious Freedom Act of 1997.

This bill would protect workers from on-the-job discrimination related to religious beliefs and practices. It represents a milestone in the protection of the religious liberties of all workers. Senator COATS and I developed this new bill based on a similar bill I introduced earlier this session.

In 1972, Congress amended the Civil Rights Act of 1964 to require employers to reasonably accommodate an employee's religious practice or observance unless doing so would impose an undue hardship on the employer. This 1972 amendment, although completely appropriate, has been interpreted by the courts so narrowly as to place little restraint on an employer's refusal to provide religious accommodation. The Workplace Religious Freedom Act will restore to the religious accommodation provision the weight that Congress originally intended and help assure that employers have a meaningful obligation to reasonably accommodate their employees' religious practices.

The restoration of this protection is no small matter. For many religiously observant Americans the greatest peril to their ability to carry out their religious faiths on a day-to-day basis may come from employers. I have heard accounts from around the country about a small minority of employers who will not make reasonable accommodation for employees to observe the Sabbath and other holy days or for employees who must wear religiously-required garb, such as a yarmulke, or for employees to wear clothing that meets religion-based modesty requirements.

The refusal of an employer, absent undue hardship, to provide reasonable accommodation of a religious practice should be seen as a form of religious discrimination, as originally intended by Congress in 1972. And religious discrimination should be treated fully as seriously as any other form of discrimination that stands between Americans and equal employment opportunities. Enactment of the Workplace Religious Freedom Act will constitute an important step toward ensuring that all members of society, whatever their religious beliefs and practices, will be protected from an invidious form of discrimination.

It is important to recognize that, in addition to protecting the religious freedom of employees, this legislation protects employers from an undue burden. Employees would be allowed to take time off only if their doing so does not pose a significant difficulty or expense for the employer. This common sense definition of undue hardship is used in the ''Americans with Disabilities Act'' and has worked well in that context.

We have little doubt that this bill is constitutional because it simply clarifies existing law on discrimination by private employers, strengthening the required standard for employers. Unlike the Religious Freedom Restoration Act [RFRA], which was declared unconstitutional recently by the Supreme Court, the bill does not deal with behavior by State or Federal Governments or substantively expand 14th amendment rights.

I believe this bill should receive bipartisan support. This bill is endorsed by a wide range of organizations including the American Jewish Committee, Baptist Joint Committee, Christian Legal Society, Seventh-day Adventists, National Association of Evangelicals, National Council of the Churches, National Sikh Center, and Presbyterian Churches. I ask unanimous consent that the letter from the Coalition for Religious Freedom in the Workplace, which represents all of these groups, be included in the RECORD.

I want to thank Senator COATS for joining me in this effort. I look forward to working with him to pass this legislation so that all American workers can be assured of both equal employment opportunities and the ability to practice their religion.

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

S. 1124

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 ''Workplace Religious Freedom Act of 1997''.

SEC. 2. AMENDMENTS.

(a) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(1) by inserting ''(1)'' after ''(j)'';

(2) by inserting '', after initiating and engaging in an affirmative and bona fide effort,'' after ''unable'';

(3) by striking ''an employee's'' and all that follows through ''religious'' and insert ''an employee's religious''; and

(4) by adding at the end the following:

''(2) As used in this subsection, the term 'employee' includes a prospective employee.

''(3) As used in this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense—

''(A) an accommodation shall be considered to require significant difficulty or expense if the accommodation will result in the inability of an employee to perform the essential functions of the employment position of the employee; and

''(B) other factors to be considered in making the determination shall include—

''(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

''(ii) the number of individuals who will need the particular accommodation to a religious observance or practice; and

''(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.''.

(b) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e–2) is amended by adding at the end the following:

''(o)(1) As used in this subsection:

''(A) The term 'employee' includes a prospective employee.

''(B) The term 'leave of general usage' means leave provided under the policy or program of an employer, under which—

''(i) an employee may take leave by adjusting or altering the work schedule or assignment of the employee according to criteria determined by the employer; and

''(ii) the employee may determine the purpose for which the leave is to be utilized.

''(C) The term 'undue hardship' has the meaning given the term in section 701(j)(3).

''(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, an accommodation by the employer shall not be deemed to be reasonable if such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee.

''(3) An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.

''(4) It shall not be a defense to a claim of unlawful employment practice under this title for failure to provide a reasonable accommodation to a religious observance or practice of an employee that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate such observance or practice—

''(A) an adjustment would be made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or

''(B) the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.

''(5)(A) An employer shall not be required to pay premium wages or confer premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

''(B) As used in this paragraph—

''(i) the term 'premium benefit' means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, an educational benefit, or a pension, that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee; and

''(ii) the term 'premium wages' includes overtime pay and compensatory time off, premium pay for night, weekend, or holiday work, and premium pay for standby or irregular duty.''.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by section 2 take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by section 2 do not apply with respect to conduct occurring before the date of enactment of this Act.

COALITION FOR RELIGIOUS FREEDOM IN THE WORKPLACE,
Washington, DC, July 31, 1997.

The Coalition for Religious Freedom in the Workplace is a broad coalition of religious and civil rights groups that has come together to promote the passage of legislation to strengthen the religious accommodation provisions of Title VII of the Civil Rights Act of 1964. We applaud Senators Dan Coats and John Kerry for their action today in introducing the Workplace Religious Freedom Act of 1997.

Current civil rights law defines the refusal of an employer to reasonably accommodate an employee's religious practice, unless such accommodation would impose an undue hardship on the employer, as a form of religious discrimination. But this standard has been interpreted far too narrowly by the courts, placing little restraint on an employer's ability to refuse to provide religious accommodation.

It is time to correct an interpretation of the law that needlessly forces upon religiously observant employees a conflict between the dictates of religious observance and the requirements of the workplace. The bipartisan effort of Senators Coats and Kerry in crafting and introducing the Workplace Religious Freedom Act sends exactly the right signal; as was the case with the Religious Freedom Restoration Act, the effort to safeguard religious liberty and fight against religious discrimination is one that should, and must, bring together Americans from a broad range of political and religious persuasions.

The Coalition for Religious Freedom in the Workplace welcomes today's introduction of the Workplace Religious Freedom Act. We look forward to working with Senators Coats, Kerry and other Members on this crucial issue as this legislation moves forward.

Mr. COATS. Mr. President, to privatize religious belief is to trivialize it. When we treat religion as purely personal—irrelevant to the way we live our lives and write our laws—this is not neutrality to religion, it is hostility to religion. The reason is simple: because faith is more than an internal belief, it is a guide to external conduct. And for religious liberty to have any meaning, government and business must accommodate that conduct, within the bounds of reason and order. Consider one case:

Ms. Jones, a line worker at Bigco Enterprises approaches her supervisor with a problem: According to her religion, she may not work on Sunday. Ms. Jones will work any other day—including Saturday evenings—without extra pay. But the mandate of her religion is absolute. If given the choice of working on Sunday or losing her job, Ms. Jones will have to resign or risk being fired. The supervisor explains that Bigco has a random shift-assignment policy which requires that every employee work the assigned shift or find a replacement worker. Unable to find a replacement worker, Ms. Jones misses two Sundays, and is fired.

Mr. President, presumably, title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating against an employee on the basis of her religion, would provide Ms. Jones some recourse. But that is not necessarily the case.

Since 1972, title VII has required an employer to make an accommodation ''unless an employer demonstrates that he is unable to reasonably accommodate an employee's religious observance or practice without undue hardship.'' In a case such as the one described above, Mr. Jones' religious practice would not have to be accommodated, and Bigco would likely not be liable since attempting to find a replacement worker for Jones would cause Bigco to ''bear more than a de minimis cost''.

Under current law, Ms. Jones' religious observance would constitute an undue hardship, and Bigco would have no further obligation to Ms. Jones.

Over 60 percent of Americans consider themselves to be religious, yet, Ms. Jones' predicament is all too common in the United States. Employees who engage in seemingly common religious observances such as the Sabbath are often faced with the difficulty of breaking an employer's rule or violating a religious tenet.

As Justice Marshall explained in his dissent in the Hardison case, under the de minimis standard which the courts have adopted in religious accommodation cases, an employer ''need not grant even the most minor special privilege to religious observers to enable them to follow their faith.'' He continues: ''As a question of social policy, this result is deeply troubling, for a society that truly values pluralism cannot compel aderents of minority religions to make the cruel choice of surrendering their religion or their job.''

Mr. President, I am pleased to join Senator KERRY in introducing the Workplace Religious Freedom Act to addresses this issue head-on. The goal of the act is to restore the original intent of title VII by extending to religious observers the same level of protection afforded others under Federal civil rights laws.

The act accomplishes this goal principally by applying the same standard for undue hardship to religious observance cases as are already applied in other Federal civil rights actions, such as those under the Americans with Disabilities Act and the Rehabilitation Act. Thus under this legislation, the term undue hardship is defined as an action requiring ''significant difficulty or expense''.

Our bill takes into account a number of factors, including: First the cost of the accommodation as determined by the costs of lost productivity and of retraining or hiring employees or transferring employees from one facility to another; second the size of the employer; third the number of employees who require the accommodation and; fourth for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

The bill also provides a number of safeguards for the employer. For example, an employer is not required to provide an accommodation which will result in the inability of an employee to perform the essential functions of the job nor is an employer required to pay premium wages or additional benefits to employees requesting the accommodation if the change in schedule is instituted specifically to accommodate an employee's religious observance or practice.

The Workplace Religious Freedom Act is an important step toward restoring the original intent of title VII. Though we know that only a minority of employers refuse to make reasonable accommodations for employees to observe the Sabbath or other Holy days, the fact of the matter is that no worker in America should be forced to choose between a job and violating deeply held religious tenets. Religious discrimination in America must not be tolerated. It should be treated as seriously as any other form of discrimination.

Mr. President, let me conclude by reminding us that the best and oldest tradition of America is religious accommodation without coercion. We have no established religion in this country, and do not want one. But we must recognize and respect the important role of religion in our society. Values that come from religious faith enrich our common life. As a society, we must continue to guarantee that religious liberty. I urge my colleagues to support this important legislation.

COALITION FOR RELIGIOUS FREEDOM IN THE WORKPLACE

Agudath Israel of America
America Jewish Committee
American Jewish Congress

Americans for Democratic Action
Anti-Defamation League
Baptist Joint Committee on Public Affairs
Central Conference of American Rabbis
Christian Legal Society
Church of Scientology International
Council on Religious Freedom
General Board on Church and Society
The United Methodist Church
General Conference of Seventh-day Adventists
Guru Gobind Singh Foundation
Hadassah-WZOA
International Association of Jewish Lawyers and Jurists
Jewish Council for Public Affairs
National Association of Evangelicals
NationalCouncil of Churches
National Council of Jewish Women
National Sikh Center
North American Council for Muslim Women
People for the American Way
Presbyterian Church (USA), Washington Office
Rabbinical Council of America
Traditional Values Coalition
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations
United Synagogue of Conservative Judaism

By Ms. MOSELEY-BRAUN (for herself and Mr. DURBIN):

S. 1125. A bill to amend title 23, United States Code, to extend the discretionary bridge program; to the Committee on Environment and Public Works.

HIGHWAY BRDIGE IMPROVEMENT ACT OF 1997

Ms. MOSELEY-BRAUN. Mr. President, I am pleased to introduce the Highway Bridge Improvement Act of 1997 with my colleague from Illinois, Senator DURBIN.

This legislation would increase the authorization for the Discretionary Bridge Program from its current level of around $60 million annually to $800 million annually. This change would allow States with large bridge improvement projects to compete for discretionary grants at the Federal level.

Mr. President, in 1995 approximately 25 percent of the Nation's Interstate bridges were classified as deficient. In addition, 28 percent of the 130,000 bridges on all other arterial systems were deficient. As the Congress considers ISTEA reauthorization legislation later this year, it is vitally important that we continue the successful Highway Bridge Repair and Rehabilitation Program, and substantially increase the authorization level of the Discretionary Bridge Program.

Since its creation in 1978, the Discretionary Bridge Program has been a valuable source of funds for many States. Demand for funding under the program has vastly exceeded available resources. In 1996 alone, States submitted 29 requests totaling $650 million. The program was authorized at less than one-tenth that level.

The Highway Bridge Improvement Act would increase the authorization for the Discretionary Bridge Program to $800 million annually, allowing States to compete for discretionary bridge repair grants above and beyond their formula allocation for bridge repairs.

Mr. President, this bill does not include a set-aside for the Highway Timber Bridge Research and Demonstration Program, nor does it include a new proposal I support to create a Steel Bridge Research and Construction Program. Our legislation is a very simple statement about the importance of increasing the authorization for the Discretionary Bridge Program.

As my colleagues on the Environment and Public Works Committee draft legislation to reauthorization the Intermodal Surface Transportation and Efficiency Act, I hope they will include the timber and steel bridge set-asides, and I hope they will include the Highway Bridge Improvement Act.

I urge all of my colleagues to consider the needs of the bridges in their States, and to support this important legislation.

By Mrs. BOXER (for herself and Ms. MOSELEY-BRAUN):

S. 1126. A bill to repeal the provision in the Balanced Budget Act of 1997 relating to base periods for Federal unemployment tax purposes; to the Committee on Labor and Human Resources.

LEGISLATION TO REPEAL CERTAIN SECTION OF THE BALANCED BUDGET ACT OF 1997

Mrs. BOXER. Mr. President, I rise today to introduce a bill to repeal section 5401 of the conference report to H.R. 2015, the Balanced Budget Act of 1997. This provision, entitled ''Clarifying provision relating to base periods,'' will have a devastating impact on hundreds of thousands of unemployed workers in California and throughout the country.

This provision, although labeled ''clarifying,'' actually overturns a very important 3-year-old Federal court decision. A provision with such far-reaching implications for all of the working men and women in our country who are currently unemployed, or, in this era of downsizing, may become unemployed, should not be tucked away in a 1,000-plus page bill.

Let me briefly explain to my colleagues why this provision has such a devastating impact on unemployed workers. On February 21, 1997, a statewide class action suit was filed on behalf of more than 120,000 Californians who have earned sufficient wages to qualify for unemployment insurance but nevertheless must wait up to 7 months to receive their unemployment benefits. There is no question that these workers are entitled to unemployment benefits; the only issue is when the State will pay the benefits.

In order to receive unemployment benefits a worker must have earned a prescribed amount in the 12-month period prior to his unemployment. However, because many States, including my home State of California, are slow to obtain and process wage data, a worker's unemployment compensation is often not calculated based upon his most recent wages. Rather, it is often calculated based upon wages which were earned up to 7 months prior to the date the worker files a claim. For example, if a worker files a claim for benefits in January 1997, any amounts he earned after July 1996, will be disregarded because it is outside of the ''base period.''

This policy of delaying payment of unemployment benefits causes severe hardship to unemployed workers, pushing many of these workers on to the welfare roles. The bill I have introduced today will help enable these unemployed workers get the benefits they are due in a timely manner.

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. 1126

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

SECTION 1. REPEAL OF SECTION 5401 OF BALANCED BUDGET ACT OF 1997.

(a) IN GENERAL.—Section 5401 of the Balanced Budget Act of 1997 is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act.

By Mr. WELLSTONE:

S. 1128. A bill to provide rental assistance under section 8 of the United States Housing Act of 1937 for victims of domestic violence to enable such victims to relocate; to the Committee on Banking, Housing, and Urban Affairs.

THE DOMESTIC VIOLENCE VICTIMS HOUSING ACT

Mr. WELLSTONE. Mr. President, I rise today to introduce legislation that will ensure that battered women have increased access to affordable housing through tenant-based rental assistance. The lack of safe, affordable housing is a major factor in forcing women to return to their violent partners, either directly from a shelter or after attempting to set up an independent home. This bill would address that important problem by providing section 8 housing certificates to low-income women who are victims of domestic violence.

Domestic violence in our society is a staggering problem. An estimated 4 million American women experience a serious assault by a husband or boyfriend each year. In 1993 alone, over 1,300 women were reportedly killed by abusive partners or former partners. Battered women are confronted with numerous obstacles in their efforts to survive and escape domestic violence. Some obstacles arise from the dynamics of abusive relationships—dependency, isolation, and fear. Economic obstacles, however, create some of the must difficult problems for women trying to leave a violent partner, including child and health care costs, and the lack of safe, affordable housing. Battered women and their children are a large proportion of the emergency shelter population. Even if shelter space is available, access to affordable housing,

housing subsidies and services are needed to keep women from having to return to a violent home. A study in Michigan found that 60 percent of those who left shelters and returned to their violent partners did so because of too little affordable housing. Equally as disturbing is the fact that 50 percent of all homeless women and children in this country are fleeing domestic violence.

There have been cases brought to my attention in my home State of Minnesota where women trying to escape abusive relations could have benefited from this legislation, and we know that sadly there are many more stories from around the country.

One case involves a young mother from a small town in central Minnesota. Rachel left her child's father after suffering 2 years of abuse at his hands. She and her baby stayed in a battered women's shelter for a month until she found an apartment. After paying her rent each month, Rachel was unable to provide for her family. Seeing no other options, she returned to the home of her abuser; after a 2 month respite, he began to batter her again.

This legislation would assist women, like Rachel, fleeing abuse to get affordable housing by authorizing $50 million in funding for section 8 housing certificates. The Department of Housing and Urban Development [HUD] would allocate the resources to public housing authorities which would issue the housing certificates to domestic violence victims. Only those victims who met the other requirements of the section 8 program would be eligible. HUD estimates that this program would provide 7,500 housing units nationwide for victims of domestic violence.

Mr. President, this legislation will go a long way in removing a major roadblock for battered women who are trying to escape domestic violence—the lack of affordable housing. We need to give these women an opportunity other than living on the streets, in shelters, returning to their batterers. This legislation would provide battered women and their children an opportunity to rebuild their lives in a stable home. Furthermore, this legislation conveys the message to abusers that we will not tolerate their violence, that we will not continue to allow them to drive their victims into the shelters and the street.

I ask unanimous consent that 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. 1128

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 ''Domestic Violence Victims Housing Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ABUSE.—The term ''abuse'' includes any act that constitutes or causes, any attempt to commit, or any threat to commit—

(A) any bodily injury or physical illness, including placing, by physical menace, another in fear of imminent serious bodily injury;

(B) any rape, sexual assault, or involuntary sexual activity, or any sexual activity with a dependent child;

(C) the infliction of false imprisonment or other nonconsensual restraints on liberty of movement;

(D) deprivation of medical care, housing, food, or other necessities of life; or

(E) mental or psychological abuse, including repeated or severe humiliation, intimidation, criticism, acts designed to induce terror, or verbal abuse.

(2) DOMESTIC VIOLENCE.—The term ''domestic violence'' means abuse that is committed against an individual by—

(A) a spouse or former spouse of the individual;

(B) an individual who is the biological parent or stepparent of a child of the individual subject to the abuse, who adopted such child, or who is a legal guardian to such a child;

(C) an individual with whom the individual subject to the abuse is or was cohabiting;

(D) a current or former romantic, intimate, or sexual partner of the individual; or

(E) an individual from whom the individual subject to the abuse would be eligible for protection under the domestic violence, protection order, or family laws of the applicable jurisdiction.

(3) FAMILY VICTIMIZED BY DOMESTIC VIOLENCE.—

(A) IN GENERAL.—The term ''family victimized by domestic violence'' means a family or household that includes an individual who has been determined under subparagraph (B) to have been subject to domestic violence, but does not include any individual described in paragraph (3) who committed the domestic violence. The term includes any such family or household in which only a minor or minors are the individual or individuals who was or were subject to domestic violence only if such family or household also includes a parent, stepparent, legal guardian, or other responsible caretaker for the child.

(B) DETERMINATION THAT FAMILY OR INDIVIDUAL WAS SUBJECT TO DOMESTIC VIOLENCE.—For purposes of subparagraph (A), a determination under this subparagraph is a determination that domestic violence has been committed, which is made by any agency or official of a State or unit of general local government (including a public housing agency) based upon—

(i) information provided by any medical, legal, counseling, or other clinic, shelter, or other program or entity licensed, recognized, or authorized by the State or unit of general local government to provide services to victims of domestic violence;

(ii) information provided by any agency of the State or unit of general local government that provides or administers the provision of social, legal, or health services;

(iii) information provided by any clergy;

(iv) information provided by any hospital, clinic, medical facility, or doctor licensed or authorized by the State or unit of general local government to provide medical services;

(v) a petition or complaint filed in a court or law or documents or records of action of any court or law enforcement agency, including any record of any protection order, injunction, or temporary or final order issued by civil or criminal courts or any police report; or

(vi) any other reliable evidence that domestic violence has occurred.

(4) PUBLIC HOUSING AGENCY.—The term ''public housing agency'' has the meaning given the term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(6) STATE.—The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(7) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''unit of general local government'' has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

The budget authority under section 5(c) of the United States Housing Act of 1937 for assistance under subsections (b) and (o) of section 8 of such Act is authorized to be increased by—

(1) $50,000,000 on or after October 1, 1997; and

(2) such sums as may be necessary on or after October 1, 1998.

SEC. 4. USE OF AMOUNTS FOR HOUSING ASSISTANCE FOR VICTIMS OF DOMESTIC VIOLENCE.

(a) IN GENERAL.—Amounts available pursuant to section 3 shall be made available by the Secretary of Housing and Urban Development only to public housing agencies only for use in providing tenant-based rental assistance on behalf of families victimized by domestic violence who have left or who are leaving a residence as a result of the domestic violence.

(b) DETERMINATION.—For purposes of subsection (a), a family victimized by domestic violence shall be considered to have left or to be leaving a residence as a result of domestic violence, if the public housing agency providing rental assistance under this Act determines that the member of the family who was subject to the domestic violence reasonably believes that relocation from such residence will assist in avoiding future domestic violence against such member or another member of the family.

(c) ALLOCATION.—Amounts made available pursuant to section 3 shall be allocated by the Secretary to one or more public housing agencies that submit applications to the Secretary that, in the determination of the Secretary, best demonstrate—

(1) a need for such assistance; and

(2) the ability to use that assistance in accordance with this Act.

By Mr. WELLSTONE (for himself and Mr. DURBIN):

S. 1129. A bill to provide grants to States for supervised visitation centers; to the Committee on Labor and Human Resources.

THE SAFE HAVENS FOR CHILDREN ACT OF 1997

Mr. WELLSTONE. Mr. President, I rise today to introduce legislation that will provide safe havens for children who are members of families in which violence is a problem. I am pleased to have my distinguished colleague from Illinois, Mr. DURBIN, join me in this effort.

The prevalence of family violence in our society is staggering. Studies show that 25 percent of all violence occurs among people who are related to one another. Data also indicate that the incidence of violence in families escalates during separation and divorce. In

fact, over 70 percent of women who are treated for domestic violence in emergency departments have already separated from the person who has inflicted their injuries. Many of these assaults occur in the context of child visitation. This clearly places children at risk not only of witnessing violence, but also of becoming victims of violence within their own families. Children who are exposed to violence suffer many long term effects of this exposure.

In addition to the obvious physical consequences of violence, there are innumerable psychosocial effects. For example, a child who learns from his parents, his role models, that violence is a way of resolving differences, or controlling another person, will grow up believing that it is normal to use violence in everyday interpersonal relationships. As a consequence, he will grow up believing that it is acceptable to physically hurt those people he loves the most. A young girl who watches her mother being beaten up by her father may come to understand that physical injury is just one aspect of a ''normal'' relationship. Children who are exposed to violence are at risk for mental health problems and substance abuse problems as they grow up. When we allow children to grow up believing that violence is normal and acceptable, we do a great deal of damage to their lives and decrease their chances for healthy futures.

In order to prevent the risk of exposure to violence, I am introducing this legislation, to provide funding for the creation of child safety centers. These centers will provide a safe environment in which children can visit with their parents without risk of being exposed to violence in the context of their family relationships. This bill will protect children from the trauma of witnessing or experiencing violence, sexual abuse, neglect, abduction, rape, or death during parent-child visitation or visitation exchanges; protect victims of violence from experiencing further violence during child visitation or visitation exchanges and will provide safe havens for children and their parents during visitation or visitation exchanges.

This act will provide grants to States to enable the states to enter into contract and cooperative agreements with public or private nonprofit entities in order to establish child safety centers. These centers will operate for the purpose of facilitating supervised visitation and visitation exchange. The services provided by the centers will be evaluated each year, so that we will learn how many people are served by the centers and what types of problems are encountered by the clients of the centers. The act will authorize appropriations of $65,000,000 for each of the fiscal years 1998 through 2000.

Mr. President, this legislation will go a long way in protecting children from family violence and in providing support for families that are experiencing violence. We need to do this to protect our children and give them the chance to grow up without believing that violence is normal.

I ask unanimous consent that 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. 1129

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 ''Safe Havens for Children Act of 1997''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to protect children from the trauma of witnessing or experiencing violence, sexual abuse, neglect, abduction, rape, or death during parent-child visitation and visitation exchanges;

(2) to protect victims of domestic violence from experiencing further violence during child visitation and visitation exchanges; and

(3) to provide safe havens for parents and children during visitation and visitation exchanges, to promote continuity and stability.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) Family violence does not necessarily cease when family victims are legally separated by divorce or otherwise not sharing a household.

(2) According to a 1996 report by the American Psychological Association, custody and visitation disputes are more frequent when there is a history of domestic violence.

(3) Family violence often escalates following separation and divorce, and child custody and visitation arrangements become the new forum for the continuation of abuse.

(4) According to a 1996 report by the American Psychological Association, fathers who batter mothers are twice as likely to seek sole custody of their children. In these circumstances, if the abusive father loses custody he is more likely to continue the threats to the mother through other legal actions.

(5) Some perpetrators of violence use the children as pawns to control the abused party and to commit more violence during separation or divorce. In one study, 34 percent of women in shelters and callers to hotlines reported threats of kidnapping, 11 percent reported that the batterer had kidnapped the child for some period, and 21 percent reported that threats of kidnapping forced the victim to return to the batterer.

(6) Approximately 90 percent of children in homes in which their mothers are abused witness the abuse. Children who witness domestic violence may themselves become victims and exhibit more aggressive, antisocial, fearful, and inhibited behaviors. Such children display more anxiety, aggression and temperamental problems.

(7) Women and children are at an elevated risk of violence during the process of separation or divorce.

(8) Fifty to 70 percent of men who abuse their spouses or partners also abuse their children.

(9) Up to 75 percent of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couple.

(10) In one study of spousal homicide, over ½ of the male defendants were separated from their victims.

(11) Seventy-three percent of battered women seeking emergency medical services do so after separation.

(12) The National Council of Juvenile and Family Court Judges includes the option of visitation centers in their Model Code on Domestic and Family Violence.

SEC. 4. GRANTS TO STATES TO PROVIDE FOR SUPERVISED VISITATION CENTERS

(a) IN GENERAL.—The Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') is authorized to award grants to States to enable States to enter into contracts and cooperative agreements with public or private nonprofit entities to assist such entities in establishing and operating supervised visitation centers for the purposes of facilitating supervised visitation and visitation exchange.

(b) CONSIDERATIONS.—In awarding such grants, contracts, and cooperative agreements under subsection (a), the Secretary shall take into account—

(1) the number of families to be served by the proposed visitation center to be established under the grant, contract, or agreement;

(2) the extent to which the proposed supervised visitation centers serve underserved populations; and

(3) the extent to which the applicant demonstrates cooperation and collaboration with advocates in the local community served, including the State domestic violence coalition, State sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Amounts provided under a grant, contract, or cooperative agreement awarded under this section shall be used to establish supervised visitation centers and for the purposes described in section 2. Individuals shall be permitted to use the services provided by the center on a sliding fee basis.

(2) APPLICANT REQUIREMENTS.—The Secretary shall award grants, contracts, and cooperative agreements under this Act in accordance with such regulations as the Secretary may promulgate. The Secretary shall give priority in awarding grants, contracts, and cooperative agreements under this Act to States that consider domestic violence in making a custody decision. An applicant awarded such a grant, contract, or cooperative agreement shall—

(A) demonstrate recognized expertise in the area of family violence and a record of high quality service to victims of domestic violence and sexual assault;

(B) demonstrate collaboration with and support of the State domestic violence coalition, sexual assault coalition and local domestic violence and sexual assault shelter or program in the locality in which the supervised visitation center will be operated; and

(C) provide long-term supervised visitation and visitation exchange services to promote continuity and stability.

(d) REPORTING AND EVALUATION.—

(1) REPORTING.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to Congress a report that includes information concerning—

(A) the number of individuals served and the number of individuals turned away from services categorized by State and the type of presenting problems that underlie the need for supervised visitation or visitation exchange, such as domestic violence, child abuse, sexual assault, emotional or other physical abuse, or a combination of such factors;

(B) the numbers of supervised visitations or visitation exchanges ordered during custody determinations under a separation or divorce decree or protection order, through child protection services, or through other social services agencies;

(C) the process by which children or abused partners are protected during visitations,

temporary custody transfers and other activities for which the supervised visitation centers are created;

(D) safety and security problems occurring during the reporting period during supervised visitations or at visitation centers including the number of parental abduction cases;

(E) the number of parental abduction cases in a judicial district using supervised visitation services, both as identified in criminal prosecution and custody violations; and

(F) any other appropriate information designated in regulations promulgated by the Secretary.

(2) EVALUATION.—In addition to submitting the reports required under paragraph (1), an entity receiving a grant, contract or cooperative agreement under this Act shall have a collateral agreement with the court, the child protection social services division of the State, and local domestic violence agencies or State and local domestic violence coalitions to evaluate the supervised visitation center operated under the grant, contract or agreement. The entities conducting such evaluations shall submit a narrative evaluation of the center to both the center and the grantee.

(e) FUNDING.—

(1) IN GENERAL.—There shall be made available from amounts contained in the Violent Crime Reduction Trust Fund established under title XXXI of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211 et seq.), $65,000,000 for each of the fiscal years 1998 through 2000 for the purpose of awarding grants, contracts, and cooperative agreements under this Act.

(2) DISTRIBUTION.—Of the amounts made available to carry out this Act for each fiscal year, not less than 90 percent of such amount shall be used to award grants, contracts, or cooperative agreements.

(3) DISBURSEMENT.—Amounts made available under this Act shall be disbursed as categorical grants through the 10 regional offices of the Department of Health and Human Services.

By Mr. CAMPBELL (for himself and Mr. INOUYE)

S. 1130. A bill to provide for the assessment of fees by the National Indian Gaming Commission, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN GAMING ENFORCEMENT AND INTEGRITY ACT

Mr. CAMPBELL. Mr. President, today I introduce the Indian Gaming Enforcement and Integrity Act of 1997. The purpose of this legislation is to reform the current regulatory fee structure administered by the National Indian Gaming Commission [NIGC], the regulatory agency responsible for monitoring and regulating Indian tribal government gaming. The essence of any regulatory agency is in its ability to monitor activities within its purview and to act decisively in enforcing violations of the law. The NIGC is no different and it has depended on regulatory assessments and Federal appropriations to carry out these vital roles.

When Congress enacted and the President signed into law, the Indian Gaming Regulatory Act [IGRA], two principal goals were sought: To provide a statutory basis for the operation of Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; and, second, to provide a statutory basis for the regulation of the Indian gaming industry to shield it from corrupting influences.

Since its enactment in 1988, the Indian gaming industry has grown tremendously, where today it is a multibillion dollar industry. As a result, the IGRA is beginning to provide many tribal governments with the wherewithal to provide basic services to their members. Where poverty once reigned on Indian reservations, economic opportunity now abounds. In many cases, tribal governments are able to employ large numbers of their own members, as well as non-Indians from surrounding communities. Further, it is no coincidence that in many communities around the Nation, welfare rolls have dropped and employment has risen as a direct result of tribal gaming.

The second objective of the IGRA is to provide adequate regulation to shield Indian gaming from corruption influences and to ensure the games are fair, and conducted in accordance with all applicable laws. IGRA established the National Indian Gaming Commission and empowered it to monitor Indian gaming and to regulate certain aspects of Indian gaming. The act authorizes the Commission to assess regualtory fees on these gaming activities. In addition to these assessed fees, the act authorizes an annual Federal appropriation to complement the funds available for the efficient operation of the Commission.

To date, the Commission is responsible for monitoring and regulating 273 Indian gaming establishments operated by 184 tribes in 28 States. While it attempts to keep up with this tremendous growth, the Commission is currently statutorily constrained from securing the level of funding it needs to fulfill its mandates under the law.

Current law authorizes the NIGC to assess fees on class II gaming activities at a level not to exceed $1.5 million per year. In addition to Federal appropriations of $1 million over the last 3 fiscal years, and other fees collected, the NIGC has been operating on a budget that slightly exceeds $3 million.

To further illustrate the funding dilemma of the NIGC, the Committee on Indian Affairs conducted an oversight hearing on July 10, 1997 to review the current Indian gaming regulatory fee structure. Testimony provided to the committee indicated that for fiscal year 1997, the Commission has an overall operating budget of $4.3 million which consists of, a $1 million direct appropriation, $1.5 million in fees assessed on class II tribal gaming revenue, and $1.8 million in unobligated funds from prior years. However, for fiscal year 1998 it is indicated that funds from prior year unobligated balances would be nearly depleted, resulting in a projected operational budget of $2.5 million to $3.0 million for fiscal year 1998. According to the NIGC, without additional funding reductions in staff would take place, with a commensurate decrease in its regulatory, compliance and enforcement efforts.

Further, testimony indicated that greater resources need to be available to the NIGC in order to meet their statutorily mandated responsibilities. To accomplish this the NIGC proposed expanding their collection to class III gaming activities

As a result of the hearing, I have developed legislation that reflects testimony provided by the NIGC and tribal interest. This legislation will require the NIGC to assess minimum mandatory fees on each gaming operation that conducts a gaming activity regulated under the act. In addition to these minimum fees, the Commission is authorized to assess fees on class II gaming and on class III gaming. In order to provide a reasonable fee assessment approach, the legislation provides for maximum rates of not more than 2.5 percent on the gross revenues of class II activities; and not more than .5 percent on the gross revenues of class III activities.

In addition to these maximum rates, the bill provides for a phased in approach so that fees collected on class II activities shall not exceed $5 million in fiscal year 1998, $8 million in fiscal year 1999, and $10 million in fiscal year 2000. Similarly, fees collected on class III activities shall not exceed $3 million in fiscal year 1998, $4 million in fiscal year 1999, and $5 million in fiscal year 2000.

The Commission is required to take into account its duties and the services it provides to Indian tribal gaming in setting the annual fees under the act. The legislation creates a special fund in the U.S. Treasury for amounts equal to the fees paid by the gaming operations, and requires that all amounts deposited into the special fund shall be used only to fund the activities of the Commission under the IGRA. Because the United States maintains a special relationship with the Indian tribes, and given its legitimate role in providing services to the tribes, the bill I am introducing retains a Federal appropriation to defray the costs incurred by the Commission in carrying out its duties under the IGRA.

As I have stated before, it is our obligation to make sure that we protect the interests of Native Americans and, at the same time, protect the interest of those who participate in Indian Gaming.

This legislation seeks to ensure the integrity of the Indian gaming industry by providing the tools necessary to the agency responsible for regulating this industry. That is why I urge my colleagues to join me in supporting it.

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. 1130

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

SECTION 1. ASSESSMENT OF FEES.

(a) IN GENERAL.—Section 18(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)) is amended—

(1) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively;

(2) by striking ''(a)(1)'' and all that follows through the end of paragraph (3) and inserting the following:

''(a) ANNUAL FEES.—

''(1) MINIMUM REGULATORY FEES.—In addition to assessing fees pursuant to a schedule established under paragraph (2), the Commission shall require each gaming operation that conducts a class II or class III gaming activity that is regulated by this Act to pay to the Commission, on a quarterly basis, a minimum regulatory fee in an amount equal to $250.

''(2) CLASS II AND CLASS III GAMING FEES.—

''(A) CLASS II GAMING FEES.—

''(i) IN GENERAL.—The Commission shall establish a schedule of fees to be paid to the Commission that includes fees for each class II gaming activity that is regulated by this Act.

''(ii) RATE OF FEES.—For each gaming activity covered under the schedule established under clause (i), the rate of fees imposed under that schedule shall not exceed 2.5 percent of the gross revenues of that gaming activity.

''(iii) AMOUNT OF FEES ASSESSED.—Subject to paragraph (3), the total amount of fees imposed during any fiscal year under the schedule established under clause (i) shall not exceed—

''(I) $5,000,000 for fiscal year 1998;

''(II) $8,000,000 for fiscal year 1999; and

''(III) $10,000,000 for fiscal year 2000, and for each fiscal year thereafter.

''(B) CLASS III GAMING FEES.—

''(i) IN GENERAL.—The Commission shall establish a schedule of fees to be paid to the Commission that includes fees for each class III gaming activity that is regulated by this Act.

''(ii) RATE OF FEES.—For each gaming activity covered under the schedule established under clause (i), the rate of fees imposed under that schedule shall not exceed 0.5 percent of the gross revenues of that gaming activity.

''(iii) AMOUNT OF FEES ASSESSED.—Subject to paragraph (3), the total amount of fees imposed during any fiscal year under the schedule established under clause (i) shall not exceed—

''(I) $3,000,000 for fiscal year 1998;

''(II) $4,000,000 for fiscal year 1999; and

''(III) $5,000,000 for fiscal year 2000, and for each fiscal year thereafter.

''(3) GRADUATED FEE LIMITATION.—

''(A) IN GENERAL.—The aggregate amount of fees collected under paragraph (2) shall not exceed—

''(i) $8,000,000 for fiscal year 1998;

''(ii) $12,000,000 for fiscal year 1999; and

''(iii) $15,000,000 for fiscal year 2000, and for each fiscal year thereafter.

''(B) FACTORS FOR CONSIDERATION.—In assessing and collecting fees under this section, the Commission shall take into account the duties of, and services provided by, the Commission under this Act.

''(4) SPECIAL FUND.—The Secretary of the Treasury shall establish a special fund into which the Secretary of the Treasury shall deposit amounts equal to the fees paid under this subsection. The amounts deposited into the special fund shall be used only to fund the activities of the Commission under this Act.'';

(3) in paragraph (5), as redesignated by paragraph (1) of this section, by striking ''(5) Failure'' and inserting the following:

''(5) CONSEQUENCES OF FAILURE TO PAY FEES.—Failure'';

(4) in paragraph (6), as redesignated by paragraph (1) of this section, by striking ''(6) To the extent'' and inserting the following:

''(6) CREDIT.—To the extent''; and

(5) in paragraph (7), as redesignated by paragraph (1) of this section, by striking ''(7) For purposes of this section,'' and inserting the following:

''(7) GROSS REVENUES.—For purposes of this section,''.

(b) BUDGET OF COMMISSION.—Section 18(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(b)) is amended—

(1) by striking ''(b)(1) The Commission'' and inserting the following:

''(b) REQUESTS FOR APPROPRIATIONS.—

''(1) IN GENERAL.—The Commission'';

(2) by striking paragraph (2) and inserting the following:

''(2) CONTENTS OF BUDGET.—For fiscal year 1998, and for each fiscal year thereafter, the budget of the Commission may include a request for appropriations, as authorized by section 19, in an amount equal to the sum of—

''(A)(i) for fiscal year 1998, an estimate (determined by the Commission) of the amount of funds to be derived from the fees collected under subsection (a) for that fiscal year; or

''(ii) for each fiscal year thereafter, the amount of funds derived from the fees collected under subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made; and

''(B) $1,000,000.''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 19 of the Indian Gaming Regulatory Act (25 U.S.C. 2718) is amended to read as follows:

''SEC. 19. AUTHORIZATION OF APPROPRIATIONS.

''Subject to section 18, for fiscal year 1998, and for each fiscal year thereafter, there are authorized to be appropriated to the Commission an amount equal to the sum of—

''(1)(A) for fiscal year 1998, an estimate (determined by the Commission) of the amount of funds to be derived from the fees collected under subsection (a); or

''(B) for each fiscal year thereafter, the amount of funds derived from the fees collected under subsection (a) for the fiscal year preceding the fiscal year; and

''(2) $1,000,000.''.

Mr. INOUYE. Mr. President, I am pleased to join my chairman today, Senator BEN NIGHTHORSE CAMPBELL, as a cosponsor of legislation to provide for an amendment in authorizing legislation that will enable the National Indian Gaming Commission to adjust the manner in which fees are imposed on the gaming operations that are subject to regulation under the Indian Gaming Regulatory Act of 1988.

Mr. President, it has been 9 years since the Indian Gaming Regulatory Act was enacted into law. In the ensuing years, there has been a substantial increase in the number of tribal government-sponsored gaming operations, as well as a significant shift in the number of operations that are engaged in the conduct of class III gaming operations.

The bill we introduce today might be considered as companion legislation to a bill introduced earlier this week by Senator JOHN MCCAIN, and a bill that Senator CAMPBELL is developing for introduction in the fall. All three measures are intended to reflect the contemporary realities of tribal gaming and the need for a regulatory framework that can respond to the growth in Indian gaming.

Mr. President, we proceed with this separate legislation because of the pressing need to assure that the Commission is adequately funded, and that the Commission has the capacity, independent of Federal appropriations, to address a far wider array of regulatory demands than we could have anticipated in 1988.

By Mr. MACK:

S. 1131. A bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit; to the Committee on Finance.

RESEARCH AND EXPERIMENTATION TAX CREDIT LEGISLATION

Mr. MACK. Mr. President, we have good reason to celebrate what we have just accomplished by passing the Taxpayer Relief Act of 1997.

We set out to help families pay for the education of their kids. It's done. We set out to provide a $500 credit for children. It's done. We set out to provide meaningful death tax relief. It's done. We set out to expand IRA's to encourage savings. It's done. We set out to provide significant capital gains relief. And it's done, too.

The Taxpayer Relief Act is a great victory for the American people. But we cannot rest on this accomplishment, when there is much else that needs to be done. I am today introducing legislation to permanently extend the research and experimentation tax credit. In the tax bill we just passed, the research and experimentation tax credit is extended a mere 13 months, to June 30, 1998. This extension is disappointing.

The research credit has provided a valuable economic incentive for U.S. companies to increase their investment in research and development in order to maintain their competitive edge in the global marketplace. A permanent extension of the research credit is critical to fast-growing research-intensive companies such as those in the computer, telecommunications, and biotechnology industries.

For these companies, an incentive to increase investment in research plays a critical role in determining whether future research projects, many of which span many years in length, are started, continued, or abandoned. The incentive benefit of the current research credit is reduced because of its temporary and uncertain nature. The bill I am today introducing will correct this problem, and make the research tax credit an incentive that our high-technology companies can count on.

By Mr. BINGAMAN:

S. 1132. A bill to modify the boundaries of the Bandelier National Monument to include the lands within the headwaters of the Upper Alamo Watershed which drain into the monument and which are not currently within the

jurisdiction of a Federal land management agency, to authorize purchase or donation of those lands, and for other purposes; to the Committee on Energy and Natural Resources.

THE BANDELIER NATIONAL MONUMENT ADMINISTRATIVE IMPROVEMENT AND WATERSHED PROTECTION ACT OF 1997

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill to extend the boundaries of the Bandelier National Monument. Since 1916 when President Wilson created the monument to protect the ''archeological resources of a vanished people,'' both Congress and the President have adjusted the monument's boundaries on numerous occasions to protect these treasures, and the ecological balance within the monument. The latest example was in 1976, when Congress set aside over 70 percent of the monument to create the Bandelier Wilderness area. Because we have acted to conserve this valuable land in the past, today's visitors to the monument, the people of New Mexico and Americans from around the Nation, have a wonderful place to go to. In the same morning you can see varieties of wildlife, including herds of elk and deer, and explore the homes of early native American peoples. This bill continues that foresighted tradition of protection.

The greatest threat to the monument at this time is potential development in the upper watershed that drains into the park. Not only could this impair the esthetic experience of visitors to the monument, it could seriously harm the ecological balance within the monument. The potential for soil erosion, flooding, and siltation of streams from upstream development is of grave concern, and this bill seeks to address the problem. Under this bill the boundaries of the monument would be extended to include all of the lands which are not currently in public ownership in the upper Alamo watershed which drains into the monument.

This bill will allow the Park Service to enter into agreements with private landowners to either purchase their land, or to restrict the development of their land in order to protect the monument. I want to note that the current landowners support this, and have stated that they would like to enter into such agreements that will protect the monument for future generations. Because of this, I have written this bill to give the Park Service authority to enter into contracts with willing sellers. This bill does not give the Park Service condemnation authority.

Mr. President, because we have a situation where we can protect this treasure for generations to come with the help and cooperation of the private landowners that neighbor the monument, I am pleased to offer this bill.

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. 1132

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 ''Bandelier National Monument Administrative Improvement and Watershed Protection Act of 1997.''

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that:

(1) Bandelier National Monument (hereinafter, the Monument) was established by Presidential proclamation on February 11, 1916, to preserve the archeological resources of a ''vanished people, with as much land as may be necessary for the proper protection thereof * * *'' (No. 1322; 39 Stat. 1746).

(2) At various times since its establishment, the Congress and the President have adjusted the Monument's boundaries and purpose to further preservation of archeological and natural resources within the Monument:

(A) On February 25, 1932, the Otowi Section of the Santa Fe National Forest (some 4,699 acres of land) was transferred to the Monument from the Santa Fe National Forest (Presidential Proclamation No. 1191; 17 Stat. 2503);

(B) In December 1959, 3,600 acres of Frijoles Mesa were transferred to the National Park Service from the Atomic Energy Committee (hereinafter, AEC) and subsequently added to the Monument on January 9, 1991, because of ''pueblo-type archeological ruins germane to those in the Monument'' (Presidential Proclamation No. 3388);

(C) On May 27, 1963, Upper Canyon, 2,882 acres of land previously administered by the AEC, was added to the Monument to preserve ''their unusual scenic character together with geologic and topographic features, the preservation of which would implement the purposes'' of the Monument (Presidential Proclamation No. 3539);

(D) In 1976, concerned about upstream land management activities that could result in flooding and erosion in the Monument, Congress included the headwaters of the Rito de los Frijoles and the Cañada de Cochiti Grant (a total of 7,310 acres) within the Monument's boundaries (Pub. L. 94–578; 90 Stat. 2732); and

(E) In 1976, Congress created the Bandelier Wilderness, a 23,267-acre area that covers over 70 percent of the Monument.

(3) The Monument still has potential threats from flooding, erosion, and water quality deterioration because of the mixed ownership of the upper watersheds along its western border, particularly in Alamo Canyon.

(b) PURPOSES.—The purposes of this Act are to modify the boundary of the Monument to allow for acquisition and enhanced protection of the lands within the monument's upper watershed.

SEC. 3. BOUNDARY MODIFICATION.

Effective on the date of enactment of this Act, the boundaries of the Monument shall be modified to include approximately 935 acres of land comprised of the Elk Meadows subdivision, the Gardner parcel, the Clark parcel, and the Baca Land & Cattle Co. lands within the Upper Alamo watershed as depicted on the National Park Service map entitled ''Alamo Headwaters Proposed Additions'' dated 06/97. Such map shall be on file and available for public inspection in the offices of the Director of the National Park Service, Department of the Interior.

SEC. 4. TRANSFER AND ACQUISITION OF LANDS.

Within the boundaries designated by this Act, the Secretary of the Interior is authorized to acquire lands (or interests in land such as he determines shall adequately protect the Monument from flooding, erosion, and degradation of its drainage waters) by donation, purchase with donated or appropriated funds, exchange, or transfer of lands acquired by other Federal agencies.

SEC. 5. ADMINISTRATION.

The Secretary of the Interior, acting through the Director of the National Park Service, shall manage the national monument, including lands added to the Monument by this Act, in accordance with this Act and the provisions of law generally applicable to units of the National Park System, including the Act of August 25, an act to establish a National Park Service (39 Stat. 535; 16 U.S.C. 1 et seq.), and such specific legislation as heretofore has been enacted regarding the Monument.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the purpose of this Act.

By Mrs. MURRAY (for herself, Mr. CRAIG, Mr. WYDEN, Mr. BAUCUS, Mr. MURKOWSKI, Mr. SMITH of Oregon, Mr. BURNS, Mr. GORTON, and Mr. KEMPTHORNE):

S. 1134. A bill granting the consent and approval of Congress to an interstate forest fire protection compact; to the Committee on the Judiciary.

THE NORTHWEST WILDFIRE COMPACT

Mrs. MURRAY. Mr. President, today I am introducing the Northwest Wildland Fire Protection Agreement. This compact will help our States throughout the Northwest respond more quickly and efficiently to wildfires. Senators CRAIG, WYDEN, MURKOWSKI, KEMPTHORNE, GORTON, G. SMITH, BAUCUS, and BURNS have joined me as original cosponsors because this compact affects all of our States of Washington, Oregon, Alaska, Idaho, and Montana. It establishes an agreement with the provinces of Alberta, British Columbia, and the Yukon Territory to mutually aid in prevention, pre-suppression and control of forest fires.

Mr. State's Commissioner of Public Lands, Jennifer Belcher, brought this compact to my attention. She explained how for the State of Washington, this means the Department of Natural Resources will have access to the excellent firefighting tools of British Columbia, including helicopters and other aircraft stationed close to the border. This will increase her ability to quickly mobilize forces to suppress wildfires that might otherwise get out of control.

The Washington DNR has been fighting wildfires since the early 1900's. According to a DNR Forest Fire Study, in the past 25 years, the department has fought 28,000-plus wildfires involving more than 370,000 acres of Washington forest land. In recent years, firefighting budgets have decreased and the intensity of fires has increased, with the terrible fire season of 1994 breaking the record at 79,000 acres burned in Washington. We need this compact to enable our States to better protect the life and property of our citizens.

All eight affected States and provinces have agreed to this compact. However, before the States and Provinces can legally enter this agreement, the U.S. Congress must pass enabling legislation. Congress did so in 1952 with the wildfire compact after which this legislation was patterned, which was signed by five northeastern States and eastern Provinces, and remains in effect today.

I urge my colleagues to help us move this compact through the process so our States will be poised to quickly and cost-efficiently suppress dangerous wildfires. I would also like to urge colleagues to support another compact introduced by Senator CRAIG and cosponsored by all Northwest Senators to help us join forces in cases of natural disasters.

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. 1134

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

SECTION 1. CONSENT OF CONGRESS.

(a) IN GENERAL.—The consent and approval of Congress is given to an interstate forest fire protection compact, as set out in subsection (b).

(b) COMPACT.—The compact reads substantially as follows:

"THE NORTHWEST WILDLAND FIRE PROTECTION AGREEMENT

''THIS AGREEMENT is entered into by and between the State, Provincial, and Territorial wildland fire protection agencies signatory hereto, hereinafter referred to as ''Members''.

''FOR AND IN CONSIDERATION OF the following terms and conditions, the Members agree:

"Article I

''1.1 The purpose of this Agreement is to promote effective prevention, presuppression and control of forest fires in the Northwest wildland region of the United States and adjacent areas of Canada (by the Members) by providing mutual aid in prevention, presuppression and control of wildland fires, and by establishing procedures in operating plans that will facilitate such aid.

"Article II

''2.1 The agreement shall become effective for those Members ratifying it whenever any two or more Members, the States of Oregon, Washington, Alaska, Idaho, Montana, or the Yukon Territory, or the Province of British Columbia, or the Province of Alberta have ratified it.

''2.2 Any State, Province, or Territory not mentioned in this Article which is contiguous to any Member may become a party to this Agreement subject to unanimous approval of the Members.

"Article III

''3.1 The role of the Members is to determine from time to time such methods, practices, circumstances and conditions as may be found for enhancing the prevention, presuppression, and control of forest fires in the area comprising the Member's territory; to coordinate the plans and the work of the appropriate agencies of the Members; an to coordinate the rendering of aid by the Members to each other in fighting wildland fires.

''3.2 The Members may develop cooperative operating plans for the programs covered by this Agreement. Operating plans shall include definition of terms, fiscal procedures, personnel contacts, resources available, and standards applicable to the program. Other sections may be added as necessary.

"Article IV

''4.1 A majority of Members shall constitute a quorum for the transaction of its general business. Motions of Members present shall be carried by a simple majority except as stated in Article II. Each Member will have one vote on motions brought before them.

"Article V

''5.1 Whenever a Member requests aid from any other Member in controlling or preventing wildland fires, the Members agree, to the extent they possibly can, to render all possible aid.

"Article VI

''6.1 Whenever the forces of any Member are aiding another Member under this Agreement, the employees of such Member shall operate under the direction of the officers of the Member to which they are rendering aid and be considered agents of the Member they are rendering aid to and, therefore, have the same privileges and immunities as comparable employees of the Member to which the are rendering aid.

''6.2 No Member or its officers or employees rendering aid within another State, Territory, or Province, pursuant to this Agreement shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith to the extent authorized by the laws of the Member receiving the assistance. The receiving Member, to the extent authorized by the laws of the State, Territory, or Province, agrees to indemnify and save-harmless the assisting Member from any such liability.

''6.3 Any Member rendering outside aid pursuant to this Agreement shall be reimbursed by the Member receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment and for the cost of all materials, transportation, wages, salaries and maintenance of personnel and equipment incurred in connection with such request in accordance with the provisions of the previous section. Nothing contained herein shall prevent any assisting Member from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving Member without charge or cost.

''6.4 for purposes of the Agreement, personnel shall be considered employees of each sending Member for the payment of compensation to injured employees and death benefits to the representatives of deceased employees injured or killed while rendering aid to another Member pursuant to this Agreement.

''6.5 The Members shall formulate procedures for claims and reimbursement under the provisions of this Article.

"Article VII

''7.1 When appropriations for support of this agreement, or for the support of common services in executing this agreement, are needed, costs will be allocated equally among the Members.

''7.2 As necessary, Members shall keep accurate books of account, showing in full, its receipts and disbursements, and the books of account shall be open at any reasonable time to the inspection of representatives of the Members.

''7.3 The Members may accept any and all donations, gifts, and grants of money, equipment, supplies, materials and services from the Federal or any local government, or any agency thereof and from any person, firm or corporation, for any of its purposes and functions under this Agreement, and may receive and use the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

"Article VIII

''8.1 Nothing in this Agreement shall be construed to limit or restrict the powers of any Member to provide for the prevention, control, and extinguishment of wildland fires or to prohibit the enactment of enforcement of State, Territorial, or Provincial laws, rules or regulations intended to aid in such prevention, control and extinguishment of wildland fires in such State, Territory, or Province.

''8.2 Nothing in this Agreement shall be construed to affect any existing or future Cooperative Agreement between Members and/or their respective Federal agencies.

"Article IX

''9.1 The Members may request the United States Forest Service to act as the coordinating agency of the Northwest Wildland Fire Protection Agreement in cooperation with the appropriate agencies for each Member.

''9.2 The Members will hold an annual meeting to review the terms of this Agreement, any applicable Operating Plans, and make necessary modifications.

''9.3 Amendments to this Agreement can be made by simple majority vote of the Members and will take effect immediately upon passage.

"Article X

''10.1 This Agreement shall continue in force on each Member until such Member takes action to withdraw therefrom. Such action shall not be effective until 60 days after notice thereof has been sent to all other Members.

"Article XI

''11.1 Nothing is this Agreement shall obligate the funds of any Member beyond those approved by appropriate legislative action.''.

SEC. 2. OTHER STATES.

Without further submission of the compact, the consent of Congress is given to any State to become a party to it in accordance with its terms.

SEC. 3. RIGHTS RESERVED.

The right to alter, amend, or repeal this Act is expressly reserved.

By Mr. McCONNELL:

S. 1135. A bill to provide certain immunities from civil liability for trade and professional associations, and for other purposes; to the Committee on the Judiciary.

THE TRADE AND PROFESSIONAL ASSOCIATION FREE FLOW OF INFORMATION ACT

Mr. McCONNELL. Mr. President, I rise today to introduce the Trade and Professional Association Free Flow of Information Act, and ask my colleagues to join me by co-sponsoring this important legislation.

Our society is increasingly litigious, especially in the area of product liability. Unfortunately, complex product liability litigation ensnares trade and professional associations that do not manufacture, buy, or sell the product. America's litigation maze often traps associations who do nothing more than publish good-faith factual information for its members regarding various products.

This service is particularly helpful to small business owners who become involved in product litigation, but lack the funds to conduct expensive and time-consuming product research. Additionally, trade and professional associations help their members to avoid litigation by alerting them to critical characteristics of different products. This research and information service is clearly in the best interest of both consumers and small businesses.

My bill would acomplish three goals. First, it grants trade and professional associations limited protection from liability when acting in good faith to provide information to their members. The associations may still be held liable for fraudulently or recklessly distributing false information to their members.

Second, before information may be subpoenaed from an association, a clear case must be made that the information is vital to the case and is unavailable from any other source. Let me point out, however, that this provision does not prevent associations from being served with subpoenas. It merely ensures that the information requested is vital to a particular action and unavailable from any other source.

Finally, the bill establishes a qualified privilege between an association and its members to ensure that confidential materials can be provided for the benefit of association members. This privilege is not absolute—it may be overcome upon proof that the party seeking the materials has a compelling need for the information. This provision is based on a joint defense privilege currently recognized by state and federal courts.

Additionally, this bill includes an opt-out provision similar to the one we included in the Volunteer Protection Act, which the President recently signed into law. This provision permits a State to opt-out of the bill's coverage in any civil action in which all parties are citizens of the State.

Mr. President, the need for this bill was recently discussed in an article of the Legal Times. I ask unanimous consent that this article be published in the RECORD.

In closing, I would like to emphasize that this bill will allow associations to continue to actively disseminate valuable information to their members, while safeguarding current legal protections against fraud and abuse. The goal of the Free Flow of Information Act is one that I believe I share with a majority of my colleagues—a decrease in costly litigation coupled with an increase in the flow of information between associations and their members. I urge my colleagues to cosponsor this important legislation.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 1135

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 ''Trade and Professional Association Free Flow of Information Act of 1997''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) trade and professional associations serve the public interest by conducting research, collecting and distributing information, and otherwise providing services to their members with regard to products and materials purchased and used by those members;

(2) in the decade preceding the date of enactment of this Act, many large class action lawsuits have been filed against manufacturers for allegedly defective products;

(3) as a result of the lawsuits referred to in paragraph (2), many members of trade and professional associations who are consumers of those products have relied increasingly on trade and professional associations for information concerning those products, including information concerning—

(A) the conditions under which such a product may be used effectively;

(B) whether it is necessary to repair or replace such a product, and if such a repair or replacement is necessary, the appropriate means of accomplishing that repair or replacement; and

(C) any litigation concerning such a product;

(4) trade and professional associations have, with an increasing frequency, been served broad and burdensome third-party subpoenas from litigants in product defect lawsuits, including class action lawsuits;

(5) members of trade and professional associations are seeking potentially beneficial information relating to product defects, quality, or performance from the trade and professional associations;

(6) trade and professional associations have been subject to lawsuits concerning methods of collection and dissemination of that information;

(7) the burden of responding to third-party subpoenas in product defect lawsuits and the threat of litigation have had a substantial chilling effect on the ability and willingness of trade and professional associations to disseminate information described in paragraph (5) to members, and the threat that information provided on a confidential basis to members could be subject to discovery in a civil action also has a chilling effect;

(8) because of the national scope of the problems described in paragraphs (1) through (7), it is not possible for States to fully address the problems by enacting State laws; and

(9) the Federal Government has the authority under the United States Constitution (including article I, section 8, clause 3 of the Constitution and the 14th amendment to the Constitution) to remove barriers to interstate commerce and protect due process rights.

(b) PURPOSES.—The purposes of this Act are to promote the free flow of goods and services and lessen burdens on interstate commerce in accordance with the authorities referred to in subsection (a)(9) by ensuring the free flow of information concerning product defects, quality, or performance among trade and professional associations and their members.

SEC. 2. DEFINITIONS.

In this Act:

(1) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use, including improvements to real property and fixtures that are affixed or incorporated into those improvements.

(B) EXCLUSIONS.—The term does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, natural gas, or steam.

(2) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(3) TRADE OR PROFESSIONAL ASSOCIATION.—The term ''trade or professional association'' means an organization described in paragraph (3), (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code.

SEC. 3. QUALIFIED EXEMPTION FROM CIVIL LIABILITY.

(a) IN GENERAL.—

(1) IN GENERAL.—Except as provided in subsection (b), a trade or professional association shall not be subject to civil liability relating to harm caused by the provision of information described in paragraph (2) by the trade or professional association to a member of the trade or professional association.

(2) INFORMATION.—The information described in this paragraph is information relating to a product concerning—

(A) the quality of the product;

(B) the performance of the product; or

(C) any defect of the product.

(3) APPLICABILITY.—This subsection applies with respect to civil liability under Federal or State law.

(b) EXCEPTION FOR LIABILITY.—Subsection (a) shall not apply with respect to harm caused by an act of a trade or professional association that a court determines, on the basis of clear and convincing evidence, to have been caused by the trade or professional association by the provision of information described in subsection (a)(2) that the trade or professional association—

(1) knew to be false; or

(2) provided a reckless indifference to the truth or falsity of that information.

SEC. 4. SPECIAL MOTION TO STRIKE.

A trade or professional association may file a special motion to strike any claim in any judicial proceeding against the trade or professional association on the ground that the claim is based on an act with respect to which the association is exempt from liability under section 3.

SEC. 5. REQUIRED PROCEDURES REGARDING SPECIAL MOTION TO STRIKE.

(a) TREATMENT OF MOTION.—Upon the filing of any motion under section 4—

(1) to the extent consistent with this section, the motion shall be treated as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure (or an equivalent motion under applicable State law); and

(2) the trial court shall hear the motion within a period of time that is appropriate for preferred or expedited motions.

(b) SUSPENSION OF DISCOVERY.—Upon the filing of a motion under section 4, discovery shall be suspended pending a decision on—

(1) the motion; and

(2) any appeal on the ruling on the motion.

(c) BURDEN OF PROOF.—The responding party shall have the burden of proof in presenting evidence that a motion filed under section 4 should be denied.

(d) BASIS OF DETERMINATION.—A court shall make a determination on a motion filed under section 4 on the basis of the facts contained in the pleadings and affidavits filed in accordance with this section.

(e) DISMISSAL.—With respect to a claim that is the subject of a motion filed under section 4, the court shall grant the motion and dismiss the claim, unless the responding party has produced evidence that would be sufficient for a reasonable finder of fact to conclude, on the basis of clear and convincing evidence, that the moving party is not exempt from liability for that claim under section 3.

(f) COSTS.—If a moving party prevails in procuring the dismissal of a claim as a result of a motion made under section 4, the court shall award that party the costs incurred by the party in connection with making the motion, including reasonable attorney and expert witness fees.

SEC. 6. QUALIFIED EXEMPTION FROM THIRD-PARTY DISCOVERY.

(a) IN GENERAL.—Notwithstanding any other provision of law, a trade or professional association may only be served with a subpoena in a civil action described in subsection (b) if the party that serves the subpoena first establishes to the court, by clear and convincing evidence that—

(1) the materials or information sought by the subpoena are directly relevant to the civil action; and

(2) the party serving the subpoena has a compelling need for the materials or information because the materials or information are not otherwise available.

(b) CIVIL ACTIONS DESCRIBED.—A civil action described in this subsection is a civil action—

(1) relating to the quality, performance, or defect of a product; and

(2) to which the trade or professional association involved is not a party.

SEC. 7. SPECIAL MOTION TO QUASH A SUBPOENA.

A trade or professional association may file a special motion to quash a subpoena on the grounds that the trade or professional association is exempt from any third-party discovery request under section 6.

SEC. 8. REQUIRED PROCEDURES REGARDING SPECIAL MOTION TO QUASH.

(a) IN GENERAL.—Upon the filing of any motion under section 7, the trial court shall hear the motion within the period of time that is appropriate for preferred or expedited motions.

(b) SUSPENSION OF COMPLIANCE.—Upon the filing of a motion under section 7, the court shall not compel compliance with the subpoena during the period during which—

(1) the motion is under consideration; or

(2) an appeal on the determination by the court to deny the motion has not resulted in a final ruling by the court on the appeal.

(c) BURDEN OF PROOF.—The responding party shall have the burden of proof in presenting evidence that a motion filed under section 7 should be denied.

(d) BASIS OF DETERMINATION.—A court shall make a determination on a motion filed under section 7 on the basis of the facts contained in the pleadings and affidavits filed in accordance with this section.

(e) QUASHING A SUBPOENA.—The court shall grant a motion filed under section 7 and quash the subpoena that is the subject of the motion, unless the responding party proves, by clear and convincing evidence, that the trade or professional association that received the subpoena is not exempt from responding to the subpoena under section 6.

(f) COSTS.—If a trade or professional association prevails in procuring the quashing of a subpoena as a result of a motion made under section 7, the court shall award the trade or professional association the costs incurred by that trade or professional association in connection with making the motion, including reasonable attorney and expert witness fees.

SEC. 9. RIGHT TO OBJECT UNDER RULE 45 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Nothing in this Act may be construed to impair the right of a trade or professional association to serve written objections under rule 45(c)(2)(B) of the Federal Rules of Civil Procedure, or any similar rule or procedure under applicable State law.

SEC. 10. QUALIFIED ASSOCIATION-MEMBER PRIVILEGE.

(a) IN GENERAL.—Except as provided in subsection (b), a member of a trade or professional association shall not be required to disclose any information described in section 3(a)(2), including any materials containing that information, that—

(1) relates to actual or anticipated litigation involving the quality, performance, or defect of a product;

(2) is considered to be confidential by the trade or professional association and that member; and

(3) is communicated by the trade or professional association with the reasonable expectation that the information will—

(A) be used in connection with actual or anticipated litigation; and

(B) be maintained in confidence.

(b) EXCEPTION.—Subsection (a) does not apply in any action in which a party seeking information described in that subsection has established to a court, by clear and convincing evidence, that—

(1) the materials or information sought are directly relevant to an action filed by that party; and

(2) the party has a compelling need for the information because the information is not otherwise obtainable.

SEC. 11. ELECTION OF STATE REGARDING NONAPPLICABILITY.

This Act shall not apply to any civil action in a State court with respect to which all of the parties are citizens of that State, if that State enacts, pursuant to applicable State law, a State statute that—

(1) cites the authority of this section;

(2) specifies that the State elects to be exempt from the requirements of this Act pursuant to this section; and

(3) contains no other provisions.

SEC. 12. PREEMPTION; APPLICABILITY.

(a) PREEMPTION.—This Act supersedes the laws of any State to the extent such State laws apply to matters to which this Act applies.

(b) APPLICABILITY.—Except as provided in section 11, and subject to subsection (a), this Act applies to any civil action that is pending or commenced in a Federal or State court, on or after the date of enactment of this Act.

[From the Legal Times, July 28, 1997]

LIMITING LIABILITY—TRADE GROUPS BACK BILL AIMED AT SHIELDING THEM FROM SUITS OVER ADVICE TO MEMBERS

(By T.R. Goldman)

In the fall of 1987, Kenneth Halpern dove into his backyard swimming pool in Mobile, Ala., broke his neck on the pool bottom, and set off a chain of litigation that would send shock waves through the trade association community for years.

Halpern was paralyzed in the dive and died less than a year later. The suit seeking restitution for his death named the pool's builder as a defendant. But Halpern's suit went one step further, also naming as a defendant the pool builders' trade group, the National Spa and Pool Institute.

Unfortunately for the trade group, the Alabama Supreme Court in 1990 bought Halpern's argument, at least in part. By disseminating standards for pool construction to its members, the court reasoned, the trade group opened itself to potential liability for injuries caused in a pool.

While the Pool Institute was not ultimately found liable for Halpern's death, the group spent hundreds of thousands of dollars proving that its standards were in fact sufficient to prevent injury. And the case left behind a menacing state precedent for trade groups of all stripes, leaving them vulnerable to all manner of liability suits.

Earlier this year, with the Alabama pool case and others like it in mind, the trade association world called on Capitol Hill for a legislative fix.

Their savior, they hope, will be Rep. Sonny Bono, the Palm Springs, Calif., Republican who in May introduced the Trade and Professional Association Free Flow of Information Act.

Bono's bill would set a national standard shielding associations from lawsuits when providing information and technical advice to their members. It would also allow associations to refuse to respond to subpoenas—unless the information is available only from the trade group and nowhere else.

The bill would also set up a type of privilege between a trade association and its members so that the confidentiality of documents flowing between the two would be assured.

That's vitally important, explains General Counsel Daniel Durden of the National Association of Home Builders, because the fear of litigation has a chilling effect on the industrywide mediation efforts trade associations are often ideally situated to oversee.

Take, for example, a widget installed in homes across the country. Five years later, the widget fails, due to a design flaw. ''The manufacturer of the widget gets sued, and the people who put them in their homes—our members—get sued,'' Durden says. ''And if it's a widespread problem, our members will call us and say, 'What can you do for us?'

''We can play a role in negotiating among the builders, manufacturers, and potentially the insurance companies in coming up with a stopgap measure, so the consumer of the widget doesn't file suit,'' adds Durden, whose group is actively supporting the Bono bill.

But if the association gets involved in trying to find a settlement, any information shared with it may no longer be privileged, Durden says. And that, in turn, can dissuade members from sharing information.

''The idea is that by acting in a fashion that forwards a resolution, an association shouldn't get slammed,'' he says.

Trial lawyers, of course, are deeply offended by the notion that certain potential defendants should be off-limits, and are vigorously opposed to the Bono bill.

''No association, corporation, or individual should be immunized for responsibility for the injuries they cause,'' Howard Twiggs, outgoing president of the Association of Trial Lawyers of America, said through a spokesman. ''No citizen should be denied the opportunity to hold wrongdoers responsible for their actions.''

Traditionally courts have held that a trade group was obligated only to its members, not

to the general public, for the accuracy and quality of the standards it promulgates for its members. After all, the groups argued, they could not properly be held responsible if a builder failed to follow their guidelines.

But the Alabama Supreme Court ruling changed all that, by holding in King v. National Spa and Pool Institute that the trade association did in fact have a ''duty'' to the public—regardless of whether it had control over its members' behavior. (The named plaintiff is Barbara King, the administrator of Halpem's estate.)

''What this case says is that if you put our standards and somebody uses them, then you can be hauled into court and made to show you used due care in producing them,'' complains David Karmol, general counsel and chief lobbyist of the Alexandria, Va.-based Spa and Pool Institute.

''We did use due process. We got comments from outsiders, from the Consumer Product Safety Commission,'' says Karmol, adding that his group has been disseminating pool standards for 40 years. ''The point is, we did all the right things. But if you have to prove that in court that you did all the right things, you've already lost. We spent half a million dollars winning. I don't know how many associations can afford to win many half-million dollar cases on a regular basis.''

No shortage of groups have been called upon to try.

According to Gerard Jacobs, a co-managing partner in the D.C. office of Chicago's Jenner & Block, trade associations are increasingly being hauled into court as defendants. ''I can tell you that Jenner & Block has a dozen such cases,'' says Jacobs. ''Higher than it's ever been.''

Adds James Clarke, chief lobbyist at the American Society of Association Executives, which is actively supporting Bono's legislation: ''Groups are more and more fearful that litigation will tie them up like pretzels.''

BACK PAIN

Among the hardest hit have been four trade associations that deal with spinal surgery—and are implicated in hundreds of tort claims against the so-called ''pedicle screw,'' an orthopedic device officially approved by the Food and Drug Administration only for use in arm and leg bone operations, though it is widely used in the pedicles of the vertebrae during back surgery as well.

According to hundreds of suits filed in recent years, the Illinois-based North American Spine Society allegedly conspired with pedicle screw manufacturers to help them illegally promote their products for uses not approved by the FDA.

''Because we accepted money from exhibitors for exhibit space, charged them with a registration fee, and got some research funding from them—and then turned around and let certain doctors whom [trial lawyers] call product promotors give talks at our annual meeting . . . we allegedly defrauded our own members into thinking these things were safe,'' complains Eric Muehlbauer, executive director of the Spine Society.

''That's ludicrous,'' he argues. ''Why would we defraud our own members? We were a forum provider, that's all.''

Muehlbauer says more than 500 individuals have sued the trade group for promoting the use of an ''unreasonably dangerous'' product. ''Plaintiffs attorneys are giving each other seminars on how to promote these lawsuits,'' he says, adding that complaints have also been filed against the American Academy of Orthopedic Surgeons, the American Association of Neurological Surgeons, and the Scoliosis Research Society.

But, counters plaintiffs attorney Arnold Levin, by accepting money from pedicle screw vendors, the Spine Society becomes a legitimate defendant. ''By hosting the manufacturers, by giving comfort to them, aiding and assisting them, they became part of the selling arm, they became part of the manufacturer,'' says Levin, a partner in Philadelphia's Levin, Fishbein, Sedran & Berman, which is litigating the issue.

''And they were trading in a product that hadn't been approved for that use by the FDA,'' he adds.

STANDARD PROCEDURE

Down in Alabama, which has a reputation as one of the most favorable places in America for the plaintiffs' bar, trial lawyer Richard Cunningham of Mobile's Cunningham, Bounds, Yance, Crowder & Brown says trade associations are not always the neutral, consumer-friendly forces they often claim to be.

Earlier this month, Cunningham won a potentially multibillion dollar class action in a Mobile County, Ala., circuit court against the Masonite Corp. for installing faculty hard-board siding in more than four million homes. He says many trade associations are not at all interested in consumers, and have nothing more than their members' interests at heart.

''The real problem is when you have a trade association controlled by an industry and they intentionally promulgate minimal standards which do not impose any burden on the industry and do not create a safe product,'' he says.

''The state of the art standard for the industry could be much higher than the minimal standards set, but it will cost them much more money to meet that higher standard,'' Cunningham continues.''But the industry can use the minimal standards to say, 'We were not negligent, we met the existing standard of care.' In fact, there may have been a collusive effort between industry on the whole and the trade association to establish ineffective standards.''

That wasn't necessarily the case in the Masonite decision, which includes a minimum of $47.5 million in legal fees for the dozen or so law firms that took part in the class action. But during the course of litigation, a subpoena was issued to the Palatine, Ill.-based American Hardboard Association for information about the testing of certain hardboard products.

''It is the practice of trial lawyers to go fishing at trade association folks to see if there's anything negative in the files, or whether the association ever warned about this or that happening,'' says Karmol of the Spa and Pool Institute, making the case for a legislative remedy.

''There's an argument to be made that if associations are to advance the public interest, and allow members to talk about things to avoid similar situations in the future, there ought to be some kind of protection.''

In fact, Karmol concedes, the number of times the institute has been named in a lawsuit has not increased over time. ''But I attribute that to our aggressive defense. Most trial lawyers are looking for defendants who will role over and kick in $100,000 to a settlement,'' he says.

While it appears that nothing short of legislation will stop associations from being drawn into court, those who have represented such groups in these cases say there are ways to avoid worsening their plight once there, including maintaining a judicious level of discretion.

If you don't want the court to construe that you have a duty to the public, and hence can be targeted in a lawsuit, don't brag to them about the information you disseminate, says Jacobs, the Jenner & Block partner. And make sure your standards are more than sufficient.

''Do your due diligence,'' counsels Jacobs. ''and don't crow to consumers about the value of your program if it is designed to assist members. It's much more difficult [to defend yourself] when you make pronouncements at large.''

Meanwhile, while the Bono legislation will undoubtedly face stiff opposition in Congress—the trial lawyers remains a formidable foe—supporters are cheered that at least the issue is now getting some attention.

''It's in its infancy,'' acknowledges the ASAE's Clarke, referring to the proposed legislation. ''But there will be lots of work and lots of efforts in this area. We don't want it to be seen as open season on associations.''

By Mr. DURBIN:

S. 1136. A bill to amend the Employee Retirement Income Security Act of 1974 to provide that the State preemption rules shall not apply to certain actions under State law to protect health insurance policyholders; to the Committee on Labor and Human Resources.

THE EMPLOYEE HEALTH INSURANCE ACCOUNTABILITY ACT

Mr. DURBIN. Mr. President, I rise today to introduce the Employee Health Insurance Accountability Act of 1997. This measure will hold employer-sponsored health maintenance organizations accountable for patient injuries that result from their decisions regarding a patient's medical care.

Due to a loophole in the Employer Retirement Income Security Act of 1974 [ERISA], employer-sponsored health plans can escape responsibility for the effect their treatment decisions have on their patients' health. Many courts have held that ERISA preempts State lawsuits against the entities that provide employee benefits and retirement plans. This includes medical malpractice suits against an employer-sponsored HMO.

There are two primary victims under the current system. The first victims are the patients who are injured, because they are wrongfully denied treatment services by their employer-sponsored HMO's. Let me tell you just one story:

Due to her history of high-risk pregnancies, Ms. Florence Corcoran's physician determined that she should be hospitalized during the waning weeks of her pregnancy. Her employer-sponsored HMO disagreed and only authorized 10 hours a day of home nursing care. While the nurse was off-duty, Ms. Corcoran's unborn child suffered distress and died. Ms. Corcoran sued her employer-sponsored HMO, but the court held that ERISA preempted her claim. Ms. Corcoran, therefore, will never obtain proper redress for the death of her unborn child and her HMO will never be held accountable. She can only sue her doctor—not her employer-sponsored HMO—even though her doctor was not at fault.

Ms. Corcoran and others like her cannot bring suit in State court where they should rightfully receive redress for their losses. Instead, they are forced to sue in Federal court where they can only receive the cost of the medical benefit they were denied. In

short, Ms. Corcoran's unborn child died needlessly, and the only penalty to the HMO is the few hundred dollars it would have cost to properly hospitalize her.

As Newsweek observed, if ''there's no financial penalty when [employer-sponsored] health plans are negligent, what's to stop these profit-driven creatures from delivering inadequate medical care?''

The other victims of the current system are the doctors who end up in court and are left holding the bag for the actions of the employer-sponsored HMO's. To quote the Chicage Tribune, ''[HMOs], which care for more than 60 million people, are telling courts across the country that they cannot be held responsible for medical malpractice in cases involving patients who receive care through an employer-sponsored health plan* * *. HMOs are shifting virtually all of the risk of patient care to physicians, even though the HMO's can force doctors to change their clinical decisions.''

Again, let me demonstrate with a real life example:

Mr. Basile Pappas was suffering from numbness in his arms and was unable to walk, so he sought treatment at a local community hospital at 11 a.m. The emergency room doctor on staff made a difficult diagnosis and determined that Mr. Pappas had a cervical epidural abscess, a condition that was compressing his spinal cord. The emergency room doctor correctly concluded that unless Mr. Papas was treated immediately by a spinal cord trauma unit he could suffer severe paralysis.

At 12:30 p.m. the emergency room doctor made arrangements to transfer Mr. Pappas to a local university hospital, the only hospital in the area with such a trauma unit. Mr. Pappas' employer-sponsored HMO, however, would not allow Mr. Pappas to be transferred to the university hospital because it was not part of his service plan. Even after the emergency room doctor explained to the employer-sponsored HMO the urgency of the situation, the HMO refused. Indeed, the employer-sponsored HMO's physician who denied the treatment request refused to even speak to the emergency room doctor.

The emergency room doctor expeditiously made other arrangements to transfer Mr. Pappas to a hospital with the appropriate facilities that could admit Mr. Pappas. Nonetheless, Mr. Pappas was not treated until 3:30 p.m. and now suffers from permanent quadripliegia resulting from compression of his spine by the abscess. A court determined that the employer-sponsored HMO was immune from liability due to ERISA, but the hospital and Mr. Pappas' physicians were left paying for Mr. Pappas' injuries although they had little to no culpability.

Congress clearly never intended ERISA to remove all consumer protection nor for it to be used as a tool by employer-sponsored HMO's to shirk their responsibilities. My bill, therefore, amends section 514(b) of ERISA to clarify that State medical malpractice suits against an employer-sponsored HMO are not preempted by Federal law.

The Employee Health Insurance Accountability Act resolves the current problem by doing three things:

First, the measure holds employer-sponsored health insurance plans accountable for the consequences of their treatment rules and coverage determinations. This will increase patient protection, and create a powerful incentive for employer-sponsored HMO's to provide necessity care.

Second, the measure provides patients with legal redress when their employer-sponsored HMO's treatment rules and coverage determinations cause them harm. Victims like Ms. Corcoran will no longer be left without the opportunity to seek just reparations for their injuries. And

Finally, the measure reduces the likelihood that doctors will be sued for coverage determinations beyond their control. They will no longer face lawsuits simply because injured patients cannot properly hold their employer-sponsored HMO accountable.

Thank you Mr. President for the opportunity to introduce this important initiative. I hope my colleagues will join with me and support the Employee Health Insurance Accountability Act in order to ensure that employer-sponsored HMO's can no longer escape liability for their actions.

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

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

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 ''Employee Health Insurance Accountability Act of 1997''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) employer-sponsored health insurers' treatment rules and coverage determinations affect patients' receipts of health care by restricting the health services that are available to patients;

(2) physicians' behavior is affected by employer-sponsored health insurers' treatment and coverage determinations;

(3) medical malpractice is almost exclusively within the jurisdiction of the States;

(4) section 514(a) of the Employer Retirement Income Security Act of 1974 (29 U.S.C. 1144(a) (''ERISA'')) generally preempts State lawsuits against the entities that provide employee benefits and retirement plans while allowing lawsuits against physicians;

(5) there is a split among the United States Courts of Appeals on whether ERISA preempts medical malpractice suits against employer-sponsored health insurers;

(6) in the jurisdictions in which the Courts of Appeals have held that ERISA preempts medical malpractice suits against employer-sponsored health insurers, patients who may have been injured due to their employer-sponsored health insurers' treatment and coverage determinations have been left without a right of action under which to bring a lawsuit to seek just redress for their injuries; and

(7) it is, therefore, necessary to amend ERISA to clarify that State medical malpractice suits against an employer-sponsored health insurer are not preempted.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To restore accountability to employer-sponsored health insurers for the impact of their treatment rules and coverage determinations on patients' health.

(2) To increase patient protection from adverse effects on their health due to their employer-sponsored health insurers' treatment rules and coverage determinations.

(3) To provide patients with legal redress when their employer-sponsored health insurers' treatment rules and coverage determinations cause them harm.

(4) To provide more equitable assignment of liability among health care decision-makers so that plaintiffs are not forced to attempt to hold physicians liable for the treatment rules and coverage determinations of employer-sponsored health insurers.

SEC. 3. ERISA PREEMPTION NOT TO APPLY TO CERTAIN ACTIONS INVOLVING HEALTH INSURANCE POLICYHOLDERS.

(a) IN GENERAL.—Section 514(b) of the Employee Retirement Income Savings Act of 1974 (29 U.S.C. 1144(b)) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following paragraph:

''(9) Subsection (a) shall not be construed to preempt any cause of action under State law to recover damages for medical malpractice, personal injury, or wrongful death against any entity that arises out of the provision by such entity of insurance or administrative services to or for an employee welfare benefit plan maintained to provide health care benefits.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to causes of action arising on or after the date of enactment of this Act.

By Mr. DURBIN:

S. 1137. A bill to amend section 258 of the Communications Act of 1934 to establish additional protections against the unauthorized change of subscribers from one telecommunications carrier to another; to the Committee on Commerce, Science, and Transportation.

THE SLAMMING PROTECTION ACT

Mr. DURBIN. Mr. President, I rise today to introduce the Slamming Protection Act of 1997. This measure enables long-distance telephone consumers and the States to strike back against ''slamming,'' the practice of changing a telephone customer's long-distance carrier without the customer's knowledge or consent.

Slamming is the Federal Communications Commission's largest source of consumer complaints. In 1995, more than a third of the consumer complaints filed with the FCC's Common Carrier Bureau involved slamming. Last year 16,000 long-distance telephone consumers filed slamming complaints with the FCC. Since 1994, the number of slamming complaints has tripled. Yet, this is only the tip of the iceberg. Moreover, the Los Angeles Times reports that more than 1 million

American telephone consumers have been slammed in the last 2 years.

Slamming is not merely an inconvenience or a nuisance. It is an act of fraud that costs long-distance telephone consumers millions of dollars a year.

Let me give you an example. This January, Ms. Geryl Kramer, a small business owner in Chicago, was surprised to open her phone bill and find it noticeably more expensive than usual. After numerous phone calls she discovered that without her knowledge or consent, her long-distance carrier had been changed—she had been slammed. Her long-distance telephone service became a ping-pong ball bounced among various long-distance carriers for their profit and at her expense.

Ms. Kramer spent countless hours attempting to resolve the situation, going back and forth between four different long-distance carriers who were involved in the slamming which had quadrupled her small business' long-distance bills. Although she was slammed in November last year, she still has not been able to track down how she was slammed or who was responsible.

Ms. Kramer was understandably upset and frustrated. Beyond being exasperated by the audacity of the slammer, Ms. Kramer was left feeling powerless by her inability to hold the slammer accountable for its fraudulent actions. Having explored every other avenue, Ms. Kramer came to me seeking a solution to the problem of slamming. I believe the Slamming Protection Act is that solution.

The current protections against slamming are simply inadequate. Although long-distance telephone consumers can currently bring an action in Federal court or file a complaint with the FCC, these measures have been largely ineffective in reducing slamming. The economic damages suffered by consumers are often relatively insignificant—it would cost more to sue for recovery than the consumer would ever recover in court.

Moreover, if a long-distance telephone consumer files an FCC slamming complaint, the only redress is to be excused from paying the additional cost of the long-distance bill, if the bill is more expensive than it would have been under the original long-distance carrier. Thus, the consumer who is slammed must take the time and effort to file the complaint and participate in the investigation. Yet, when all is said and done, all the consumer can get after being defrauded is to be excused from paying the additional costs. Not surprisingly, slammers are undeterred by this system. And, it turns out, they have little to fear from broader FCC investigations.

The FCC does have administrative enforcement procedures against slamming. Although the FCC's efforts are a step in the right direction, they are too slow moving and seldom result in more than a slap on the wrist. Last year the FCC processed roughly 13,000 slamming complaints. This is only a fraction of the number of slamming incidents. And only rarely do the FCC's efforts result in changes in industry practice.

Since the FCC began investigating slamming in 1994, it has only moved against seven long-distance carriers and has only entered into consent decrees with eight long-distance carriers accused of slamming. Moreover, any fine or settlement agreement achieved by the FCC is paid to the U.S. Treasury, not the long-distance telephone consumer who was slammed—not to the party who was harmed.

Mr. President, we need tougher laws on the books. Long-distance telephone consumers should be able to stand up for themselves and fight back against slammers to let them know that their actions will not pay.

The Slamming Protection Act will help stamp out slamming by providing individual long-distance telephone consumers with the right and the power to strike back against individual slammers and by establishing penalties that will make slamming too risky and too expensive for the practice to remain profitable.

This measure will help end slamming in three ways:

First, it creates a right of action for long-distance telephone consumers to sue the slammer in State or Federal court. The Slamming Protection Act establishes minimum statutory damages of $2,000—or $6,000 if the slamming was done willfully and knowingly. These substantial penalties are designed to have a significant deterrent effect and to be large enough to encourage consumers to bring such actions;

Second, the Slamming Protection Act provides State attorneys general with the right to bring suit against slammers on behalf of the citizens of their States. Currently, in some jurisdictions the States are virtually helpless in their fight against interstate slammers. There is no existing Federal right of action to allow the States to hold slammers accountable. And a number of courts have held that similar State laws are preempted by Federal law. Some States, therefore, are left without recourse to prevent their citizens from being injured by slammers; and

Finally, the Slamming Protection Act creates criminal fines and jail time for repeat and willful slammers. Slamming takes choices away from consumers without their knowledge and distorts the long distance competitive market by rewarding companies that engage in misleading marketing practices. The Slamming Protection Act's criminal penalties will guarantee that slammers can no longer act with impunity.

Thank you Mr. President for the opportunity to introduce this important initiative. I hope my colleagues will join with me and support The Slamming Protection Act in order to help long-distance telephone consumers and the States to fight back against deceptive and fraudulent slammers.

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

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

S. 1137

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 ''Slamming Protection Act''.

SEC. 2. ADDITIONAL PROTECTIONS AGAINST UNAUTHORIZED CHANGES OF PROVIDERS OF TELEPHONE SERVICE.

Section 258 of the Communications Act of 1984 (47 U.S.C. 258) is amended by adding at the end the following:

''(c) CRIMINAL PENALTIES.—

''(1) PERSONS.—Any person who executes a change in a provider of telephone exchange service or telephone toll service in willful violation of the procedures prescribed under subsection (a)—

''(A) shall be fined not more than $1,000, imprisoned not more than 30 days, or both, for the first offense; and

''(B) shall be fined not more than $10,000, imprisoned not more than 9 months, or both, for any subsequent offense.

''(2) TELECOMMUNICATIONS CARRIERS.—Any telecommunications carrier who executes a change in a provider of telephone exchange service or telephone toll service in willful violation of the procedures prescribed under subsection (a) shall be fined not more than $50,000 for the first offense and shall be fined not more than $100,000 for any subsequent offense.

''(d) PRIVATE RIGHT OF ACTION.—

''(1) IN GENERAL.—A subscriber whose provider of telephone exchange service or telephone toll service is changed in violation of the procedures prescribed under subsection (a) may, within one year after discovery of the change, bring in an appropriate court an action—

''(A) for an order to revoke the change;

''(B) for an award of damages in an amount equal to the greater of—

''(i) the actual monetary loss resulting from the change; or

''(ii) an amount not to exceed $2,000; or

''(C) for relief under both subparagraphs (A) and (B).

''(2) INCREASED AWARD.—If the court finds that the defendant executed the change in willful and knowing violation of the procedures prescribed under subsection (a), the court may, in its discretion, increase the amount of the award under paragraph (1) to an amount equal to not more than three times the maximum amount awardable under subparagraph (B) of that paragraph.

''(e) ACTIONS BY STATES.—

''(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of unauthorized changes in providers of telephone exchange service or telephone toll service of residents in such State in violation of the procedures prescribed under subsection (a), the State may bring a civil action on behalf of its residents to enjoin such practices, to recover damages equal to the actual monetary loss suffered by such residents, or both. If the court finds the defendant executed such changes in willful and knowing violation of such procedures, the court may, in its discretion, increase the amount of the award

to an amount equal to not more than three times the amount awardable under the preceding sentence.

''(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to award declaratory relief, or orders affording like relief, commanding the defendant to comply with the procedures prescribed under subsection (a). Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

''(3) NOTICE TO COMMISSION.—A State shall serve prior written notice of any civil action under this subsection upon the Commission with a copy of its complaint, except in any case where prior notice is not feasible, in which case the State shall serve such notice immediately after instituting such action.

''(4) RIGHTS OF COMMISSION.—Upon receiving notice of an action under this subsection, the Commission shall have the right—

''(A) to intervene in the action;

''(B) upon so intervening, to be heard on all such matters arising therein; and

''(C) to file petitions for appeal.

''(5) VENUE; SERVICE OF PROCESS.—Any civil action under this subsection may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

''(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

''(f) CLASS ACTIONS.—For any class action brought with respect to the violation of the procedures prescribed under subsection (a), the total damages awarded may not exceed an amount equal to three times the total actual damages suffered by the members of the class, irrespective of the minimum damages provided for in subsection (d).

''(g) NO PREEMPTION OF STATE LAW.—Nothing in this section shall preempt the availability of relief under State law for unauthorized changes of providers of intrastate telephone exchange service or telephone toll service.''.

By Mr. HELMS (for himself, Mr. BROWNBACK, Mr. BURNS, Mr. HAGEL, and Mr. ROBERTS):

S. 1138. A bill to reform the coastwise, intercoastal, and noncontiguous trade shipping laws, and for other purposes, to the Committee on Commerce, Science, and Transportation.

THE FREEDOM TO SHIP ACT OF 1997

Mr. HELMS. Mr. President, since 1920 there has been a Federal law on the books that, while perhaps well intentioned, nonetheless forbids a vast segment of the farming community in North Carolina and other States from obtaining reasonably-priced grain from the Midwest. It has long prevented Midwestern grain producers from delivering much needed grain to grain deficit states which experience difficulty in feeding their livestock.

That is why I am today introducing S. 1138 which I have titled ''The Freedom To Ship Act of 1997.'' I am pleased to have Senator BROWNBACK, Senator BURNS, Senator HAGEL, and Senator ROBERTS as original cosponsors.

Mr. President, the Jones Act, as it is commonly called, prevents a large sector of the Agricultural community in North Carolina from obtaining grain from the Midwest at reasonable prices. Furthermore, it is preventing grain suppliers in the Midwest from supplying grain deficit states, such as North Carolina, with grain needed for their livestock.

Under the present system, a few waterborne carriers have a monopoly on shipping, and my folks in North Carolina tell me that those shippers have no certified Jones Act ships to meet their demands.

My poultry and pork farmers tell me they can't get enough grain for their farms to feed their animals. My State cannot, and will never be able, to produce enough grain for the poultry and pork producers in North Carolina; so, as a result, they must, I repeat, they must have grain shipped in from the Midwest. They tell me the railroads can't guarantee enough rail cars to get the supplies of grain needed from the Midwest. And the costs of these shipments that are available are very high. The increase in transportation costs coupled with the price of grain leads to higher overhead for my farmers. This shortage of grains and shortage of trains means higher costs and higher prices which threatens the jobs of many farmers.

According to the 1996 North Carolina Department of Agriculture report, North Carolina was first in the nation in turkey production with 59.5 million heads; our State was number two in hog production, exceeded by Iowa, at 9.8 million heads; and in commercial broilers North Carolina was fourth with 681 million heads, exceeded by Arkansas, Georgia, and Alabama.

While we slightly dropped off in turkey production in 1996, we increased hog production by 1.5 million head and increased commercial broiler production by 37 million heads over the last statistical reporting period. That is a tremendous number of poultry and livestock to feed, and that's just the tip of the iceberg.

Dependence on one mode of transportation, the railroads, is not good. In times of severe weather, such as heavy snows in Winter and flooding from heavy rains, many times railroads can't get through mountain passes or flooded areas of the country. We've seen quite a few severe winters and floods in the past few years. Even a delay of one day can be critical to farmers.

Mr. President, the problem is that the Jones Act restricts shipping between ports in the United States. It requires that merchandise being transported by water between U.S. points be shipped on U.S.-built, U.S.-flagged, U.S.-manned, and U.S.-citizen owned vessels that are documented by the Coast Guard for such carriage. The problem is that there are not enough Jones Act certified vessels to transport grain to North Carolina farmers. As a matter of fact, my farmers are now faced with being forced to go to foreign sources of feed grain.

According to a report in the September 12, 1995, Journal of Commerce, Murphy Family Farms brought in a cargo of 1 million bushels of Canadian wheat to the port of Wilmington, North Carolina on Canada Steamship Lines.

Mr. President, the Jones Act is not fair to grain producers in the Midwest. It penalizes them for being American farmers.

Those that would protest this legislation would say that it would destroy American shipping. If we maintain the status quo, my farmers will have no choice but to buy foreign grain from countries like Canada and Argentina and it will be transported on non U.S. flagged vessels.

Mr. President, this legislation requires any non-U.S. flag shipping company that wishes to do regularly scheduled business in the coastwise trades to: set up a United States Corporation, use U.S. Labor, comply with all state and federal law and—for those of us who are worried about the budget deficit—pay state and Federal Taxes. More importantly, it would create more long shore jobs. The more ships you have in the trade the more you have to load and unload, hence you need more workers.

According to a report, issued in December of 1995, by the United States International Trade Commission, ''The economy wide effect of removing the Jones Act is a U.S. economic welfare gain of approximately $2.8 billion. This figure can also be interpreted as the annual reduction in real national income imposed by the Jones Act. A primary reason for the large gain in welfare is a decline of approximately 26 percent in the price of shipping services formerly restricted by the Jones Act.''

It is strange circumstance where we are the breadbasket of the world and there is a lid on the basket of the domestic market placed by the Jones Act.

Mr. President, the Jones Act placing restrictions on shipments of a whole host of other non-agricultural goods and commodities, such as coal, fuel oil, steel, kaolin clay, in the United States. Our legislation would help lower shipping costs for many other industries as well.

So I urge my colleagues to join us in correcting this inequity to allow American grain to be shipped unhindered to those grain deficit states that are in need of it; and all other non-agricultural commodities and goods to be shipped by water at reasonable costs where they are needed.

I urge my colleagues to support this legislation and ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 1138

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 ''Freedom to Ship Act of 1997''.

SEC. 2. MISCELLANEOUS AMENDMENTS TO DEFINITIONS IN TITLE 46, UNITED STATES CODE.

Section 2101 of title 46, United States Code, is amended—

(1) in each of paragraphs (1) through (45), by striking the period at the end and inserting a semicolon;

(2) in paragraph (46), by striking the period at the end and inserting ''; and'';

(3) by striking paragraph (3a) and inserting the following:

''(3a) 'citizen of the United States' means—

''(A)(i) a national of the United States, as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(ii) a corporation established under the laws of the United States or under the laws of a State, territory, district, or possession of the United States, that has—

''(I) a president or other chief executive officer and chairman of the board of directors of that corporation who are citizens of the United States; and

''(II) a board of directors, on which two-thirds of the number of directors necessary to constitute a quorum are citizens of the United States;

''(iii) a partnership existing under the laws of a State, territory, district, or possession of the United States that has at least two-thirds of the general partners who are citizens of the United States;

''(iv) a trust that has at least two-thirds of the trustees who are citizens of the United States; or

''(v) an association, joint venture, limited liability company or partnership, or other entity that has at least two-thirds of the members who are citizens of the United States; but

''(B) such term does not include—

''(i) with respect to a person or entity under clause (ii), (iii), or (v) of subparagraph (A), any parent corporation, partnership, or other person (other than an individual) or entity that is a second-tier owner (as that term is defined by the Secretary) of the person or entity involved; or

''(ii) with respect to a trust under clause (iv), any beneficiary of the trust.'';

(4) by inserting after paragraph (4) the following new paragraph:

''(4a) 'coastwise trade'—

''(A) subject to subparagraph (B), means the transportation by water of merchandise or passengers, the towing of a vessel by a towing vessel, or dredging operations embraced within the coastwise laws of the United States—

''(i) between points in the United States (including any district, territory, or possession of the United States);

''(ii) on the Great Lakes (including any tributary or connecting waters of the Great Lakes and the Saint Lawrence Seaway);

''(iii) on the subjacent waters of the Outer Continental Shelf subject to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

''(iv) in the noncontiguous trade; and

''(B) does not include the activities specified in subparagraph (A) on the navigable waters included in the inland waterways trade except for activities specified in subparagraph (A) that occur on mixed waters.'';

(5) by inserting after paragraph (11c) the following new paragraph:

''(11d) 'foreign qualified vessel' means a vessel—

''(A) registered in a foreign country; and

''(B) the owner, operator, or charterer of which is a citizen of the United States or—

''(i) has qualified to engage in business in a State and has an agent in that State upon whom service of process may be made;

''(ii) is subject to the laws of the United States in the same manner as any foreign person doing business in the United States; and

''(iii) either—

''(I) employs vessels in the coastwise trade regularly or from time to time as part of a regularly scheduled freight service in the foreign ocean (including the Great Lakes) trades of the United States; or

''(II) offers passage or cruises on passenger vessels the owner, operator, or charterer employs in the coastwise trade or in the coastwise trade as part of those cruises offered in the foreign ocean (including the Great Lakes) trades of the United States.'';

(6) by redesignating paragraph (14a) as paragraph (14b);

(7) by inserting after paragraph (14) the following new paragraph:

''(14a) 'inland waterways trade'—

''(A) means—

''(i) the transportation of merchandise or passengers on the navigable rivers, canals, lakes other than the Great Lakes, or other waterways inside the Boundary Line;

''(ii) the towing of barges by towing vessels in the waters specified in clause (i); or

''(iii) engaging in dredging operations in the waters specified in clause (i); and

''(B) includes any activity specified in subparagraph (A) that is conducted in mixed waters.'';

(8) by redesignating paragraph (15a) as paragraph (15b);

(9) by inserting after paragraph (15) the following:

''(15a) 'mixed waters' means—

''(A) the harbors and ports on the coasts and Great Lakes of the United States; and

''(B) the rivers, canals, and other waterways tributary to the Great Lakes or to the coastal harbors and coasts of the United States inside the Boundary Line,

that the Secretary of Transportation determines to be navigable by oceangoing vessels.'';

(10) by redesignating paragraph (17a) as paragraph (17b);

(11) by inserting after paragraph (17) the following:

''(17a) 'noncontiguous trade' means transportation by water of merchandise or passengers, or towing by towing vessels—

''(A) between—

''(i) a point in the 48 continental States and the District of Columbia; and

''(ii) a point in Hawaii, Alaska, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, or any other noncontiguous territory or possession of the United States, as embraced within the coastwise laws of the United States; or

''(B) between 2 points described in subparagraph (A)(ii).'';

(12) in paragraph (21)(A)—

(A) in clause (ii), by striking ''or'' after the semicolon;

(B) in clause (iii), by inserting ''or'' after the semicolon; and

(C) by adding at the end the following new clause:

''(iv) an individual who—

''(I) is a member of the family or a guest of the owner or charterer; and

''(II) is not a passenger for hire;'';

(13) by striking paragraph (40) and inserting the following:

''(40) 'towing vessel' means any commercial vessel engaged in, or that a person intends to use to engage in, the service of—

''(A) towing, pulling, pushing, or hauling alongside (or any combination thereof); or

''(B) assisting in towing, pulling, pushing, or hauling alongside;''; and

(14) by inserting after paragraph (40) the following new paragraphs:

''(40a) 'towing of a vessel by a towing vessel between points' means attaching a towing vessel to a towed vessel (including any barge) at 1 point and releasing the towed vessel from the towing vessel at another point, regardless of the origin or ultimate destination of either the towed vessel or the towing vessel; and

''(40b) 'transportation of merchandise or passengers by water between points' means, without regard to the origin or ultimate destination of the merchandise or passengers involved—

''(A) in the case of merchandise, loading merchandise at 1 point and permanently unloading the merchandise at another point; or

''(B) in the case of passengers, embarking passengers at 1 point and permanently disembarking the passengers at another point.''.

SEC. 3. DOCUMENTATION.

(a) DEFINITIONS.—Section 12101(b)(2) of title 46, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) 'license', 'enrollment and license', 'license for the coastwise (or coasting) trade', 'enrollment and license for the coastwise (or coasting) trade', and 'enrollment and license to engage in the foreign and coastwise (or coasting) trade on the northern, northeastern, and northwestern frontiers, otherwise than by sea' mean a coastwise endorsement provided in section 12106.'';

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(b) VESSELS ELIGIBLE FOR DOCUMENTATION.—Section 12102(a) of title 46, United States Code, is amended—

(1) by striking all that precedes paragraph (5) and inserting the following:

''(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country or that is not titled in a State is eligible for documentation if—

''(1)(A) the vessel is owned by an individual who is a citizen of the United States, or a corporation, association, trust, joint venture, partnership, limited liability company, or other entity that is a citizen of the United States; and

''(B) the owner of the vessel is capable of holding title to a vessel under the laws of the United States or under the laws of a State;''; and

(2) by redesignating paragraphs (5) and (6) as paragraphs (2) and (3), respectively.

(c) COASTWISE ENDORSEMENTS.—Section 12106 of title 46, United States Code, is amended to read as follows:

''§ 12106. Coastwise endorsements and certificates

''(a) IN GENERAL.—A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that is eligible for documentation.

''(b) ELIGIBILITY.—

''(1) IN GENERAL.—Any of the following vessels may be issued a certificate to engage in the coastwise trade if the Secretary of Transportation makes a finding, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry of such vessel extends reciprocal privileges to vessels of the United States to engage in the transportation of merchandise or passengers (or both) in its coastwise trade:

''(A) A foreign qualified vessel (as defined in section 2101(11d)).

''(B) A vessel of foreign registry—

''(i) if the vessel is subject to a demise or bareboat charter, for the duration of that charter, to a person or entity that would be eligible to document that vessel if that person or entity were the owner of the vessel; or

''(ii) that engages irregularly in the coastwise trade of the United States.

''(2) VESSEL ENGAGING IRREGULARLY IN THE COASTWISE TRADE.—For purposes of this subsection, a vessel engages irregularly in the coastwise trade of the United States if that vessel—

''(A) during any 60-day period does not make, in the aggregate, more than 4 calls to United States ports; and

''(B) during any calendar year does not make, in the aggregate, more than 6 calls to United States ports.

''(c) EMPLOYMENT IN THE COASTWISE TRADE.—Subject to the applicable laws of the United States regulating the coastwise trade and trade with Canada, only a vessel with a certificate of documentation endorsed with a coastwise endorsement or with a certificate issued under subsection (b) may be employed in the coastwise trade.''.

(d) INLAND WATERWAYS ENDORSEMENTS.—Section 12107 of title 46, United States Code, is amended to read as follows:

''§ 12107. Inland waterways endorsements

''A certificate of documentation may be endorsed with an inland waterways endorsement for a vessel that—

''(1) is eligible for documentation; and

''(2)(A) was built in the United States; or

''(B) was not built in the United States; but was—

''(i) captured in war by citizens of the United States and lawfully condemned as prize;

''(ii) adjudged to be forfeited for a breach of the laws of the United States; or

''(iii) is qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14).''.

(e) LIMITATIONS ON OPERATIONS AUTHORIZED BY CERTIFICATES.—Section 12110(b) of title 46, United States Code, is amended—

(1) by striking ''coastwise trade'' and inserting ''coastwise trade or inland waterways trade''; and

(2) by striking ''that trade'' and inserting ''those trades''.

SEC. 4. TRANSPORTATION OF MERCHANDISE IN THE COASTWISE AND INLAND WATERWAYS TRADES.

(a) IN GENERAL.—Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883) is amended to read as follows:

''SEC. 27. PROHIBITION.

''No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of title 46, United States Code), or a political subdivision of a State, and including material without value, shall be transported by water, on penalty of forfeiture of the merchandise (or a monetary amount not to exceed the value of the merchandise, as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any cosigner, seller, owner, importer, consignee, agent, or other person that transports or causes the merchandise to be transported by water)—

''(1) in the coastwise trade, in any vessel other than—

''(A) a vessel documented with a coastwise endorsement under section 12106(a) of title 46, United States Code; or

''(B) a vessel that has been issued coastwise certification under section 12106(b) of title 46, United States Code, that is in effect for engaging in the transportation of merchandise; or

''(2) in the inland waterways trade in any vessel other than a vessel documented with an inland waterways endorsement under section 12107 of title 46, United States Code.''.

(b) REPEAL.—Section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1) is repealed.

SEC. 5. TRANSPORTATION OF PASSENGERS.

(a) IN GENERAL.—Section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289) is amended to read as follows:

''SEC. 8. PROHIBITION.

''No passengers shall be transported by water, on penalty of $200 for each passenger so transported or the actual cost of the transportation, whichever is greater, to be recovered from the vessel so transporting the passenger—

''(1) in the coastwise trade, in any vessel other than—

''(A) a vessel documented with a coastwise endorsement under section 12106 of title 46, United States Code; or

''(B) a vessel that has been issued a coastwise certification under section 12106(b) of title 46, United States Code, that is in effect for engaging in the transportation of merchandise; and

''(2) in the inland waterways trade, in any vessel other than a vessel documented with an inland waterways endorsement under section 12107 of title 46, United States Code.''.

(b) REPEALS.—The following provisions are repealed:

(1) The Act of April 26, 1938 (52 Stat. 223, chapter 174; 46 U.S.C. App. 289a).

(2) Section 12(22) of the Maritime Act of 1981 (46 U.S.C. App. 289b).

(3) Public Law 98–563 (46 U.S.C. App. 289c).

SEC. 6. TOWING AND SALVAGING OPERATIONS.

Section 4370(a) of the Revised Statutes (46 U.S.C. App. 316(a)) is amended to read as follows:

''(a)(1) No vessel (including any barge), other than a vessel in distress, may be towed—

''(A) in the coastwise trade by any vessel other than—

''(i) a vessel documented with a coastwise endorsement under section 12106(a) of title 46, United States Code; or

''(ii) a vessel registered in a foreign country, if the Secretary of the Treasury finds, pursuant to information furnished by the Secretary of State, that the government of that foreign country and the government of the country of which each ultimate owner of the towing vessel is a citizen extend reciprocal privileges to vessels of the United States to tow vessels (including barges) in the coastal waters of that country; or

''(B) in the inland waterways trade by any vessel other than a vessel documented with an inland waterways endorsement under section 12107 of title 46, United States Code.

''(2)(A) The owner and master of any vessel that tows another vessel (including a barge) in violation of this section shall each be liable to the United States Government for a civil penalty in an amount not less than $250 and not greater than $1,000. The penalty shall be enforceable through the district court of the United States for any district in which the offending vessel is found.

''(B) A penalty specified in subparagraph (A) shall constitute a lien upon the offending vessel, and that vessel shall not be granted clearance until that penalty is paid.

''(C) In addition to the penalty specified in subparagraph (A), the offending vessel shall be liable to the United States Government for a civil penalty in an amount equal to $50 per ton of the measurement of the vessel towed in violation of this section, which shall be recoverable in a libel or other enforcement action conducted through the district court for the United States for the district in which the offending vessel is found.''.

SEC. 7. CITIZENSHIP AND TRANSFER PROVISIONS.

(a) CITIZENSHIP OF CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS.—Section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) is amended—

(1) in subsection (a)—

(A) by inserting a period after ''possession thereof''; and

(B) by striking all that follows the period inserted in subparagraph (A) through the end of the subsection; and

(2) by striking subsection (c).

(b) APPROVAL OF TRANSFER OF REGISTRY OR OPERATION UNDER AUTHORITY OF A FOREIGN COUNTRY OR FOR SCRAPPING IN A FOREIGN COUNTRY; PENALTIES.—Section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) Except as provided in section 611 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1181) and section 31322(a)(1)(D) of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

''(1) place under foreign registry—

''(A) a documented vessel; or

''(B) a vessel with respect to which the last documentation was made under the laws of the United States;

''(2) operate a vessel referred to in paragraph (1) under the authority of a foreign government; or

''(3) scrap or transfer for scrapping a vessel referred to in paragraph (1) in a foreign country.''; and

(2) by striking subsection (d) and inserting the following:

''(d)(1) A person that places a documented vessel under foreign registry, operates that vessel under the authority of a foreign country, or scraps or transfers for scrapping that vessel in a foreign country—

''(A) in violation of this section and knowing that that placement, operation, scrapping, or transfer for scrapping is a violation of this section shall, upon conviction, be fined under title 18, United States Code, imprisoned for not more than 5 years, or both; or

''(B) otherwise in violation of this section shall be liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

''(2) A documented vessel may be seized by, and forfeited to, the United States Government if that vessel is placed under foreign registry, operated under the authority of a foreign country, or scrapped or transferred for scrapping in a foreign country in violation of this section.''.

SEC. 8. LABOR PROVISIONS.

(a) LIABILITY FOR INJURY OR DEATH OF MASTER OR CREW MEMBER.—Section 20(a) of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. App. 688(a)), is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by adding at the end of paragraph (1) (as designated under paragraph (1) of this subsection) the following new sentence: ''In an action brought under this subsection against a defendant employer that does not reside or maintain an office in the United States (including any territory or possession of the United States) and that engages in any enterprise that makes use of 1 or more ports in the United States (as defined in section 2101 of title 46, United States Code), jurisdiction shall be under the district court most proximate to the place of the occurrence of the personal injury or death that is the subject of the action.''; and

(3) by adding at the end the following new paragraph:

''(2)(A) The employer of a master or member of the crew of a vessel—

''(i) may, at the election of the employer, participate in an authorized compensation plan under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.); and

''(ii) if the employer makes an election under clause (i), notwithstanding section 2(3)(G) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(G)), shall be subject to that Act.

''(B) If an employer makes an election, in accordance with subparagraph (A), to participate in an authorized compensation plan under the Longshore and Harbor Workers' Compensation Act—

''(i) a master or crew member employed by that employer shall be considered to be an employee for the purposes of that Act; and

''(ii) the liability of that employer under that Act to the master or crew member, or to any person otherwise entitled to recover damages from the employer based on the injury, disability, or death of the master or crew member, shall be exclusive and in lieu of all other liability.''.

(b) MINIMUM REQUIREMENTS.—All vessels, whether documented in the United States or not, operating in the coastwise trade of the United States shall be subject to minimum international labor standards for seafarers under international agreements in force for the United States, as determined by the Secretary of Transportation on the advice of the Secretaries of Labor and Defense.

SEC. 9. REGULATIONS REGARDING VESSELS.

(a) APPLICABLE MINIMUM REQUIREMENTS.—Except as provided in paragraph (2), the minimum requirements for vessels engaging in the transportation of cargo or merchandise in the United States coastwise trade shall be the recognized international standards in force for the United States (as determined by the Secretary of the department in which the Coast Guard is operating, in consultation with any other official of the Federal Government that the Secretary determines to be appropriate).

(b) CONSISTENCY IN APPLICATION OF STANDARDS.—In any case in which any minimum requirement for vessels referred to in paragraph (1) is inconsistent with a minimum that is applicable to vessels that are documented in a foreign country and that are admitted to engage in the transportation of cargo and merchandise in the United States coastwise trade, the standard applicable to United States documented vessels shall be deemed to be the standard applicable to vessels that are documented in a foreign country.

(c) MINIMUM REQUIREMENTS FOR VESSELS.—As used in this subsection, the term ''minimum requirements for vessels'' means, with respect to vessels (including United States documented vessels and foreign documented vessels), all safety, manning, inspection, construction, and equipment requirements applicable to those vessels in United States coastwise passenger trade, to the extent that those requirements are consistent with applicable international law and treaties to which the United States is a signatory.

SEC. 10. ENVIRONMENT.

All vessels, whether documented under the laws of the United States or not, regularly engaging in the United States coastwise trade shall comply with all applicable State and Federal environmental statutes.

SEC. 11. GENERAL REQUIREMENTS.

Each person or entity that is not a citizen of the United States, as defined in section 2101(3a) of title 46, United States Code, that owns or operates vessels that regularly engage in the United States domestic coastwise trade shall—

(1) establish a corporation or other corporate entity and qualify under the laws of that State where the corporation or corporate entity is established to do business in the United States;

(2) name an officer of the corporation or corporate entity upon whom process may be served;

(3) abide by all applicable laws of the United States and the State where the corporation or corporate entity is established; and

(4) post evidence of—

(A) financial responsibility in amounts as considered necessary by the Secretary of Transportation for the business activities of the corporation or corporate entity; and

(B) compliance with all applicable United States laws.

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. NICKLES, the name of the Senator from Kansas [Mr. BROWNBACK] was added as a cosponsor of S. 9, a bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization.

S. 100

At the request of Mr. KERRY, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 100, a bill to amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes.

S. 358

At the request of Mr. DEWINE, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

S. 412

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 412, a bill to provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals.

S. 428

At the request of Mr. KOHL, the names of the Senator from California [Mrs. FEINSTEIN] and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 428, a bill to amend chapter 44 of title 18, United States Code, to improve the safety of handguns.

S. 474

At the request of Mr. KYL, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 474, a bill to amend sections 1081 and 1084 of title 18, United States Code.

S. 507

At the request of Mr. HATCH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 507, a bill to establish the United States Patent and Trademark Organization as a Government corporation, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes.

S. 617

At the request of Mr. JOHNSON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 625

At the request of Mr. MCCONNELL, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 625, a bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

S. 852

At the request of Mr. LOTT, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 892

At the request of Mr. GRAHAM, the name of the Senator from Maine [Ms. COLLINS] was added as a cosponsor of S. 892, a bill to amend title VII of the Public Health Service Act to revise and extend the area health education center program.

S. 1042

At the request of Mr. CRAIG, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1042, a bill to require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

S. 1045

At the request of Mr. DASCHLE, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 1045, a bill to prohibit discrimination in employment on the basis of genetic information, and for other purposes.

S. 1056

At the request of Mr. BURNS, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 1056, a bill to provide for farm-related exemptions from certain hazardous materials transporation requirements.

S. 1062

At the request of Mr. D'AMATO, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Wisconsin [Mr. KOHL], the Senator from Maryland [Ms. MIKULSKI], the Senator from Rhode Island [Mr. REED], the Senator from Delaware [Mr. BIDEN], the