

Stephen P. Metruck, 0000  
 Vincent B. Atkins, 0000  
 Thomas S. Morrison, 0000  
 Thomas A. Abbate, 0000  
 Roger E. Dubuc, 0000  
 Michael E. Lehooky, 0000  
 Edward Sinclair, 0000  
 Mark A. Torres, 0000  
 David R. Callahan, 0000  
 Michael E. Sullivan, 0000  
 Lance O. Benton, 0000  
 Robert G. Mueller, 0000  
 Hal R. Savage, 0000  
 Rudy T. Holm, 0000  
 David D. Simms, 0000  
 Ronald E. Kaetzel, 0000  
 Steven R. Baum, 0000  
 Lyle A. Rice, 0000  
 Joseph M. Hanson, 0000  
 James B. McPherson, 0000  
 Stephen M. Wheeler, 0000  
 Richard G. Brunke, 0000  
 Leonard L. Ritter, 0000  
 Mark M. Campbell, 0000  
 Fred R. Call, 0000  
 Christopher W. Doane, 0000  
 Michael A. Hamel, 0000  
 Peyton A. Coleman, 0000  
 Steven C. Taylor, 0000  
 Michael D. Dawe, 0000  
 Frank M. Reed, 0000  
 Thomas M. Heitstuman, 0000  
 Thomas E. Atwood, 0000  
 Michael E. Kendall, 0000  
 Robert L. Desh, 0000  
 Daniel B. Abel, 0000  
 Richard T. Gromlich, 0000  
 Lincoln D. Stroh, 0000  
 Keith A. Taylor, 0000  
 Mark R. Higgins, 0000  
 Frederick W. Tucher, 0000  
 Kristy L. Plourde, 0000  
 Richard D. Belisle, 0000  
 Maura S. Albano, 0000  
 David H. Gardner, 0000  
 Paul E. Wiedenhoef, 0000  
 John C. Odell, 0000  
 Karl L. Schultz, 0000  
 Bruce L. Toney, 0000  
 Terry A. Boyd, 0000  
 Edwin B. Thiedeman, 0000  
 Kenneth K. Moore, 0000  
 Mathew D. Bliven, 0000  
 Todd Gentile, 0000  
 Richard K. Murphy, 0000  
 Eugene Gray, 0000  
 John J. Jennings, 0000  
 Robert M. Pyle, 0000

The following-named officers of the U.S. Coast Guard Permanent Commissioned Teaching Staff at the Coast Academy for appointment to the grade indicated in the U.S. Coast Guard under title 14, United States Code, Section 189:

*To be commander*

Stephen E. Flynn, 0000  
 Jonathan C. Russell, 0000  
 Michael A. Alfultis, 0000  
 Vincent Wilczynski, 0000

The following-named officers for appointment to the grade indicated in the U.S. Coast Guard under title 14, United States Code, section 271:

*To be captain*

Michael F. Holmes, 0000  
 Herbert H. Sharpe, 0000  
 Erik N. Funk, 0000  
 Marvin J. Pontiff, 0000  
 John J. Davin, 0000  
 Richard R. Houck, 0000  
 David M. Mogan, 0000  
 Richard R. Kowalewski, 0000  
 James D. Spitzer, 0000  
 Sally Brice-Ohara, 0000  
 Kenneth W. Keane, 0000  
 Peter A. Richardson, 0000

Christopher J. Snyder, 0000  
 Paul D. Luppert, 0000  
 Lawrence T. Yarborough, 0000  
 Ronald J. Morris, 0000  
 Randolph Meade, 0000  
 Ronald L. Rutledge, 0000  
 Eric N. Fagerholm, 0000  
 George R. Matthews, 0000  
 Geoffrey D. Powers, 0000  
 Alan H. Moore, 0000  
 Theodore C. Lefevre, 0000  
 Richard R. Kelly, 0000  
 Lawrence J. Bowling, 0000  
 Glenn W. Anderson, 0000  
 Loren P. Tschohl, 0000  
 John A. Gentile, 0000  
 Surran D. Dilks, 0000  
 Terrence C. Julich, 0000  
 John M. Krupa, 0000  
 John C. Miller, 0000  
 Geoffrey L. Abbott, 0000  
 James S. Thomas, 0000  
 Joseph A. Halsch, 0000  
 Wayne R. Buchanan, 0000  
 Glenn A. Wiltshire, 0000  
 Mark S. Kern, 0000  
 James E. Evans, 0000  
 Stephen J. Krupa, 0000  
 Richard D. Poore, 0000  
 James W. Decker, 0000  
 Glenn R. Gunn, 0000  
 William W. Peterson, 0000  
 Scott E. Davis, 0000  
 Mark H. Johnson, 0000  
 Glenn E. Gately, 0000  
 James F. Murray, 0000  
 Ivan T. Luke, 0000  
 Arthur H. Hanson, 0000  
 Michael K. Grimes, 0000  
 James R. Mongold, 0000  
 David J. Visneski, 0000  
 Gregory J. Macgarva, 0000  
 Arn M. Heggors, 0000  
 James W. Stark, 0000  
 John Astley, 0000  
 Gilbert J. Kanazawa, 0000  
 Scott J. Glover, 0000  
 Kevin L. Marshall, 0000  
 Paul A. Langlois, 0000  
 Daniel B. Lloyd, 0000  
 John P. Currier, 0000  
 Wayne E. Justice, 0000  
 William R. Webster, 0000  
 Eric A. Nicolaus, 0000  
 Charles J. Dickens, 0000  
 Howard P. Rhoades, 0000  
 Robert D. Allen, 0000  
 Jody A. Breckenridge, 0000  
 Russell N. Terrell, 0000  
 Gregory F. Adams, 0000  
 William L. Ross, 0000  
 Beverly G. Kelley, 0000

(The above nominations were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. FRIST:

S. 1201. A bill to improve teacher preparation at institutions of higher education; to the Committee on Labor and Human Resources.

By Mrs. FEINSTEIN:

S. 1202. A bill providing relief for Sergio Lozano, Fauricio Lozano, and Ana Lozano; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. BENNETT, Mr. DODD, and Mr. BRYAN):  
 S. 1203. A bill to amend the Electronic Fund Transfer Act to limit consumer liability

for the unauthorized use of a debit card, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COVERDELL (for himself, Ms. LANDRIEU, Mrs. HUTCHISON, Mr. CRAIG, Mr. MACK, Mr. BROWNBACK, Mr. KYL, Mr. BURNS, Mr. HATCH, Mr. ENZI, Mr. GRAMM, Mr. THURMOND, Mr. DORGAN, and Mr. REID):

S. 1204. A bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; to the Committee on Judiciary.

By Mrs. MURRAY:

S. 1205. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify that records of arrival or departure are not required to be collected for purposes of the automated entry-exit control system developed under section 110 of such Act, for Canadians who are not otherwise required to possess a visa, passport, or border crossing identification card; to the Committee on Judiciary.

By Mrs. SNOWE (for himself, Mr. JEFFORDS, Ms. MIKULSKI, Mr. ALLARD, Mr. HARKIN, and Mr. GRASSLEY):

S. 1206. A bill to provide for an enumeration of family caregivers as part of the 2000 decennial census of population; to the Committee on Governmental Affairs.

By Mrs. BOXER (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DASCHLE, Mr. DORGAN, Mr. HARKIN, Mr. WELLSTONE, Mr. CONRAD, Ms. LANDRIEU, Mr. REED, and Mrs. MURRAY):

S. 1207. A bill to authorize the President to award a congressional gold medal to the family of the late Raul Julia, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER (for herself and Mrs. MURRAY):

S. 1208. A bill to protect women's reproductive health and constitutional right to choice, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself, Mr. DODD, and Mr. KERRY):

S. 1209. A bill improving teacher preparation and recruitment; to the Committee on Labor and Human Resources.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 1202. A bill providing relief for Sergio Lozano, Fauricio Lozano, and Ana Lozano; to the Committee on the Judiciary.

### PRIVATE RELIEF LEGISLATION

Mrs. FEINSTEIN. Mr. President, I rise today to offer legislation that provides permanent resident status to three children, Sergio, 17 years old; Fauricio 15 years old; and Ana Lozano, 14 years old; who were granted immigrant visas to come to the United States with their mother earlier this year. Now they have lost their mother

and could be deported because they were recently orphaned.

The children have lived with their mother, Ana Ruth Lozano, until her death in February of this year due to complications from typhoid fever. Since their mother's death, the children have been living with their closest relative, their U.S.-citizen grandmother who lives in Los Angeles.

Without their mother, the children do not have the legal right to remain in the United States. The Lozano children can be deported because the immigration law prohibits permanent legal residency to minor children without their parents.

Without their mother, these children can be deported by the INS despite the fact the children have no family who will take care of them in El Salvador except their estranged father who, INS reports show, was abusive to the mother and the children.

Without this bill, the children will most likely be sent to an orphanage in El Salvador. Here in the United States, the children have their U.S.-citizen grandmother and uncles who will give them a loving home.

I have previously sought administrative relief for the Lozano children by asking the INS district office in Los Angeles and Commissioner Meissner if any humanitarian exemptions could be made in their case. INS has told my staff that there is nothing further they can do administratively and a private relief bill may be the only way to protect the children from deportation.

I hope you will support this bill so that we can help the Lozano children begin to rebuild their lives in the United States.

Mr. President, I ask for unanimous consent that the attached news article and the bill be entered into the RECORD.

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

S. 1202

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

#### SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Sergio Lozano, Fauricio Lozano and Ana Lozano, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

[From the Los Angeles Times, May 29, 1997]

#### YOUTH'S VISAS IN DOUBT AFTER MOTHER'S DEATH

(By Patrick J. McDonnell)

Three El Salvadoran teenagers who were granted U.S. government permission to move to Los Angeles with their mother earlier this year now face deportation because their mother's death has left them without a legal right to be in the United States.

Ana Ruth Lozano a single mother who worked in a garment factory in El Salvador, had long dreamed that she and her children would be able to join relatives in Los Ange-

les, a glittering place with promise beyond the postwar tumult of Central America.

She died in El Salvador in February at the age of 33, apparently of complications from typhoid fever, three weeks after her family received visas to emigrate to the United States following an eight-year wait.

Ironically, relatives say; Lozano took ill on the day she was informed by officials in the U.S. Embassy in San Salvador that authorities were approving the family's long-delayed application.

"My mother always said we'd go to the United States and have a real chance to succeed," said Sergio Lozano, 17, who finally arrived here last month with his siblings, Fauricio, 15, and Ana, 14.

With the shock of her unexpected death still raw, the family is facing another blow: The Immigration and Naturalization Service says that Lozano's death means that her children must go back to El Salvador. Because she was the primary visa beneficiary, the INS says, the law calls for the papers of her children—the "derivative beneficiaries"—to be revoked upon her death.

The incredulous Lozano family has fallen into one of the many cracks in U.S. immigration law. Their case stands out even amid the often dramatic consequences in a legal arena replete with tales of separated families.

"It's just not fair to send these children back now," Zoila Esperanza Lozano, 54, the children's maternal grandmother, said as she fought back tears during an interview at her Los Angeles apartment, where a photograph of her late daughter and a Mother's Day poem from her are displayed prominently.

Rosemary Melville, INS deputy district director in Los Angeles, declined to discuss the Lozano case specifically, citing privacy laws. But she confirmed that visas for family members are considered "null and void" if the principal beneficiary dies before the visa is used. In "compelling" cases, Melville added, the agency has discretion to grant residency or block deportation based on humanitarian concerns.

In another era, legal observers say, authorities may have been inclined to stretch the letter of the law or issue a waiver allowing the Lozano children to stay. But such exceptions are more problematic amid today's national climate generally hostile to immigration.

"The unfortunate track record of immigration law is if you make one exception you find it spinning out of control," said Ira Mehlman of the Federation for American Immigration Reform, a group that seeks to reduce immigration levels and assails "loopholes" in the law.

Relatives of the Lozano children say they were assured by officials at the U.S. Embassy in San Salvador that the children's visas were still good, despite the mother's death. They learned otherwise upon the youths' arrival at Los Angeles International Airport last month, when, according to the family, the three youngsters were held and questioned for six hours and faced being sent back to El Salvador on the spot—an expedited "removal" procedure that has been in the INS arsenal since April 1, when a tough new immigration law went into effect.

Finally, inspectors agreed to allow the three into the country conditionally, pending the outcome of an agency review. The three teenagers have another date with the INS in Los Angeles on June 25.

The Lozano family has mobilized to do whatever necessary to keep the children in Los Angeles. The three, now enrolled at Belmont High School, are staying in their grandmother's one-bedroom Westlake apartment.

"For me, the children are a blessing from my beautiful daughter, and I'll do whatever I can for them," their grandmother said.

Tough of modest means, relatives here say they are willing to sign legally binding accords to care for the three and ensure that they do not become public charges.

Francisco Lozano, Ana Ruth's younger brother, is spearheading a letter-writing campaign to officials in Congress and elsewhere. "If I have to go and see President Clinton, I will," said Lozano, a hotel pastry chef.

In El Salvador, the family says, the three children have nothing to go back to: no home, no close kin, no means of support. Ana Ruth Lozano had been estranged from the children's father for years, relatives say. Most close relatives on their mother's side of the family are in the United States and Canada, as are many other Salvadorans, who left their homeland during the civil war that engulfed it in the 1980s.

The children's grandmother has supported them in El Salvador for years, sending back monthly checks of up to \$300, almost half her pay as a live-in housekeeper.

Seated in their grandmother's home on a recent afternoon, all three Lozano youths spoke of their desire to remain in the United States, study, and embark upon careers: Sergio wants to be a graphic artist, Fauricio would like to be an airline pilot, and Ana hopes to become a lawyer.

"I don't think I'd have any chance to even dream about such a thing back home," said Fauricio.

"Here one has the chance to better oneself," said the slender, reserved Ana. "This place is what our mother always wanted for us."

By Mr. D'AMATO (for himself, Mr. BENNETT, Mr. DODD and Mr. BRYAN):

S. 1203. A bill to amend the Electronic Fund Transfer Act to limit consumer liability for the unauthorized use of a debit card, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

#### THE DEBIT CARD CONSUMER PROTECTION ACT OF 1997

Mr. D'AMATO. Mr. President, today I introduce legislation that will protect tens of millions of consumers who carry bank debit cards, as well as millions more who are being targeted by banks to use this relatively new and unfamiliar payment card. This bill extends to the users of debit cards the protections that now already apply to users of credit cards. And I would like to thank my colleagues, Senators BENNETT, DODD, and BRYAN, for cosponsoring this important legislation.

In the past few years, millions of Americans have opened envelopes from their banks to find these new payment cards. These cards look like credit cards. They have "VISA" or "MasterCard" logos on the front of them—I am holding one up now—but they are actually debit cards, or, in the language of the industry, they are "off-line" debit cards. They are called "off-line" cards because they can be used with just a signature, and no PIN No., in order to access the consumer's bank account directly.

These off-line cards combine the convenience of a credit card with the simplicity of an ATM card. In order to make a purchase, the consumer simply presents the debit card to a merchant and signs a sales slip. The money for the payment is then automatically

withdrawn from the consumer's bank account and transferred to the merchant.

But if an off-line card is lost or stolen, it poses a little known and potentially unlimited danger to the consumer. Because it needs only a signature to authorize a purchase, a criminal who finds the card or who steals the card can easily use it to make purchases. He can go on a wild shopping spree and buy thousands of dollars worth of goods on that stolen card.

But unlike a stolen credit card, these fraudulent charges are immediately deducted from the victim's bank account. And unlike a stolen credit card, the law provides virtually no limit to the victim's liability.

And what happens to the consumer whose bank account is cleaned out by fraud? Soon her checks begin bouncing, bills go unpaid, late charges and overdraft fees pile up, suddenly the victim is facing financial disaster. Unraveling this mess can mean weeks of letters and phone calls, and nobody will compensate the victim for the lasting damage to his or her name or reputation.

Furthermore, the victim will be literally penniless until the bank investigates the theft and, hopefully, restores the account.

Under current law, the bank could take up to 20 days to complete this investigation. Imagine losing one's entire bank balance and then being unable to write a check for rent, car payment or groceries for 20 days.

Mr. President, I am concerned that consumers do not understand the off-line debit card. They may think it is just like an ordinary ATM card. But without the protection of a secret PIN number, the card is not secure. In reality, it is a direct line of access to the consumer's bank account. That line of access is open to anyone who possesses the card, including a thief. Just the number on the face of the card is all the thief needs to totally drain the consumer's bank account.

Financial institutions have sent out tens of millions of these cards unsolicited in the last few years. By 1994, there were 25 million off-line cards in circulation. By 1996, the number had jumped to more than 60 million. Millions more will be mailed out this year, because although banks cannot legally mail out an unsolicited credit card, a loophole in the law allows them to mail out these unsolicited off-line debit cards as replacements for consumer's ATM cards.

Mr. President, this is a ticking time bomb for millions of unwary consumers. Does the consumer understand how this new card differs from an ordinary ATM card? Does the consumer understand the risk that comes from carrying the new off-line card? Too often the answer is no. A recent survey by Mastercard found that 59 percent of the consumers who carry debit cards do not realize just how important it is to report a lost or stolen card immediately. At a minimum, consumers

need to be warned before they start carrying these off-line cards, and they need protection in the event that anything goes wrong.

Mr. President, we need reform and we need it soon. The bill we have introduced today, the Debit Card Consumer Protection Act of 1997, provides a level of protection that is clearly needed.

First, it prohibits the banks from mailing out unsolicited debit cards. Only people who want these cards should be getting them in the mail.

Second, it requires a clear disclosure to the consumer that the card provides a direct line of access to the consumer's bank account.

Third, it prohibits the bank from sending out live debit cards. Cards must not be valid for use until the recipient identifies himself or herself as the rightful owner.

Fourth, it limits the consumer's liability to \$50 in the event the card is lost or stolen.

Fifth, it expedites the restoration of funds to the consumer's account within 5 business days. Current law can make the consumer wait 20 business days.

Mr. President, this bill would bring the consumer protection laws up to date and into line with what the consumer is entitled to and expects. That is why consumer groups strongly support this bill, including the Consumer Federation of America, the Consumers Union, and the U.S. Public Interest Research Group. These organizations have all gone on record to say that this legislation provides essential protection for users of debit cards.

Now, Mr. President, some of the provisions of this bill were recently put forth in another bill, S. 1154, by my colleague, Senator REED of Rhode Island, who I see is on the floor. And some of these measures are now being implemented voluntarily by the industry. I want to commend Senator REED for his work in this area. I think that a consensus exists that consumer protections are needed to improve a situation that presents a very real risk for millions of consumers.

In fact, MasterCard and VISA recently announced that they will voluntarily cap the consumer's liability at \$50 in the event of an unauthorized use. One bank, Bank of America, has announced it will not hold consumers liable for any unauthorized charges. I commend the industry for responding to these concerns. Because of this responsiveness, I am hopeful the industry will vigorously support legislation to make these essential consumer protection laws permanent and universal.

Finally, I thank Senators BENNETT, DODD, and BRYAN for cosponsoring this bill. Senator BENNETT, as chairman of the Banking Subcommittee on Financial Services and Technology, is very aware of the enormous impact financial fraud is having on the industry and consumers. This legislation will help to protect both the industry and consumers from having to pay these high costs.

Mr. President, I ask unanimous consent 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. 1203

*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 "Debit Card Consumer Protection Act of 1997".

#### SEC. 2. CONSUMER LIABILITY FOR UNAUTHORIZED DEBIT CARD TRANSACTIONS.

Section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g) is amended by striking subsection (a) and inserting the following:

“(a) LIMITATION ON LIABILITY.—

“(1) IN GENERAL.—A consumer shall be liable for an unauthorized electronic fund transfer only if—

“(A) the card or other means of access used to make the unauthorized electronic fund transfer was an accepted card or other means of access;

“(B) the liability, including any overdraft or other fee imposed by the financial institution in connection with or as a result of the unauthorized electronic fund transfer, is not in excess of the lesser of—

“(i) \$50; or

“(ii) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time at which the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected;

“(C) the financial institution that issued the card or other means of access gave adequate notice to the cardholder of the potential liability;

“(D) such financial institution provided the consumer with a description of a means by which the institution may be notified of loss or theft of the card or other means of access, which description may be provided on the face or reverse side of the statement required by section 906(c) or on a separate notice accompanying such statement;

“(E) the unauthorized electronic fund transfer occurred before the financial institution was notified of such unauthorized transfer, or that such unauthorized transfer may occur as the result of loss, theft, or otherwise; and

“(F) the financial institution has provided a method whereby the consumer to whom the card or other means of access was issued can be identified as the person authorized to use it.

“(2) SUFFICIENCY OF NOTICE.—For purposes of paragraph (1), the financial institution has been notified when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.”.

#### SEC. 3. AMENDMENTS TO DEFINITIONS.

Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(1) in paragraph (1), by striking “and received” and all that follows through “services” and inserting “or renewed and received such card or other means of access (including a non-protected access card and a protected access card)”; and

(2) by redesignating paragraphs (9) through (11) as paragraphs (11) through (13), respectively; and

(3) by inserting after paragraph (8) the following new paragraphs:

"(9) the term 'protected access card' means an accepted card or other means of access that requires use of a personalized code or other unique identifier (other than a signature) to initiate access to the account of a consumer;

"(10) the term 'non-protected access card' means an accepted card or other means of access that does not require the use of a unique identifier to initiate access to the account of a consumer, except that for purposes of this paragraph, a signature shall not be considered to be a personalized code or other unique identifier;"

#### SEC. 4. TIMING OF ERROR RESOLUTION.

Section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and indenting accordingly;

(B) by striking "(a) If a financial" and inserting the following:

"(a) IN GENERAL.—

"(1) NOTICE TO INSTITUTION.—If a financial";

(C) in the first sentence, by striking "ten business" and inserting "5 business"; and

(D) in the second sentence, by striking "The financial" and inserting the following:

"(2) WRITTEN CONFIRMATION OF ORAL NOTIFICATION.—The financial"; and

(E) by striking "the previous sentence" each place it appears and inserting "this paragraph";

(2) in subsection (c), by striking "ten business" and inserting "5 business"; and

(3) in subsection (f)(1), by inserting before the semicolon "including such unauthorized transfer by use of a protected access card or a non-protected access card".

#### SEC. 5. ISSUANCE OF CARDS.

(a) LIMITATIONS ON ISSUANCE.—Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting accordingly;

(B) by striking "(a) No" and inserting the following:

"(a) LIMITATIONS ON ISSUANCE.—

"(1) IN GENERAL.—No"; and

(C) by adding at the end the following:

"(2) RENEWALS; SUBSTITUTIONS.—For purposes of paragraph (1), a non-protected access card may only be issued in response to a request or application for, or as a renewal of or substitution for, a non-protected access card.";

(2) in subsection (b)—

(A) by striking "(b) Notwithstanding" and all that follows through "basis" and inserting the following:

"(b) CRITERIA FOR ISSUANCE.—A person may only issue to a consumer";

(B) by striking "distribution" each place it appears and inserting "issuance"; and

(C) by striking "distribute" and inserting "issue".

(3) in subsection (c), by striking "(c) For" and inserting the following:

"(d) DEFINITION.—For"; and

(4) by inserting after subsection (b) the following new subsection:

"(c) DISCLOSURE OF NON-PROTECTED ACCESS CAPABILITY.—In any case in which a non-protected access card is issued to a consumer, such issuance shall be accompanied by a clear and conspicuous printed disclosure designated as a warning that—

"(1) the card does not require a personalized code or other unique identifier (other than a signature) to initiate access to the consumer's account; and

"(2) loss or theft of the card could result in unauthorized access to the consumer's account.";

(b) FORM OF DISCLOSURE.—Section 904(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(b)) is amended by striking "section 905" and inserting "sections 905 and 911".

#### SEC. 6. NOTIFICATION TO CONSUMERS OF RESTITUTION POLICY.

Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended—

(1) in paragraph (2), by striking "than an" and inserting "that an";

(2) in paragraph (7), by striking ". The financial institution" and all that follows through "year" and inserting "which summary shall be transmitted to the consumer thereafter not less frequently than annually";

(3) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

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

"(8) the policy of the financial institution regarding restitution to the consumer of any fees imposed by a person other than the financial institution as a result of an unauthorized electronic fund transfer, including returned check fees, late charges, and other fees;"

Mr. DODD. Thank you, Mr. President. I am pleased to take the floor today in support of the Consumer Payment Card Security Act of 1997. This legislation, of which I am an original cosponsor, would address a serious gap in our consumer laws which govern the use of debit or check cards. I would particularly like to thank my friend and Chairman of the Banking Committee, Senator D'AMATO, for his leadership role in developing this legislation.

Many of my colleagues may be aware of these cards through the intensive ad campaign mounted by VISA and MasterCard with such famous celebrities as Michael Jordan, Bugs Bunny, and our former colleague, Bob Dole. But these commercials may not exactly explain how these check cards—or debit cards—work. Essentially, a debit card is a card that looks just like your ATM card that uses the National Credit Card Electronic Networks to access your checking account. In this way, you could go into any business that accepts VISA or MasterCard, and instead of charging your purchase, you could pay for it right out of your checking account. Thus, bank customers have access to their accounts in hundreds of thousands of locations across the globe, not just at the ATM machines that are part of their banks' network.

In general, I believe that the private sector should be commended for developing this new technology. Clearly, if used properly, these debit cards will provide bank customers with greater flexibility and convenience.

However, we would not be standing on the floor today introducing legislation if the introduction of this card had gone as smoothly as everyone may have hoped. As with all new technologies, there are growing pains, and in this particular case, legislation appears necessary to help ease those pains.

The goal of this legislation is refreshingly simple: It puts debit cards under the same umbrella of consumer protections that currently govern the use of both credit cards and ATM cards.

Let me briefly recount some of the debit card problems—some might go so far as to say abuses—confronted by consumers and how the legislation would address them.

First, since a debit card looks almost identical to an ATM card, many consumers don't know that their bank has made a switch. Until very recently, this could have posed a significant financial hardship for consumers since debit card liability—if it's lost or stolen—isn't capped at \$50 the way it is capped for both credit cards and ATM cards. Also, debit cards are known as "off-line" cards; in other words, no PIN—personal identification number—is required to use the card—a crook can simply swipe it through any electronic scanner, just like a credit card, and empty your bank account.

It should be noted that in the last few weeks, the industry—particularly VISA and MasterCard, responding to increasing public pressure, has voluntarily moved to change these practices. Nevertheless, these belated efforts, while laudable, do not provide the same certainty to consumers that the statutes do. This legislation would clearly limit consumer liability to \$50. It would also ensure that consumer disclosure is improved so that the bank customer is aware that these cards do not need a PIN to be used.

The legislation would also end the practice of replacing ATM cards with debit cards without a customer's consent. One of the ways in which these cards become subject to abuse is that consumers aren't aware that they've even received this debit card as a replacement for their old ATM card. The legislation would conform debit cards with credit cards by preventing the mailing of unsolicited cards to bank customers.

Last, the bill would address a potential problem by shortening the dispute resolution process from 20 to 5 days, again conforming it to the standards currently in use for credit cards. When there is credit card fraud, the cardholder is credited for the loss until the investigation is complete, and that investigation must be done within 5 days. Under current law, debit cardholders are not always credited pending investigation and those investigations can take as long as 20 days. That's a long time for someone whose checking account has been emptied by a criminal.

Again, Mr. President, I note that in most instances, the legislation codifies what has become the industry standard. But the fact remains that given the difficulties surrounding the introduction of debit cards, and the uncertainties that arise from some companies failing to follow the industry standard, it is incumbent upon the Congress to provide the same statutory safeguards for debit card users as we

have for both credit card and ATM card users.

I hope that I will soon be able to stand here and mark the passage of this important legislation.

By Mr. COVERDELL (for himself, Ms. LANDRIEU, Mrs. HUTCHISON, Mr. CRAIG, Mr. MACK, Mr. BROWBACK, Mr. KYL, Mr. BURNS, Mr. HATCH, Mr. ENZI, Mr. GRAMM, Mr. THURMOND, Mr. DORGAN, and Mr. REID):

S. 1204. A bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the U.S. Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; to the Committee on the Judiciary.

#### THE PROPERTY OWNERS ACCESS TO JUSTICE ACT OF 1997

Mr. COVERDELL. Mr. President, I am introducing today, with Senators LANDRIEU and DORGAN, the Property Owners Access to Justice Act of 1997, a bill to simplify access to the Federal courts for private property owners whose rights may have been injured by government action. The fifth amendment to the U.S. Constitution provides individuals with protection from having their property taken by the Government. The Constitution requires that when private property is taken for a public purpose, the property owner must be compensated.

However, property owners seeking protection of their rights are frequently frustrated by endless bureaucratic delay and countless procedural hurdles that prevent them from having their day in court. They are told they must resolve all of their State court remedies and all of their administrative remedies before their case is ripe for a hearing in Federal court.

Unfortunately, most property owners cannot afford the long and often fruitless process of resolving all possible remedies before their case is ripe. This process can mean years of court battles and tens of thousands of dollars in legal fees just to win the right to have the merits of the case heard in Federal court. The hurdles are so oppressive that one study concluded less than 6 percent of takings claims filed during the 1980's were ever deemed ripe for Federal court adjudication.

This unfair result happens because the requirement to exhaust all administrative remedies before getting their day in court subjects property owners to endless rounds of appeals with the relevant agency. However, property

owners should be able to know with some degree of certainty what rights they have in their own property. The Property Owners Access to Justice Act says that property owners must try to resolve their differences with the agency in question, but once the agency has denied their appeal or waiver attempt, the property owner has the right to go to court.

The property owner would still shoulder the burden of proof that he or she has been injured and deserves compensation, but at least the owner will be able to have the merits of the case heard. And there is an end to the process, instead of leaving the property owner in the regulatory limbo of appealing and appealing and appealing before getting the right to seek relief in court.

To deal with the problem of resolving all State court remedies, this bill essentially gives property owners a choice of how to assert their property rights under the Constitution. If the property owner wants to pursue action against a local or State agency that has infringed on his or her rights, the property owner can sue in State or local court, as he would now. Or, if the property owner wants to reject that route and instead pursue only a fifth amendment takings claim, the case can be heard in Federal court.

This will correct the current situation in which a property owner can be bounced between State and Federal courts for years, with the merits of their Federal claim never being heard.

The Property Owners Access to Justice Act of 1997 is strictly procedural in nature. It does not change substantive law. It does not define a taking or establish a trigger for when compensation is due. It does not give property owners any special access to the Federal courts. On the contrary, it allows property owners the same access to Federal courts that other claimants currently have. Citizens alleging violations of their first amendment rights or fourth amendment rights are not told to resolve their administrative and State court remedies first—they go to Federal court. Property owners deserve to be treated the same as everyone else.

Mr. President, this bipartisan bill is simply an effort to provide property owners with a less complicated way to have their day in court. It gives them the access to justice and the chance to present the merits of their case that all Americans expect as a matter of simple fairness.

I urge my colleagues on both sides of the aisle to support the Property Owners Access to Justice Act of 1997 and ask unanimous consent that the full text of the bill be entered in the RECORD.

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

S. 1204

*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 "Property Owners Access to Justice Act of 1997".

#### SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

"(c) Whenever a district court exercises jurisdiction under subsection (a), it shall not abstain from exercising or relinquish its jurisdiction to a State court in an action where no claim of a violation of a State law, right, or privilege is alleged.

"(d) Where the district court has jurisdiction over an action under subsection (a) that cannot be decided without resolution of a significant but unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question certified to it, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

"(1) will significantly affect the merits of the injured party's Federal claim; and

"(2) is so unclear and obviously susceptible to a limiting construction as to render premature a decision on the merits of the constitutional or legal issue in the case.

"(e)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, that causes actual and concrete injury to the party seeking redress.

"(2) For purposes of this subsection, a final decision exists if—

"(A) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

"(B) the applicable statute, ordinance, regulation, custom, or usage provides for a right of appeal or waiver from such decision, and the party seeking redress has applied for, but has been denied, one such appeal or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if the prospects of success are reasonably unlikely and intervention by the district court is warranted to decide the merits.

"(3) For purposes of this subsection, a final decision shall not require the party seeking redress to exhaust judicial remedies provided by any State or territory of the United States."

#### SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

"(2) For purposes of this subsection, a final decision exists if—

"(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

"(B) an applicable law of the United States provides for a right of appeal or waiver from