

Second, we must begin a massive reconstruction effort. This project, led by the Europeans, should restore infrastructure damaged in the war, create opportunities for economic development, and establish conditions that will allow for eventual membership in the European Union.

Finally, we should convene a conference of concerned nations that will work together to address the long-term security needs of the Balkans.

Let me state that the objective of building a peaceful and stable Balkans will not be achieved as long as Slobodan Milosevic remains the President of Yugoslavia. A man who has started four wars in this decade, killed and ethnically cleansed hundreds of thousands of civilians, crushed democratic opposition, and presided over the ruination of his country can never guide the kind of political, economic, and social change that will be necessary to rebuild Serbia.

As long as Milosevic remains in power, he is a threat to peace. As long as Milosevic remains in power, the politics of racism and ethnic hatred will prevail. As long as Milosevic remains in power, the West should not prop up his regime by rebuilding Serbia.

In 1996, we missed our opportunity to help prodemocracy forces that gathered in the streets of Belgrade. When the protests began, we hesitated, and Milosevic used the opportunity to consolidate his control by brutally repressing the opposition. Rather than seeing Milosevic as a tyrant and a threat to peace, we saw him as a partner in Bosnia. We should no longer suffer the illusion that Milosevic can be a partner in peace. We should work with the people of Serbia to ensure a quick end to the Milosevic regime.

I believe the end could be near. Over 70 days of NATO airstrikes have loosened Milosevic's grasp on the instruments he uses to control his people. It is my hope the democratic forces in Serbia—with Western assistance—will seize this opportunity to remove him. Only with a new democratic leadership will Serbia begin the process of rejoining the community of nations.

At the end of a military conflict, it is natural to look back and to assess ways in which the use of force could have been avoided. While many will find fault with U.S. diplomacy in the days and months leading up to the initiation of airstrikes, I believe our failure starts a decade before by not working to extend to the Balkans the peaceful democratic revolutions that swept through Eastern Europe.

We must address the problems facing the Balkans by extending the benefits of democracy, or face the prospect of continual ethnic conflict and instability.

In addition to praising the men and women of the aircrews of the Air Force and the Navy and the Marine Corps who fought and flew bravely into great danger, and who deserve a great deal of credit for delivering this success, I

offer as well my congratulations and praise to the Commander in Chief, the President of the United States, who held the NATO alliance together, who persevered when there was considerable doubt and criticism not only at home but abroad as well, and who must be given great credit for delivering this successful agreement.

We have just begun the hard work of rebuilding democracy in this region of the world. We should not forget, as I have said in my statement, we have arrived here because we were complacent. We have arrived here because we ignored the call for freedom inside of Serbia, to our eventual peril as a consequence.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Washington.

Y2K ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 621, AS FURTHER MODIFIED

Mr. GORTON. What is the business before the Senate?

The PRESIDING OFFICER. The pending business is the question on the amendment by the Senator from California, as further modified.

Mr. GORTON. I move to table the Boxer amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 621, as further modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. McCAIN) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 32, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—66

Abraham	Enzi	Lott
Allard	Feinstein	Lugar
Ashcroft	Fitzgerald	Mack
Baucus	Frist	McConnell
Bayh	Gorton	Moynihhan
Bennett	Gramm	Murkowski
Bingaman	Grams	Nickles
Bond	Grassley	Robb
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Hatch	Roth
Campbell	Helms	Santorum
Chafee	Hutchinson	Sessions
Cochran	Hutchison	Shelby
Collins	Inhofe	Smith (NH)
Coverdell	Kerry	Smith (OR)
Craig	Kohl	Snowe
Crapo	Kyl	Specter
DeWine	Landrieu	
Dodd	Lieberman	
Domenici	Lincoln	

Stevens	Thurmond	Warner
Thompson	Voinovich	Wyden

NAYS—32

Akaka	Edwards	Leahy
Biden	Feingold	Levin
Boxer	Graham	Mikulski
Breaux	Harkin	Murray
Bryan	Hollings	Reed
Byrd	Inouye	Reid
Cleland	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Daschle	Kennedy	Torricelli
Dorgan	Kerrey	Wellstone
Durbin	Lautenberg	

NOT VOTING—2

McCain	Thomas
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The motion was agreed to.

Mr. GORTON. I move to reconsider the vote.

Mr. HOLLINGS. I move to table the motion.

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT AGREEMENT

Mr. GORTON. Mr. President, I ask unanimous consent that the only remaining amendments in order to S. 96 be those by Senators SESSIONS, GREGG, and INHOFE, and that following those amendments the bill be advanced to third reading.

I further ask consent that all debate must be concluded today on the Sessions, Gregg, and Inhofe amendments, and if any votes are ordered, they occur in stacked sequence just prior to the passage vote on Tuesday, with 2 minutes for explanation prior to the votes if stacked votes occur.

I further ask that following the reading of the bill for the third time, the Senate then proceed to the House companion bill, H.R. 775, and all after the enacting clause be stricken, the text of S. 96 be inserted, H.R. 775 be read for a third time, and final passage occur at 2:15 p.m. on Tuesday, June 15, or immediately after votes on any of the above amendments if such votes are ordered, with paragraph 4 of rule XII being waived.

I further ask that following the third reading of S. 96, the bill be placed back on the calendar.

Finally, I ask consent that at 11 a.m. on Tuesday, June 15, there be 2 hours equally divided for closing arguments, and following those remarks the Senate stand in recess until 2:15 p.m. for the weekly party conferences to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. I want to make a further announcement by direction of the majority leader. There will be no further votes today, and there will be no votes tomorrow. The next vote will take place not earlier than 5:30 p.m. on Monday, and there may, if appropriate at that time, be a vote on final passage of the energy and water appropriations bill.

AMENDMENT NO. 622 TO AMENDMENT NO. 608

(Purpose: To provide regulatory amnesty for defendants, including States and local governments, that are unable to comply with a federally enforceable measurement or reporting requirement because of factors related to a Y2K system failure)

Mr. GORTON. I send an amendment to the desk on behalf of Senator INHOFE

and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. INHOFE, proposes an amendment numbered 622.

Mr. GORTON. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, between lines 22 and 23, insert the following:

(6) APPLICATION TO ACTIONS BROUGHT BY A GOVERNMENTAL ENTITY.—

(1) IN GENERAL.—To the extent provided in this subsection, this Act shall apply to an action brought by a governmental entity described in section 3(1)(C).

(2) DEFINITIONS.—In this subsection:

(A) DEFENDANT.—

(i) IN GENERAL.—The term “defendant” includes a State or local government.

(ii) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) LOCAL GOVERNMENT.—The term “local government” means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K UPSET.—The term “Y2K upset”—

(i) means an exceptional incident involving temporary noncompliance with applicable federally enforceable measurement or reporting requirements because of factors related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable requirements that provide for the safety and soundness of the banking or monetary system, including the protection of depositors;

(III) noncompliance to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance; or

(V) lack of preparedness for Y2K.

(3) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET.—A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a good faith effort to effectively remediate Y2K problems;

(B) a Y2K upset occurred as a result of a Y2K system failure or other Y2K emergency;

(C) noncompliance with the applicable federally enforceable measurement or reporting requirement was unavoidable in the face of a Y2K emergency or was intended to prevent the disruption of critical functions or services that could result in the harm of life or property;

(D) upon identification of noncompliance the defendant invoking the defense began

immediate actions to remediate any violation of federally enforceable measurement or reporting requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that it became aware of the upset.

(4) GRANT OF A Y2K UPSET DEFENSE.—Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to any action brought as a result of noncompliance with federally enforceable measurement or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

(5) LENGTH OF Y2K UPSET.—The maximum allowable length of the Y2K upset shall be not more than 15 days beginning on the date of the upset unless granted specific relief by the appropriate regulatory authority.

(6) VIOLATION OF A Y2K UPSET.—Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to penalties provided in section 1001 of title 18, United States Code.

(7) EXPIRATION OF DEFENSE.—The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

At the appropriate place, insert the following:

SEC. . CREDIT PROTECTION FROM YEAR 2000 FAILURES.

(a) IN GENERAL.—No person who transacts business on matters directly or indirectly affecting mortgage, credit accounts, banking, or other financial transactions shall cause or permit a foreclosure, default, or other adverse action against any other person as a result of the improper or incorrect transmission or inability to cause transaction to occur, which is caused directly or indirectly by an actual or potential Y2K failure that results in an inability to accurately or timely process any information or data, including data regarding payments and transfers.

(b) SCOPE.—The prohibition of such adverse action to enforce obligations referred to in subsection (a) includes but is not limited to mortgages, contracts, landlord-tenant agreements, consumer credit obligations, utilities, and banking transactions.

(c) ADVERSE CREDIT INFORMATION.—The prohibition on adverse action in subsection (a) includes the entry of any negative credit information to any credit reporting agency, if the negative credit information is due directly or indirectly by an actual or potential disruption of the proper processing of financial responsibilities and information, or the inability of the consumer to cause payments to be made to creditors where such inability is due directly or indirectly to an actual or potential Y2K failure.

(d) ACTIONS MAY RESUME AFTER PROBLEM IS FIXED.—No enforcement or other adverse action prohibited by subsection (a) shall resume until the obligor has a reasonable time after the full restoration of the ability to regularly receive and disburse data necessary to perform the financial transaction required to fulfill the obligation.

(e) SECTION DOES NOT APPLY TO NON-Y2K-RELATED PROBLEMS.—This section shall not affect transactions upon which a default has occurred prior to a Y2K failure that disrupts financial or data transfer operations of either party.

(f) ENFORCEMENT OF OBLIGATIONS MERELY TOLLED.—This section delays but does not prevent the enforcement of financial obligations.

Mr. GORTON. This is the Inhofe amendment referred to in my unanimous consent request. It has to do with amnesty for certain regulatory activities in its first part. The second part

was suggested by the distinguished Senator from South Carolina and is designed to assure that no one lose a home through a mortgage or any other similar kind of loss as a result of a Y2K failure or glitch.

The amendment has been cleared on both sides.

Mr. HOLLINGS. I thank the Senator from Washington.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 622) was agreed to.

AMENDMENT NO. 623 TO AMENDMENT NO. 608 (Purpose: To permit evidence of communications with state and federal regulators to be admissible in class action lawsuits)

Mr. SESSIONS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 623.

Mr. SESSIONS. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place, add the following section:

SEC. . ADMISSIBLE EVIDENCE ULTIMATE ISSUE IN STATE COURTS.

Any party to a Y2K action in a State court in a State that has not adopted a rule of evidence substantially similar to Rule 704 of the Federal Rules of Evidence may introduce in such action evidence that would be admissible if Rule 704 applied in that jurisdiction.

Mr. SESSIONS. Mr. President, this amendment simply provides that rule 704 of the Federal Rules of Evidence, which most States have adopted—as a matter of fact, I think no more than a handful have not adopted Federal Rules of Evidence, and most of those have adopted 704; it happens that the State of Alabama did not adopt rule 704. Particularly with regard to these Y2K cases, I think rule 704 would be an appropriate rule of evidence.

It allows the introductions of analyses and reports by parties to the litigation that would indicate whether or not the entity that is involved had or had not taken adequate steps toward curing the Y2K problem, whether or not they actually have moved in that direction in a sufficient way. It could be the defense or, on the other side, assist the plaintiff.

I think this would be a good amendment and bring Alabama's law and perhaps a handful of other State laws into compliance, into uniformity in this Y2K bill.

We worked hard to have support across the aisle. I thank my colleagues, both Democrats and Republicans, for their courtesy and interest in dealing with this problem. I think we have developed language, after a number of changes, that will leave most people happy. I hope this amendment will be accepted.

I know some Members will want to review this amendment before next week when we have a final vote.

Mr. GORTON. The amendment proposed by the Senator from Alabama certainly seems highly reasonable to me.

He is, however, correct; a number of proponents and opponents have asked for an opportunity to examine the amendment in a little more detail. That is why the unanimous consent agreement deferred final consideration until Monday.

I am reasonably confident it will be accepted by voice vote, and I certainly hope it will.

Mr. SESSIONS. I thank the Senator from Washington, and I thank him for his leadership on this important issue dealing with an economic problem that could place one of America's greatest industries in jeopardy. I believe this is an important piece of legislation.

I thank Senator GORTON for his leadership.

Mr. GREGG. I ask unanimous consent the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 624 TO AMENDMENT NO. 608

(Purpose: To provide for the suspension of penalties for certain year 2000 failures by small business concerns)

Mr. GREGG. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself and Mr. BOND, proposes an amendment numbered 624.

Mr. GREGG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____ SUSPENSION OF PENALTIES FOR CERTAIN YEAR 2000 FAILURES BY SMALL BUSINESS CONCERNS.

(a) DEFINITIONS.—In this section—

(1) the term "agency" means any executive agency, as defined in section 105 of title 5, United States Code, that has the authority to impose civil penalties on small business concerns;

(2) the term "first-time violation" means a violation by a small business concern of a Federal rule or regulation resulting from a Y2K failure if that Federal rule or regulation had not been violated by that small business concern within the preceding 3 years; and

(3) the term "small business concern" has the meaning given such term in section 3 of the Small Business Act (25 U.S.C. 632).

(b) ESTABLISHMENT OF LIAISONS.—Not later than 30 days after the date of enactment of this section each agency shall—

(1) establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations; and

(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) GENERAL RULE.—Subject to subsections (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) STANDARDS FOR WAIVER.—In order to receive a waiver of civil money penalties from an agency for a first-time violation, a small business concern shall demonstrate that—

(1) the small business concern previously made a good faith effort to effectively remediate Y2K problems;

(2) a first-time violation occurred as a result of the Y2K system failure of the small business concern or other entity, which affected the small business concern's ability to comply with a federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K system failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and timely measures to remediate the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 7 business days from the time that the small business concern became aware that a first-time violation had occurred.

(e) EXCEPTIONS.—An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if the small business concern fails to correct the violation not later than 6 months after initial notification to the agency.

Mr. GREGG. I offer an amendment that ensures that small businesses which are hit with Y2K problems will not be penalized by the Federal Government for activities they are unable to deal with as a result of the Y2K problem.

An overzealous Federal Government bearing down on a small business can be a very serious problem. I know all Members have constituents who have had small businesses that have found the Federal Government to be overbearing.

It would therefore be uniquely ironic and inappropriate if the overzealousness of the Federal Government were to be thrown on top of a situation which a small business had no control over, which would be the failure of their computer system as a result of a Y2K problem. This does not get into the issue of liability, which may be the underlying question in this bill. It doesn't raise the question of whether or not the computer company should be exempt from liability, which I know has been a genuine concern of the Senator from South Carolina. Rather, it simply addresses the need for equity and fairness when we are dealing with small businesses which, through no fault of their own, have suddenly been hit with a Y2K problem and therefore fail to comply with a Federal requirement or Federal regulation and end up getting hit with a huge fine, all of which they had no control over.

This amendment is tightly drafted so a small business cannot use it as an excuse not to meet a Federal obligation or Federal regulation. It does not allow a small business to take the Y2K issue

and use it to bootstrap into avoiding an obligation which it has in the area of some Federal regulatory regime. Rather, it is very specific. It says, first off, this must be an incident of a first-time regulatory violation, so no small business which has any sort of track record of violating that Federal regulation could qualify for this exemption. So it has to be a first-time event.

Second, the small business has to prove it made a good-faith effort to remedy the Y2K problem before it got hit with it. So it cannot be a situation where the small business said: I have this Y2K problem coming at me, I have this Federal regulation problem coming at me, I am going to let the Y2K problem occur and then I will say that is my reason for not complying. Small business must have made a good-faith attempt to remedy the Y2K problem.

Third, the Y2K problem cannot be used if the violation was to avoid or resulted from efforts to prevent disruption of a critical function or service.

Fourth, the small business has to demonstrate the actions to remediate the violation were begun when the violation was discovered. So the small business has to show it attempted to address the problem as soon as it realized it had a Y2K problem, and it cannot allow the fact it has a Y2K problem, again, to go unabated and use that lack of correction of a problem as an excuse for not meeting the obligations of the Federal regulation.

Fifth, that notice was submitted to the appropriate agency when the small business became aware of the violation and therefore knew it had a Y2K problem.

The practical effect of this will be small businesses throughout this country, which are inadvertently and beyond their own capacity to control a hit with a Y2K problem, will not be doubled up with a penalty for not meeting a Federal regulatory requirement that they could not meet as a result of the Y2K problem kicking in.

It is a simple amendment. It is a reasonable amendment. It really does not get into the overall contest that has been generated around this bill which is: Should there be an exemption of liability for manufacturers of the product which creates the Y2K problem? Rather, it is trying to address the innocent bystander who gets hit, that small businessperson who suddenly wakes up, realizes he has a Y2K problem, tries to correct the Y2K problem, can't correct the Y2K problem, and as a result fails to comply with a Federal regulation, and then the Federal Government comes down and hits him with a big fine and there was nothing the small business could do. It gets hit with a double whammy: Its systems go down and they get hit with a fine.

This just goes to civil remedy, to remedies which involve monetary activity, so it does not address issues where a business would be required to remedy through action. An example here might be OSHA. If they had to

correct a workplace problem, they would still have to correct the workplace problem whether or not they had the Y2K failure. If they had an environmental problem which required remedial action, such as a change in their water discharge activities, again they would have to meet the remedial action.

All this amendment does, it is very limited in scope, it just goes to the financial liability the company might incur as a result of failing to meet a regulation. It is a proposal which is strongly supported by the small business community. The NFIB is a supporter of this proposal and will be scoring this vote as one of its primary votes as it puts together its assessment of Members of Congress, and their support for small business.

It is a reasonable proposal. I certainly hope it will end up being accepted. In any event, I understand under the unanimous consent agreement which has been generated there will be a vote on it Tuesday.

I yield the floor.

Mr. BOND. Mr. President, I rise today to address the amendment to the Y2K Act sponsored by Senator GREGG and which cosponsored. This is an important amendment that will waive Federal civil money penalties for blameless small businesses that have in good faith attempted to correct their Y2K problems, but find themselves inadvertently in violation of a Federal regulation or rule despite such efforts. Most experts that have studied the Y2K problem agree that regardless of how diligent a business is at fixing its Y2K problems, unknowable difficulties are still likely to arise that may place the operations of such businesses at risk. This amendment will ensure that the government does not further punish small businesses that have attempted to fix their Y2K problems, but are nevertheless placed in financial peril because of these problems.

As chairman of the Senate Committee on small Business, I have paid particular attention to the problems that small businesses are facing regarding the Y2K problem. Small businesses are trying to become Y2K compliant, but face many obstacles in doing so. One of the major obstacles is capital. Small businesses are the most vulnerable sector of our business community, as many of them do not have a significant amount of excess cash flow. Yet, a great number of small businesses are already incurring significant costs to become Y2K compliant. Earlier this year, Congress passed Y2K legislation that I authored to provide small businesses with the means to fix their own computer systems. Even small businesses that take advantage of that program, however, will see decreased cash flow from their efforts to correct Y2K problems.

The last thing, therefore, this government should do is levy civil money penalties on small businesses that find themselves inadvertently confronted

with Y2K problems. Many of these businesses will already have had their operations disrupted and may be in danger of going out of business entirely. The Federal Government should not push them over the edge.

This amendment has been carefully crafted so that only those small businesses that are subject to civil money penalties through no fault of their own are granted a waiver. Under this amendment, a small business would only be eligible for a waiver of civil money penalties if it had not violated the applicable rule or regulation in the last 3 years. This provision will help to ensure that businesses that have continuing violations or that have a history of violating Federal rules and regulations will not be let off the hook.

Small businesses must also demonstrate to the government agency levying the penalties that the business had previously made a good faith effort to correct its Y2K problems. We must not provide disincentives to businesses so that they do not fix their Y2K problems now. This amendment does not provide such a disincentive. In addition, to receive relief, a small business must show that the violation of the Federal rule or regulation was unavoidable or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property. The amendment also provides that, upon identification of a violation, the small business concern must have initiated reasonable and timely efforts to correct it. Finally, in order to receive the relief provided by this amendment, a small business must have submitted notice, within seven business days, to the appropriate Federal agency.

What is clear from these requirements is that the amendment will only apply to conscientious small businesses that have tried in good faith to prepare for the Y2K problem and that promptly correct inadvertent violations of a Federal rule or regulation that nevertheless occur as a result of such problem. It is critically important that these innocent victims not be punished by the Federal Government for a problem that confronts us all.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from New Hampshire is correct. He has explained his amendment with great clarity. It may or may not be seriously contested. We simply are not going to know that until early next week, so I thank him for his graciousness in waiting for a final decision until then.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, today there are 204 days left before the Y2K problem becomes a concrete reality for any entity throughout the world that has a computer system.

The Y2K issue has been publicized across this nation; sometimes to a greater degree than necessary. Some Americans have even resorted to hoarding food and planning for the end of the world. While no one has a magic answer as to what will happen on the first of the year, enough effort has been made by the public and private sector to ensure that Americans are aware of this issue.

However, I am concerned that under the current version of S. 96, companies may continue sales of non-Y2K compliant products even after enactment of this act without disclosing non-Y2K compliance to consumers. While I strongly support this important piece of legislation, I am concerned that unscrupulous marketers may attempt to deceive consumers by continuing to sell non-Y2K compliant products. A computer given for a Christmas gift isn't much of a gift when it stops working 7 days later.

Thus I planned to offer an amendment to section 5(b)(3) that would lift the cap on punitive damages for products sold after the date of enactment of this act if the plaintiff could have established by clear and convincing evidence that the defendant knowingly sold non-Y2K compliant products absent a signed waiver from the plaintiff. However, I have agreed to defer to the chairman so that this issue can be best addressed in conference.

Mr. MCCAIN. If I could inquire of my colleague from Alaska how his original amendment would have applied if, for example, a company bought a Y2K-compliant computer server in November 1999, and that server has to interact with other software and networked hardware manufactured by other companies that may or may not be Y2K compliant.

Mr. MURKOWSKI. I thank my friend for his question. My amendment would have imposed liability only if the manufacturer sold a server that was non-Y2K compliant by itself after the date of enactment of this act. My amendment would not apply to a Y2K compliant server that failed due to the non-Y2K compliance of installed software or attached hardware manufactured by other companies.

Mr. MCCAIN. I thank my colleague for his clarification and will be pleased to address his concerns in conference.

Mr. MURKOWSKI. I thank my friend from Arizona for his attention to this issue.

Mr. FEINGOLD. Mr. President, I appreciate all the hard work that has been done on this legislation by my colleagues. I know they are sincere in their concern about the effect of Y2K computer failures and in their desire to do something to encourage solutions to those problems in advance of the end of the year. But this bill is ill-considered

and ill-advised. As the Justice Department has noted with respect to original version of this bill, and I think the judgment remains accurate: this bill would be "by far the most sweeping litigation reform measure ever enacted if it were approved in its current form. The bill makes extraordinarily dramatic changes in both federal procedural and substantive law and in state procedural and substantive law."

For all the heated rhetoric we have heard on this floor over the past few days, I have not seen evidence that legislation is needed to create incentives for businesses to correct Y2K problems. More importantly, I do not agree that this bill actually creates those incentives. Indeed, I think that in many ways it does just the opposite. It rewards the worst actors with its damages caps and its prohibition of recovery for economic loss, and it may even give incentives to delay corrective action with the cooling off period and the changes in class action rules.

A major concern that I have about this bill is the breathtakingly broad and unprecedented preemption of state law that it contains. I simply do not agree that we should overrule the judgment of state legislatures and judges who have defined the law in their states for traditional contract and tort cases. This bill benefits one class of businesses, those who sell products that may cause Y2K problems, over another class of business, those who buy such products, and individual consumers. It completely disregards whether state lawmakers and judges would reach the same conclusions. I see no reason why Congress should dictate tort and contract law to the states. Protections for injured parties that have been developed through decades of experience are being summarily wiped out by the Congress, on the basis of a very thin record. Mr. President, that is not right.

Another serious problem with this bill has to do with the elimination of joint and several liability in the vast majority of Y2K cases. Mr. Chairman, we all have heard many times the horror story of a poor deep pocket defendant found to be only 1% liable who ends up on the hook for the entire judgment in a tort case. Frankly, I am aware of few actual examples of this phenomenon, but I know it is theoretically possible. A far more frequent occurrence, however, is a case where two or three defendants are found equally liable, but one or more of them is financially insolvent. The real question raised by joint and several versus proportionate liability is who should bear the risk that the full share of damages cannot be collected from one defendant. Who should have the responsibility to identify all potentially liable parties and bring them into the suit? Who should bear the risk that one of the defendants has gone bankrupt? Should it be the innocent plaintiff who the law is supposed to make whole, or a culpable defendant? Mr. President, to

me that question is easy to answer. Someone who has done wrong should bear that risk. But states have reached different balances on this question, based on their own experience of decades and decades of tort cases. How is it that we in the Congress all of the sudden became experts on this issue? Where do we get off overriding the judgment of state legislatures on this crucial question of public policy?

Now I recognize that changes to the bill obtained by Senator DODD would limit the effect of the abrogation of joint and several liability in a narrow set of cases involving egregious conduct by defendants or particularly poor plaintiffs. But I don't think this change goes far enough in protecting innocent victims from the harsh reality that sometimes the worst offenders have the least money. Section 6 of this bill eliminates joint and several liability in virtually every Y2K case, and that is wrong.

Let me quote one of the bill's stated purposes from Section 2(b) of the bill—"to establish uniform legal standards that give all businesses and users of technology reasonable incentives to solve Y2K computer date-change problems before they develop." But Mr. President, this bill doesn't establish uniform standards. It preempts state law only in one direction—always in favor of defendants and against the interests of the injured party.

As I stated before, I don't agree that uniform standards are needed. I think our state legislatures and judges are due more respect than this bill gives them. But if there is truly a compelling interest in uniformity, then I do not understand why this bill preempts state laws that offer more protection to injured plaintiffs but not those state laws that are less generous to the injured party. Yesterday, we even adopted, without debate, an amendment offered by Senator ALLARD that says specifically that any state law that provides more protection for defendants in Y2K cases than this bill does is not preempted. So preemption is a one-way street here. If you're in a state where the law is moving in the same direction as this bill and cutting back on the damages that can be recovered in a Y2K suit, you're fine, but if your state is going in the wrong direction, you get run over.

Mr. President, that is not fair. And it certainly is not consistent with the bill's stated purpose of providing uniform national standards.

Let me give you one example. About 30 states have no caps on punitive damages. Three other states have caps that are more generous than the caps in this bill. In Y2K cases involving defendants who are small businesses as defined in this bill, those state laws would be preempted. About a dozen states have higher caps on some kind of cases and lower caps on others. This bill would partially preempt those state laws, overriding the balance that the duly elected state legislatures in question decided was fair and just.

Six states do not allow punitive damages in tort cases, and one has caps that are lower than those permitted under this bill. Those states would be allowed to continue to apply the judgments of their legislatures and courts in Y2K cases.

My state of Wisconsin has generally rejected imposing arbitrary caps on punitive damages, instead trusting judges and juries to determine an appropriate punishment for defendants who act in a particularly harmful and intentional or malicious way. The state of Washington, to take an example, has eliminated punitive damages. Why should the policy decisions of the state of Washington be respected by this Congress more than the policy decisions of Wisconsin—or Pennsylvania, or Arizona, or New York, or the majority of states.

The one-sided tilt of this bill is very troubling. Punitive damages caps of any kind are bad ideas I believe. Remember that in every state punitive damages can be awarded only in cases of intentional or outrageous misconduct. So the protection offered by these caps goes to the very worst Y2K offenders—those who have acted intentionally or maliciously to avoid fixing their Y2K problems. Where is the justice and balance in that?

Mr. President, because I think it's important for the Senate to take every aspect of legislation into account in our debate here on the floor, I have a few more facts I'd like to add—facts about how much money has been donated to the political parties and to candidates by a couple of powerful groups that have a huge stake in this bill.

Now the dollar figures I'm about to cite, keep in mind, are only for the last election cycle, 1997 to 1998. First there's the computer and electronics industry, which gave close to \$6 million in PAC and soft money during the last election cycle—\$5,772,146 to be exact. And there's also the Association of Trial Lawyers of America, which gave \$2,836,350 in PAC and soft money contributions to parties and candidates in 1997 and 1998.

As I said, I cite these figures so that as my colleagues weigh the pros and cons of this bill, they, and the public, are aware of the financial interests that have been brought to bear on the legislation. The lobbying efforts, as we know, have been significant, and so have the campaign contributions. And the public can be excused if it wonders if those contributions have distorted the process by which this bill was crafted.

Mr. President, I am pleased that the Administration has indicated it will veto this bill in its current form. I will support that veto as well as voting against the bill. We need to encourage problem solving and remediation to avoid a disaster on January 1 in the Year 2000. But we don't need to enact this bill. Indeed, while trying to address a supposed litigation explosion,

we may well have created an explosion of unfairness to people and businesses who are injured by the negligent or reckless behavior of those who sell non-Y2K compliant products.

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent the Senate now go to a period for morning business with Senators being allowed to speak therein for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ASSISTANCE TO THE KOSOVAR ALBANIAN REFUGEES

Mr. CLELAND. Mr. President, I rise today both to pay tribute to and to thank the Government of the Republic of China on Taiwan (ROC) for their recent announcement to provide economic assistance to the Kosovar Albanian refugees. These funds, some \$300 million, represent a very generous gift and will prove invaluable to the displaced people of Kosovo by helping them receive the food, shelter and clothing they need to survive in the refugee camps and later, when they return to their homes in Kosovo. Furthermore, the aid from Taiwan will provide emergency medical assistance to the refugees, educational materials for the displaced children and job training for those that need it. The government of the ROC is even making it possible for some refugees to receive short term accommodations and job training in Taiwan while they await the rebuilding of their homes, businesses, schools, and hospitals.

The generosity of the government of the ROC is a tribute to the thoughtfulness and caring of the Taiwanese people and serves as a wonderful example for the entire international community. The current president of Taiwan, Lee Teng-hui, typifies this compassion and I would like to personally thank him and his foreign minister, Jason Hu, who is a good friend of mine, for all they have done not only for the people of Taiwan but not for the people of Kosovo. Only through such generosity and compassion can the people of the Balkans begin to move past the horrors they have experienced over the past few months and build a better future for themselves and their communities.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 10, 1999, the federal debt stood at \$5,604,848,624,148.74 (Five trillion, six hundred four billion, eight hundred forty-eight million, six hundred twenty-four thousand, one hundred forty-eight dollars and seventy-four cents).

One year ago, June 10, 1998, the federal debt stood at \$5,493,570,000,000 (Five trillion, four hundred ninety-

three billion, five hundred seventy million).

Five years ago, June 10, 1994, the federal debt stood at \$4,601,856,000,000 (Four trillion, six hundred one billion, eight hundred fifty-six million).

Ten years ago, June 10, 1989, the federal debt stood at \$2,783,892,000,000 (Two trillion, seven hundred eighty-three billion, eight hundred ninety-two million) which reflects a doubling of the debt—an increase of almost \$3 trillion—\$2,820,956,624,148.74 (Two trillion, eight hundred twenty billion, nine hundred fifty-six million, six hundred twenty-four thousand, one hundred forty-eight dollars and seventy-four cents) during the past 10 years.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGES FROM THE HOUSE

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that it has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 127. Concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony to present a gold medal on behalf of Congress to Rosa Parks.

MEASURE PLACED ON THE CALENDAR

The following bill was read twice and ordered placed on the calendar:

H.R. 1259. An act to amend the Congressional Budget Act of 1974 to protect Social Security surpluses through strengthened budgetary enforcement mechanisms.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3601. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report of the Maternal and Child Health Program for fiscal year 1996; to the Committee on Finance.

EC-3602. A communication from the Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the March 1999 issue of the "Treasury Bulletin"

which contains various annual reports; to the Committee on Finance.

EC-3603. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report for 1998 relative to extra billing in the Medicare program; to the Committee on Finance.

EC-3604. A communication from the Administrator, Department of Health and Human Services, transmitting, pursuant to law, a report relative to the Rural Health Care Transition grant program; to the Committee on Finance.

EC-3605. A communication from the Commissioner, General Services Administration, transmitting, pursuant to law, a report of the status of the National Laboratory Center and the Fire Investigation Research and Education facility; to the Committee on Environment and Public Works.

EC-3606. A communication from the Director, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the 1998 annual report on the Preservation of Minority Savings Institutions; to the Committee on Banking, Housing, and Urban Affairs.

EC-3607. A communication from the Chairman, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report for calendar year 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC-3608. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Upper Guadalupe River; to the Committee on Environment and Public Works.

EC-3609. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-77, "Children's Defense Fund Equitable Real Property Tax Relief Act of 1999"; to the Committee on Governmental Affairs.

EC-3610. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-76, "Apostolic Church of Washington, D.C., Equitable Real Property Tax Relief Act of 1999"; to the Committee on Governmental Affairs.

EC-3611. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-70, "Ben Ali Way Act of 1999"; to the Committee on Governmental Affairs.

EC-3612. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-69, "Criminal Code and Clarifying Technical Amendments Act of 1999"; to the Committee on Governmental Affairs.

EC-3613. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-75, "Bethesda-Welch Post 7284, Veterans of Foreign Wars, Equitable Real Property Tax Relief Act of 1999"; to the Committee on Governmental Affairs.

EC-3614. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13-78, "General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 1999-2004 Authorization Act of 1999"; to the Committee on Governmental Affairs.

EC-3615. A communication from the Commissioner, Social Security, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1998, through March 31, 1999; to the Committee on Governmental Affairs.

EC-3616. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, the report of the Office of Inspector General for the period