



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 106th CONGRESS, FIRST SESSION

Vol. 145

WASHINGTON, TUESDAY, JUNE 15, 1999

No. 84

Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, there is nothing more wonderful than the smile of Your affirmation. We say with John Hancock, "By the smile of heaven I am a free and independent man." We praise You that You have smiled with providential care on our beloved Nation. Your smile of joy is the source of our lasting happiness. You have given us freedom to live as independent men and women because we are dependent on You. May this be a day to count our blessings, so that every moment of this day may be filled with praise and gratitude for all You do for us. We even praise You for our problems because we know that You will help us solve them in a way that will bring us closer to You. Most of all, we seek Your smile over our efforts to change whatever contradicts Your will in America and registers consternation on Your face. Thank You for Your corrective judgment and, when we change or correct social injustice, thank You for Your amazing grace. We claim Your benediction, "*The Lord bless you and keep you. The Lord make his face shine upon you and be gracious to you. The Lord lift up His countenance upon you, and give you peace.*"—Numbers 6:24-26. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator MCCAIN, is recognized.

SCHEDULE

Mr. MCCAIN. Today the Senate will immediately begin 2 hours of debate on S. 96, the Y2K legislation. Following that debate, the Senate will stand in

recess until 2:15 p.m. so that the weekly party conferences can meet. When the Senate reconvenes at 2:15, a series of stacked votes will begin. The first votes in order will be on or in relation to the pending amendments to the Y2K bill, followed by a vote on final passage.

After the disposition of the Y2K bill, a cloture vote on the Social Security lockbox issue will take place. If cloture is not invoked on the lockbox legislation, a cloture vote on H.R. 1664 regarding the steel, oil, and gas appropriations bill will be in order.

Further, if cloture is not invoked on H.R. 1664, it is the intention of the majority leader to resume debate on the energy and water appropriations bill. It is hoped that a vote on final passage to that appropriations bill can be completed by this evening.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ENZI). Under the previous order, leadership time is reserved.

Y2K ACT

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate equally divided for closing arguments on S. 96, which the clerk will report.

The legislative assistant read as follows:

A bill (S. 96) to regulate commerce between and among the several States by providing for its orderly resolution of disputes arising out of computer-based problems related to processing data that includes a two-digit expression of the year's date.

The Senate resumed consideration of the bill.

Pending:

McCain Amendment No. 608, in the nature of a substitute.

Sessions Amendment No. 623 (to Amendment No. 608), to permit evidence of communications with State and Federal regulators to be admissible in class action lawsuits.

Gregg/Bond Amendment No. 624 (to Amendment No. 608), to provide for the suspension of penalties for certain year 2000 failures by small business concerns.

Mr. MCCAIN. Mr. President, after discussion with the distinguished Democrat manager, Senator HOLLINGS, I would like to modify the unanimous consent agreement to allow Senator HOLLINGS and I 3 minutes each before the vote on final passage is taken. I will withhold that request to clear it on both sides. But I think it is appropriate after we have votes on amendments that Senator HOLLINGS and I be allowed to make brief statements before the final vote on this very important issue. So I will withhold that unanimous consent request, but I intend to make it at the appropriate time.

Also for the information of my colleagues, I believe we may not require a vote on the Sessions amendment—I believe we are working that out on both sides—and we may not require a vote on the Gregg amendment as well, although neither have been worked out on both sides. We are attempting to do that. So it is entirely possible that at 2:15 we would be moving to final passage.

I note that it is acceptable to the other side, so I ask unanimous consent to modify the unanimous consent request, that Senator HOLLINGS be allowed 4 minutes and I be allowed 4 minutes prior to the vote on final passage of the pending Y2K legislation.

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

Mr. MCCAIN. Mr. President, I believe it is in the unanimous consent agreement that there be 2 hours equally divided; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Mr. President, I yield myself whatever time I may consume.

Mr. President, we are about to culminate the work of many months: investigation, drafting, negotiation, and compromise. The vote we take today

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S6975

will set the tone for the Senate in the new millennium. The Senate will either rise to the challenge that the Y2K problem poses and provide a proactive solution, or it will allow traditional political loyalties to leave us in reactive mode after a problem exists. I am optimistic that most of my colleagues recognize the importance of providing a balanced approach to avoiding a Y2K litigation quagmire, to preserving the nation's economy and providing support to the creativity and ingenuity that makes this country the world's leader in technology.

I want to remind my colleagues that many compromises have been made in this bill since it passed out of the Commerce Committee. It is certainly not as strong a bill as that passed by the House. These compromises have been made in order to get a bill that can have bipartisan approval and can be signed into law. We cannot play politics with this important issue—we must ensure that this legislation becomes law. On the other hand, I have stated clearly that I will not be party to passing a mere facade. Unless we really accomplish something, we cannot take credit for doing so. Even with all of the compromises we have made to get the legislation to this point, I firmly believe that the legislation will be effective.

Before we vote, I want to walk through the provisions of the legislation and correct some misconceptions as to how this bill would operate. With all of the rhetoric of the past several days, I think there has been some concern about the operation of the legislation, which I want to allay.

First, it is critical to remember that this legislation addresses Y2K failures which may be encountered by every industry, business, and consumer in the country. This legislation is not designed to protect the high tech industry or provide it immunity. The intent of the legislation is to provide a balance and orderly system for the resolution of Y2K failures in a manner that is fair, ensures that real problems experienced by consumers and businesses alike are addressed quickly, without litigation whenever possible, and that the judicial system is not overrun with opportunistic and creative lawsuits. It is not the redress of real problems that this legislation seeks to limit.

It is important to keep in mind that this legislation is supported by the broadest array of interests I have ever seen in support of legislation. They represent companies which will be plaintiffs, those who will be defendants, and those who will likely be both. These varied interests have debated among themselves many of the points raised on the floor of the Senate regarding the balance between plaintiffs and defendants. The compromises made since the bill was passed from the Commerce Committee also have refined the balance. What remains today to be voted upon is a good piece of legislation for every segment of the nation's economy.

Let me also reiterate that the Y2K date code problem is not simple to correct. Millions of lines of code are involved, many in outdated languages or in applications that have been revised and upgraded more than once or twice. Multiple means of correcting the date codes adds to the challenge, as does the rare occurrence of leap year in the first year of a new century. Uncertainty as to all the affected embedded chips, the interface of the various corrections, and the complexities of solving the date code without affecting other aspects of a date program, all make this a complex problem requiring massive dedication of technical ingenuity to correct. Although the opponents of this legislation would like the country to think the solution is simple and could have and should have been fixed a long time before now, it is not so simple.

Businesses in every industry will spend hundreds of billions of dollars to correct the problem. Estimates are that the costs in the United States alone will be between \$100 and \$200 BIL-LION—without litigation costs. There will undoubtedly be shifts of costs from one business to another, from one industry to another, from consumer to manufacturer, as the ramifications of the problem are better known. The purpose of this legislation is to provide rules and mechanisms for this process of cost shifting; rather than focusing on blame, to focus on solutions, prevention and remediation of real problems, rather than anticipated or perceived problems.

Let me review some of the most important aspects of S. 96:

First, I want to emphasize that this legislation does not affect personal injury cases. We have done nothing to alter the current law regarding how personal injury or wrongful death claims would be handled.

Second, let me state clearly that this legislation sunsets. It applies only to problems that occur within 3 years. This legislation will not change American law for all time.

The notice provisions provide time for the potential plaintiffs and defendants to resolve Y2K problems without litigation. The notice period is 30 days. Only if the defendant responds by fixing the problem is another 60 days provided to allow remediation to be completed. If there is no response, or if the defendant declines to fix the problem, the plaintiff can sue on the 31st day. The emphasis here is on providing notice that there is a problem so that it can be fixed. Most people want their equipment to work—they don't want a lawsuit. This provision ensures that the first order of business is to offer an opportunity to fix the problem. In no way does this provision deny someone's right to sue. Instead, it should speed up resolution of problems.

A requirement for pleading material injury ensures that the cases which are litigated are those in which there is real injury. This section will not cause problems for consumers or businesses

with actual Y2K-related failures. It will cause a problem for plaintiffs solicited for class actions where no injury has occurred, as in the increasingly famous California case brought by Tom Johnson.

To remind my colleagues, that is the case brought against six retailers in California, not to remedy any failure or injury, but to disgorge profits made over the past 5 years from selling unspecified products which may or may not be Y2K compliant. The clear intent of this litigation is a large settlement. That kind of profiteering litigation is the kind of litigation which S. 96 seeks to curb. Our judicial system should not be clogged with possible Y2K failures, nor novel complaints to ensure the payment of lottery-type settlements and attorneys' fees.

The economic loss rule further ensures that contract actions will not be "tortified." Why is this important? Historically contract actions have provided as remedy the "benefit of the bargain," but not punitive damages. The "benefit of the bargain" may include lost profits or similar compensatory damages to ensure that the plaintiff is made whole. By turning contract actions into tort actions, aggressive attorneys can claim the more lucrative punitive damages which are not compensatory in nature and allow a windfall from which to pay attorneys' fees.

However, banning the "tortification" of contracts does not leave a consumer without remedies for real problems. Principles of contract law govern many situations where only a verbal contract, not a written contract, exists. Additionally, the legislation does not affect rights under State Uniform Commercial Code and consumer protection laws.

Punitive damage awards have been limited for small businesses, but not for large businesses, in recognition that small companies are especially vulnerable to an onslaught of litigation. No caps are applicable, however, if the defendant has intentionally caused injury, since such conduct is egregious and should not be protected. These modest limitations also prevent frivolous lawsuits. This is especially reasonable here where we have eliminated personal injury claims, thus the damages suffered are all economic in nature.

We have preserved contracts as written to ensure that preexisting contractual relationships are maintained. The parties will receive the full benefit of their bargain. When the terms of a contract are in conflict with this legislation, the contract prevails. There is no reason for attorneys to say, as some trial lawyers have, that the legislation would alter a businessman's right to sue a vendor who does not perform a contract because of a Y2K failure. He can. But the legislation provides a notice period in which the vendor can, and should, remedy the problem without the time and expense of litigation.

A critical provision of the legislation provides that where litigation is necessary, the defendants will pay for their proportionate share of the damage. This is fair. A defendant pays for the damage he caused. It also eliminates the incentive to sue the "deep pockets" who may not be primarily responsible for the problem. Exceptions are provided for small plaintiffs who should not be at risk for collecting a damage award, and for situations where a defendant, because of particularly egregious behavior, should bear the burden of collecting from other defendants.

Those who oppose the bill have alleged that these provisions will actually deter responsible companies from taking necessary action to prevent Y2K failures. The facts do not support this claim. All one has to do is take a quick look at the year 2000 related Internet links to see that massive efforts are already being made to make information about Y2K problems and solutions available.

A recent EDS, Electronic Data Systems, ad highlights its free of charge, on-line data base that lists over 230,000 products from more than 5,000 vendors, with links to the vendors, instructions for making products Y2K compliant, and links to other related sites. The ad claims that the site receives 56,000 hits a day.

Both the EDS site and other sites provide step-by-step checklists and resource information for solutions. Why is this information being made available? Because the United States is the world's leader in technology. One of the reasons for the high-tech industry's success is that it has responded well to the marketplace. Preventing Y2K problems, letting other businesses and industries know about the problem and how to solve it, make good business sense.

If so much work is going into solving the Y2K problem then why do we need this legislation?

As I have stated before, the cost of solving the Y2K problem is staggering. Experts have estimated that the businesses in the United States alone will spend \$50 billion in fixing affected computers, products and systems. But what experts have also concluded is that the real problems and costs associated with Y2K may not be the January 1 failures, but the lawsuits filed to create problems where none exist. An article in USA Today on April 28 by Kevin Maney sums it up:

... Experts have increasingly been saying the Y2K problem won't be so bad, at least relative to the catastrophe once predicted. Companies and governments have worked hard to fix the bug. Y2K-related breakdowns expected by now have been mild to non-existent. For the lawyers, this could be like training for the Olympics, then having the games called off.

... The concern, though, is that this species of Y2K lawyer has proliferated, and now it's got to eat something. If there aren't enough legitimate cases to go around, they may dig their teeth into anything. . . . In

other words, lawyers might make sure Y2K is really bad, even if it's not.

The sad truth is that litigation has become an industry. While many fine attorneys represent their clients ethically and in a scrupulous manner, litigation has become big business for a segment of the trial bar.

A panel of experts predicted at an American Bar Association convention last August that the legal costs associated with Y2K will exceed that of asbestos, breast implants and tobacco and Superfund combined. A reported 500 law firms across the country have put together Y2K litigation teams.

As we have already seen in the Tom Johnson case in California, where no real injury or damage exists, novel theories are pursued to divert attention from prevention and remediation to defending litigation. Time and resources that could be spent on improving technology are diverted to litigation and settlement costs and attorneys' fees.

During a hearing on this legislation in the Commerce Committee testimony was presented from two small businessmen who were concerned, legitimately, about problems they had faced with Y2K failures, or anticipated failures. The esteemed Ranking Member of the Committee has often mentioned their testimony on the floor. Both expressed concern that they would be prevented by this legislation from bringing suit, or from being compensated for their damages. In both instances, not only would this legislation not eliminate their right to sue, it might help prevent the need to sue. The notice provisions and remediation period would assure prompt attention and resolution to their complaints.

We cannot lose sight of the bigger picture in terms of cost of litigation. The costs of both bringing and defending lawsuits are passed on by the businesses and industries into higher prices and cutbacks in jobs or new orders. The impact on our economy of an avalanche of frivolous lawsuits will be felt by all of us. If we do not curtail litigation costs, we will all pay a price in higher prices for computer and software goods, higher prices for every other retail good with embedded chips, higher prices for insurance, and slower, more expensive increases in technological advances. Money that is spent on litigation is money that is not spent on creating new jobs, providing better incomes, retaining our nation's competitive edge.

Mr. President, in closing, let me urge my colleagues to support this legislation. It is bipartisan, and again I want to thank Senators WYDEN and DODD for all they have done to make it so. It is reasonable and practical. It presents a good balance between the interests of plaintiffs and defendants and will prevent needless and costly litigation. It will assist in preserving the best economy our country has ever enjoyed. I will encourage the continued prosperity and leadership of our nations'

technology industries as we enter the new millennium. It will prevent our nation's courts from being clogged for years with litigation that offers no one prosperity except for the lawyers. The emphasis in approaching the Y2K problem must be on prevention, remediation and prompt resolution of Y2K problems. This legislation meets those goals.

The coalition of support for this bill is compelling. This legislation is important not only to big business and high tech, but to small businesses, retailers, wholesalers, insurance, consultants—virtually every segment of the business community.

Time is of the essence. For this legislation to provide the direction and impetus desired to assure prevention and remediation of Y2K problems, it must be passed now. We have spent several months getting to this point. Let me be clear. This legislation will make a difference. If we don't pass it, we will be failing to provide leadership for our country. I fear that a year from now we will again turn to this issue, but only after an avalanche of lawsuits has stymied the economy. Support this legislation and be part of the Y2K solution.

I again thank Senators DODD and WYDEN and many others for all of their efforts. I also want to congratulate Senator HOLLINGS, my friend from South Carolina, for an impassioned and very compelling argument in opposition to this legislation. I have always enjoyed debating him on a variety of issues, and I know no one who is better informed.

I reserve the remainder of my time.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina.

Mr. HOLLINGS. I thank the Chair, and I thank the distinguished chairman of the committee.

He and I work very closely together. The chairman of our committee has gained a reputation against charades and frauds and make-believes and pork and all these things. That is why it doesn't please this particular Senator that he would take this one on.

The truth of the matter is that, generally speaking, it is a nonproblem. If there is a problem, the best of the best, Intel, has a web page we lifted just yesterday afternoon entitled "Updating Your Components, Updating Your PC Hardware."

"If you have determined that your PC hardware is not capable of handling the century rollover"—so forth and so on, about how to manually reset and install a BIOS upgrade or patch, if available.

1. Manually reset the date after December 31, 1999, the first time you turn on your PC or laptop after December 31, 1999, and before you use any software applications, simply reset the operating system date on the computer. For nearly all PCs and laptops, this is the easiest and safest way to ensure the computer will handle dates properly in the year 2000. Once reset, the PC hardware clock will maintain the correct date when powered off and on or rebooted.

2. Install a BIOS upgrade or "patch," if available if you wish to ensure that your PC hardware is capable before the new millennium begins. You may want to install a BIOS upgrade or software "patch" before the end of 1999. Some PC hardware manufacturers and BIOS and software vendors are offering free BIOS upgrades.

I was wondering, Mr. President, about the time, the minimum amount of time, as I understand, and the cost.

I lifted, again, in searching back in 1998, an article entitled, "Tool fixes PC Y2K glitch," priced at \$94.95.

We are hearing millions and billions and everything else, Chick Little, the sky is falling.

A lot of people still don't seem to realize that even though they purchase their PC in 1998, it doesn't mean that the system is compliant. There are still PCs out there that are not fully compliant. Tools like the [PCfix2000] provide users with a solution for addressing this.

Then they go on to describe this \$94.95 fix.

I noticed in the month of March, on March 10 of this year:

The easiest way to prepare your PCs for the new millennium is with Y2K diagnostic software. We chose five sub-\$50 programs that both check your computer for year 2000 compliance and solve any problems they find: Check 2000 PC Deluxe, IntelliFix 2000, Know2000, Norton 2000, and 2000 Toolbox. We scrutinized each program and, finally, chose a winner. (Mac owners: Your machines are, and always have been, free of the Y2K bug.)

That interested me, because we only just last week had Michael Dell of Dell Computers, the largest producers of computers in the United States, and he had advertised with the Securities and Exchange Commission that all Dell computers were Y2K compliant.

I ask unanimous consent, once again, to print this March issue of Business Week in the RECORD.

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

[From Business Week, Mar. 1, 1999]

BE BUG-FREE OR GET SQUASHED

(By Marcia Stepanek, Ann Therese Palmer, and Michael Shari)

Lloyd Davis is feeling squeezed. In 1998, his \$2 million, 25-employee fertilizer-equipment business was buffeted by the harsh winds that swept the farm economy. This year, his Golden Plains Agricultural Technologies Inc. in Colby, Kan., is getting slammed by Y2K. Davis needs \$71,000 to make his computer systems bug-free by Jan. 1. But he has been able to rustle up only \$39,000. His bank has denied him a loan because—ironically—he's not Y2K-ready. But Davis knows he must make the fixes or lose business. "Our big customers aren't going to wait much longer," he frets.

Golden Plains and thousands of other small businesses are getting a dire ultimatum from the big corporations they sell to: Get ready for Y2K, or get lost. Multinationals such as General Motors, McDonald's, Nike, and Deere are making the first quarter—or the second at the latest—the deadline for partners and vendors to prove they're bug-free. A recent survey by consultants Cap Gemini America says 69% of the 2,000 largest companies will stop doing business with companies that can't pass muster. The National Federation of Independent

Business figures more than 1 million companies—with 100 workers or less won't make the cut and as many as half could lose big chunks of business or even fail.

WEAK LINKS

Cutting thousands of companies out of the supply chain might strain supply lines and could even crimp output. But most CEOs figure it'll be cheaper in the long run to avoid bugs in the first place.

Some small outfits are already losing key customers. In the past year, Prudential Insurance Co. has cut nine suppliers from its "critical" list of more than 3,000 core vendors, and it continues to look for weak links, says Irene Dec, vice-president for information systems at the company. At Citibank, says Vice-President Ravi Apte, "cuts have already been made."

Suppliers around the world are feeling the pinch. Nike Inc. has warned its Hong Kong vendors that they must prove they're Y2K ready by Apr. 1. In India, Kishore Padmanabhan, vice-president of Bombay's Tata Consultancy Services, says repairs are running 6 to 12 months behind. In Japan, "small firms are having a tough time making fixes and are likely to be the main source of any Y2K problems," says Akira Ogata, general research manager for Japan Information Service Users Assn. Foreign companies operating in emerging economies such as China, Malaysia, and Russia are particularly hard-pressed to make Y2K fixes. In Indonesia, where the currency has plummeted to 27% of its 1977 value, many companies still don't consider Y2K a priority.

A December, 1998 World Bank survey shows that only 54 of 139 developing countries have begun planning for Y2K. Of those, 21 are taking steps to fix problems, but 33 have yet to take action. Indeed, the Global 2000 Coordinating Group, an international group of more than 230 institutions in 46 countries, has reconsidered its December, 1998 promise to the U.N. to publish its country-by-country Y2K-readiness ratings. The problem: A peek at the preliminary list has convinced some group members that its release could cause massive capital flight from some developing countries.

Big U.S. companies are not sugarcoating the problem. According to Sun Microsystems CEO Scott G. McNealy, Asia is "anywhere from 6 to 24 months behind" in fixing the Y2K problem—one he says could lead to shortages of core computers and disk drives early next year. Unresolved, says Guy Rabbat, corporate vice-president for Y2K at Slectron Corp. in San Jose, Calif., the problem could lead to price hikes and costly delivery delays.

Thanks to federal legislation passed last fall allowing companies to share Y2K data to speed fixes, Sun and other tech companies, including Cisco Systems, Dell Computer, Hewlett-Packard, IBM, Intel, and Motorola, are teaming up to put pressure on the suppliers they judge to be least Y2K-ready. Their new High-Technology Consortium on Year 2000 and Beyond is building a private database of suppliers of everything from disk drives to computer-mouse housings. He says the group will offer technical help to laggard firms—partly to show good faith if the industry is challenged later in court. But "if a vendor's not up to speed by April or May," Rabbat says, "it's serious crunch time."

WARNINGS

Other industries are following suit. Through the Automotive Industry Action Group, GM and other carmakers have set Mar. 31 deadlines for vendors to become Y2K-compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts.

Other companies are sending a warning to laggards—and shifting business to the tech-savvy. "Y2K can be a great opportunity to clean up and modernize the supply chain," says Roland S. Boreham, Jr., chairman of the board of Baldor Electric Co. in Fort Smith, Ark.

In Washington, Senators Christopher S. Bond (R-Mo.) and Robert F. Bennett (R-Utah) have introduced separate bills to make it easier for small companies like Davis' to get loans and stay in business. And the World Bank has shelled out \$72 million in loans and grants to Y2K-stressed nations, including Argentina and Sri Lanka. But it may be too little too late: AT&T alone has spent \$900 million fixing its systems.

Davis, for one, is not ready to quit. "I've survived tornadoes, windstorms, and drought," he says. "We'll be damaged, yes, but we'll survive." Sadly, not everyone will be able to make that claim.

WHY BIG BUSINESS MAY HAVE A SMALL-BUSINESS Y2K PROBLEM

(A January survey of small-business owners)

	Percent
Aware of the Y2K problem	55
Are taking action to fix it	38
Plan to take action but haven't yet	19
No action taken and none planned	18

Data: National Federation of Independent Business.

Mr. HOLLINGS. It is very short.

Multinationals such as General Motors, MacDonald's, Nike, and Deere, are making the first quarter—or the second at the latest—the deadline for partners and vendors to prove they're bug free. A recent survey by consultants Cap Gemini America says that 69% of the 2,000 largest companies will stop doing business with companies that can't pass muster. The National Federation of Independent Business figures more than 1 million companies with 100 workers or less won't make the cut and as many as half could lose big chunks of business or even fail.

Some small outfits are already losing key customers. In the past year, Prudential Insurance has cut 9 suppliers from its critical list of 3,000 core vendors.

Citibank has already cut. Cuts have already been made.

I read further down:

If a vendor is not up to speed by April or May, it is a serious crunch problem. Through the Automotive Industry Action Group, General Motors and other car makers have set a March 31 deadline for vendors to become Y2K compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from food marketing to launch similar efforts. Other companies are sending a warning to laggards and shifting business to the tech-savvy.

Now I quote:

"Y2K can be a great opportunity to clean up and modernize the supply chain," says Ronald S. Boreham, Jr., chairman of the board of Baldor Electric Co. in Fort Smith, Ark.

The World Bank shelled out millions in loans and grants to Y2K-stressed nations.

On and on, Mr. President. Here is another article that the banks now, by June 30, will have all of their Y2K customers and everything else compliant, or they will have cancellations.

Otherwise, Paul Gillin said in Computer World earlier this year:

Vendors have had plenty of time to prepare for 2000. The fact that some were more preoccupied with quarterly earnings and stock

options than in protecting their customers is no excuse for giving them a get-out-of-jail-free card now.

That is what Computer World has called the Y2K bill, I say to the distinguished Senator from Arizona—a get-out-of-jail-free card—which is why I am surprised by my colleague, because he is usually on the other side. I quote again from Computer World:

The problem belongs—hook, line, and sinker—to the vendors that capriciously ignored warnings from as long ago as the late '70s. . . . It has been five years since year 2000 awareness washed over the computer industry [and everyone should now be compliant].

I was interested that Boeing, for example—and the Senator from Washington was here debating it—started back in 1993. Everyone has done that. This is a political fix—and I will get to that in just a little while. I want to just bring you really up to date with respect to the number of cases.

We had a witness, Ronald Weikers, who has written *Litigating Year 2000 Cases*, published by the West Group. I can tell you, the West Group is not going to publish anything partisan. They have a wonderful reputation for objectivity and reliability of their reports. He says:

I frequently write and speak about the subject. I do not represent any clients that have any interest in the passage or defeat of any proposed Y2K legislation.

Then he goes on to state:

Thirteen of the 44 Y2K lawsuits that have been filed to date have been dismissed almost entirely.

I brought that 44 figure up to date because that was the end of April, just a little over a month and a half ago. It is now 50 cases. Twelve cases have been settled for moderate sums of money, or no money. The legal system is weeding out frivolous claims. They act as if the courts just love to see a frivolous claim come into the court that doesn't have any substance. All you have to do is get 12 people and, whoopee, you've got money. You race to the courthouse, see the 12 people, and you get your money. It is a total fanciful picture that is being painted with respect to this legislation.

The legal system is weeding out frivolous claims and Y2K legislation is therefore unnecessary.

So says, of course, the *Washington Post*; they editorialized. We included that particular item in the *RECORD*, with others.

The most recent one is by Institutional Investor, a magazine from Wall Street. They had a survey taken, and this was just this month:

Do you feel your company's internal computer systems are prepared to make the year 2000 transition without problems?

Mr. President, 88.1 percent said yes; 6 percent said no. Here we are, 5 and a half months, and now the bill. This is a wonderful problem here, and we have to give it time. In January, under the McCain bill, you get 3 months. I am giving them 5 and a half months, the

operation, right now, to that 6 percent. Get with it.

Have you done a dry run of your computer problems for the year 2000 transition?

Twelve percent said no problems. Few problems: 86.4 percent.

Then they asked:

Do you expect Y2K transition problems to have a material impact on your company's business or financial performance next year?

Three point six percent, and we have this wonderful Federal legislation. Of course, States haven't asked for that. No attorney general has ever come up here. In fact, the Conference of State Legislatures has resolved against this political fix. That is all it is, political. We will get to that in just a few minutes.

Only 3.6 percent said yes; 89.2 percent said no. And then 95.2 percent say they have worked with their suppliers and cleaned up the problem.

So here we are in June, 5 and a half months ahead of time, and we still are insisting, if you please, on the Y2K fix.

Let me divert for a second and get right into the matter of safety. I know it is difficult with the matter of gun violence in the schools, and everything else, for us politicians to think in terms of a safe America. But that is the fact. We have the safest society with respect to product liability. That is what this is about, the Y2K problem with your computer, a product liability.

Since 1963 in the McPherson case, under the common law, when the courts came in and enunciated the doctrine of strict liability, the State legislatures thereupon have followed suit, enunciating strict liability, joint and several liability, all over the land. When you buy a product, it is not caveat emptor, the buyer beware, but caveat venditor, the seller beware. They have to be responsible right down the line, because the proponents of this bill said they are going to go way down and find somebody with fat pockets, or high pockets.

That is total nonsense. I have a glitch on my computer now, and I know they are like fleas on a dog, and they are all rich; it is the richest crowd the world has ever produced, way better than any oil millionaires. I know they have deep pockets, but I am not racing to the courthouse. I told my secretary to get this blooming thing fixed. I have no time to run around to the courthouse. If I went to the courthouse at 12 noon, it would take until the year 2000 to get into the courthouse. File your pleadings and see how it happens.

The total unreality of the picture described here for the need of this particular legislation—it has worked and, yes, and the Europeans are following us, incidentally. I have the record here where they are coming along with strict liability and joint and several liability. I only mention that because they come in and say we are losing business to the Europeans. The Europeans are following America. We are setting the example for safe products in America.

The conference board has found that. The Rand study has found that. I could go to various others—232 risk managers; the conference board reports that the companies responded to product liability by "making their products safer." So we know the effect it has had.

But to emphasize it, yes. Mothers Against Drunk Drivers has done a wonderful job with respect to consumers demanding a safe product, checking it out and understanding it—and various other things. The National Safety Transportation Board has come forth with various regulations, but it is really all prompted, if you please, I say to the Senator from Utah, by the trial lawyers. This town loves lawyers. That is all about lawyers. There are 60,000 of them. This town just loves lawyers. There are 60,000 to fix you and to fix me—not to get to the court. The lawyers are racing to the court around this place. I can tell you. I have been here 32 years now, and I know them. They are delightful folks. They are highly intelligent. I enjoy them. But one thing is that they have started advertising against working lawyers and the trial lawyers.

The lawyer that has to come in, if you please, and when he has a client that comes to him, he says first I have got to investigate and make sure the facts are as you say they are and you have been wronged. He has to pay for all the expenses of that investigation—the interrogatories, the discoveries, having to file the different pleadings, the trial of the case itself, and on appeal taking care of the briefs on appeal, the costs thereof, making of appeal and waiting for the court. And all along that so-called talented trial lawyer is rushing to the courtroom. He has to get all 12 jurors—not 11 but all 12 jurors. He has to get a majority opinion from the court. Then he gets his 20 percent or 30 percent, and these Senators run all around and saying they have a lottery, and "strike it rich," and some kind of atmosphere.

The consumer has never been mentioned here. That is what trial lawyers represent. They do not represent themselves. They represent a wronged consumer. Ask the Consumer Federation of America. Ask Public Citizen. Ask anybody who represents consumers if they thought that this bill was appropriate. They are absolutely opposed to it, but we have them. They have been very clever in the way that they have postured this particular measure. It isn't about consumers. It isn't about wrongdoing. It isn't about need.

This is a measure—sooey, pig. All you computer folks come into town—you millionaires—falling over each other. Billionaires, excuse me. I don't mean to hurt their feelings. Billionaires are falling over each other because we are going to fix it for you, which reminds me; that is some crowd, isn't it? That is some crowd. They are highly intelligent. Bless their success, but that is the crowd now that wants

estate tax cuts. That is the crowd that wants capital gains tax cuts. That is the crowd that wants no tax on the Internet. What Wal-Mart has started cleaning up is Main Street. Now we are going to clean up the rest of it, because Main Street in the States and the municipalities is not going to be able to tax businesses as normal businesses on Main Street. In fact, the merchant on Main Street will say: Tell me. Yes. You want siding 42 feet long. That is fine. Let me order it. I will have it delivered tomorrow. I will order it on the Internet, and you won't have to pay the 8 percent sales tax.

There is the agent sitting up there in a little cubicle on Main Street, and all we have is the wig shops run up and down Main Street of America.

But that is the crowd that says get rid of the immigration laws. They have been spoiled. They have been told that money can buy anything. Get rid of the estate taxes, capital gains taxes, the immigration laws, and now get rid of the liability laws—200 years of State liability laws for wrongdoers—and instead they are saying the wronged injured party now has to pay for the misdeeds of the wrongdoer.

I go back to placing emphasis on the point: I want to join on the issue about these lawyers. It was Mark Robinson back in the 1970s who brought the Pinto case wherein the gasoline tank exploded. It was negligently and willfully proved that they knew it was unsafe, but they figured that the extra little cost from a market cost-benefit analysis that they weren't going to put in the safe gas tank.

He got a verdict in that death case of \$3½ million and \$125 million punitive damages 20 years ago. He collected zero of his punitive damages. He never got a red cent. But pick up the morning paper or yesterday's paper, pick up any news edition and you will find recalls.

I went to the National Transportation Safety Board. As of 1994—in the last 4 years—there have been 73 million recalls on account of the Pinto case, on account of trial lawyers. You break that down to \$1.8 million, or \$18 million each year, \$50,000 a day, and 5 percent of the \$50,000 would be death, the other 95 percent in injury, and Mark Robinson saved 2,500 people from being killed as of today. He ought to be proud of it. Every trial lawyer who works that hard knows he is taking a risk, and he has to convince by the greater weight of the preponderance of evidence all 12 jurors. He has to be studied and careful and legally sound and prevail on appeal. He is taking care of all the costs, and out of it the average American gets a good lawyer. They do not like good lawyers. They like office lawyers that fix you and me. They don't like working lawyers.

So all of us, this thing about running to the courthouse, race to the courthouse, and everything else, we put it to bed.

Under our system, torts have been relegated to the States. I would think

the contract crowd would understand that. If I remember it, they came to town in 1995 and said the best government is the least government; the best government is closest to the people—the 10th amendment, the rights of the States. Even then the first thing they passed was to make sure the States were made whole. What did they call that thing? Unfunded mandates. That was it. Yes. Unfunded mandates. They wanted to make sure they would take care of the State communities. The States have been administering. They have been doing it on Y2K. Everyone is taking up the Y2K. They don't live in an isolation booth. The people are close to their government at the local level, and all of them have been hearing about this particular problem. It has been advertised.

Incidentally, my distinguished friends, the Senator from Utah, Mr. BENNETT, and the Senator from Connecticut, Mr. DODD, have performed yeoman service in bringing attention to this particular problem. But the States have been administering this, whereby you have to be accountable for your wrongful acts. Having done so, we have a safe America with the States having administered properly their product liability law. They have refused every time—and this has been going on for 20 years—to get the Federals to come in.

Here were the States asking not to do it. No State attorney general has come up and asked for it. No State Governor has said it is inadequate, and we need a Federal statute. Here they want to do away with 200 years of liability law at the State level. Why? Why? Why? Why? Look here. All we have to do is get yesterday's New York Times, June 14. On the front, left-hand column, "Congress Chasing Campaign Donors Early and Often." The money chase. If you have any doubt about that, just the day before, on Sunday in the Washington Post, a two-column story appears on two pages, "GOP Vies for Backing of High-Tech Leaders." "Party aims to exploit Y2K vote at CEO summit."

That is why they have all of them in town. This is a disgrace. This crowd has gone so political about message, message, message, they got the message together, but they say: Now, wait a minute. Senator MCCAIN and Senator HOLLINGS were ready for a final vote at 12:30 last Thursday, but we have to wait 5 days because you have to have a message but you have to have it timely.

Guess who is in town this afternoon when we vote. Bill Gates of Microsoft. You want me to call the roll? Want to hear a bird call? Here we go.

John Warnock of Adobe system, Carol Bartz of Autodesk, Greg Bentley of Bentley Systems, Michael Cowpland of Corel Corporation, Dominique Goupil of FileMaker, Bill Harris of Intuit, Jeff Papows of Lotus Development, Bill Gates of Microsoft, William Larson of Network Associates, Eric

Schmidt of Novell, John Chen of Sybase, John Thompson of Symantec Corporation, and Jeremy Jaech of Visio Corporation.

Of course, we have some that we could not get to meet with us, I guess—like Netscape.

I saw Barksdale on TV, and I saw the head of IBM, Gerstner. They were on my morning TV. They are all in town.

I thought this was the most amusing thing I had ever seen. I lifted this—I had to scroll it down word for word. Turn on channel 2, the TV here, which is the Republican screen of what is going on. I read it word for word: Senate again attempts to end minority stranglehold—the great Y2K money chase.

That is the first time an outreach, bag in hand, has ever been called a "stranglehold." We have been begging, trying to get a little bit of the crumbs from Silicon Valley. We have to run, too. We have never been against technology. I am the author of the Advanced Technology Program. I am the author of the Manufacturers Extension Partnership Program. It all works. It was supported by the electronics industry, the technology industry. It is working extremely well. We are trying to expand it.

I would love to get Mr. Gates and Microsoft to South Carolina. I don't speak in a disparaging way. I speak in an adoring way. But don't come here with the screen about stranglehold.

We have the Federal Election Campaign Commission. Last year, according to their records:

Intel, Andy Grove, hard money, the Democrats got \$16,000; the Republicans got \$64,000.

Microsoft, the Democrats got \$71,000, and the Republicans got \$143,000.

Soft money, Microsoft, the Democrats got \$135,000; the Republicans got \$629,000.

This is usually a performance of my distinguished chairman from Arizona, because I have heard him and he is very effective. I am just shocked he is not doing this and I am forced to do it.

I could go down the list here. Computer Services Corporation, the Democrats, \$25,000; the Republicans, \$53,000.

Microtech, Democrats, soft money, zero; Republicans, \$16,000.

Advanced Micro Devices, soft money, the Democrats got \$1,000; the Republicans, \$95,000.

I have the list. You can go over there.

Stranglehold? Come on, give me a break.

Here is what they are doing. They come here. We all have to run. So we create a problem. We raise a straw man of trial lawyers. We don't talk about consumers. We don't talk about the wrongdoing. We don't talk about trial lawyers representing wrongdoers. They are not just running around with frivolous cases. That is an imaginary thing that could be brought at the political level but not at our level, I can tell you that. Trial lawyers worth their salt are

not fooling around. They have to make a living. They don't run up and down and ruin their reputation. You know they are not getting anywhere. The courts take care of the frivolous charges. They raise that thing and they are saying: Here is what we are going to do; we are going to get rid of the lawyer.

It was very obvious in the debate how they are going to get rid of the lawyer. They said get rid of economic damages. If you come in with a \$10,000 or \$20,000 computer and that is all you are limited to, that is all you can recover.

What I have just described—the investigation, the pleadings, the interrogatories, the depositions, the trial, the appeal, the cost, the time—as a lawyer, I would tell my secretary up front, if they come in, tell them those are very complicated cases and there are a lot of legal loopholes to go through and delays, and we are just not in a position to handle those cases.

That is the way to get rid of the lawyer. They know exactly what they are doing.

When Senator EDWARDS of North Carolina came up and said, wait a minute, you can't do that, the Senator from Oregon said, we will give you exactly whatever the contract. You don't contract for torts. You don't say, we are going to contract for the wrongdoing; the contract is complied with.

If they defraud you, if they engage in wrongdoing, while the computer is down you are losing your customers to your competition, you are losing your business, you may have to let go of some of your good employees to tide yourself over.

All the time that business has to wait—and a small business at that—I can tell you right now, there will be serious economic damages.

If there is any doubt about it—because that is what small business wants. They don't want a law case; they want it fixed—up comes the Senator from California, Senator BOXER. She said: Don't give us trials, don't give us lawyers; just get a fix.

They denied that in an up-and-down vote. They said instead of fixing the computer, we are going to fix the lawyers; we are going to fix the system.

Just like any car dealer who comes around, what we are going to do is take your junk off the shelves and sell it; don't worry about it, because the law will protect you for 3 years. You can get rid of all your old models. Don't worry about it. Get rid of the junk. We will repeal the liability bill. We will say that fraud pays for the first time in America.

No one is going to get these cases. That is what they will do. I can see exactly what was happening with that particular witness from New Jersey who came before the committee. He bought an update that was represented to last for 10 years. Within a year he found out it wasn't Y2K compliant. He paid \$13,000. He called them twice and nothing ever happened. He wrote a let-

ter. They finally came back and said they would make it Y2K compliant, for \$25,000. That was after he got a lawyer and it went on the Internet and some 17,000 similarly situated people filed, and that particular manufacturer, supplier, came back and said they would fix it for nothing and pay legal fees.

You can see the game that business will play on a cost-benefit basis. We live in a rough world, but we have a responsibility in American society. It is done well at the State level and has worked well at the State level. No State has asked for this particular measure. Instead, the Association of State Legislatures has resolved against the Federal Y2K bill.

But they have the audacity to come up here and raise a straw man of lawyers running to the courthouse, in a litigious society and all of that nonsense, 5½ months ahead of time, and insisting on passing this particular measure, and insisting on the time of its passage is when the computer folks are in town so they will know who delivered the goods.

I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield 10 minutes to the Senator from Utah, followed by 10 minutes to the Senator from Connecticut, if that is agreeable to the distinguished Senator from South Carolina.

Mr. HOLLINGS. Yes, it is.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have enjoyed the remarks of my colleague, my dear friend. In this body, he is certainly a champion for the trial lawyers, and certainly I have been as well. I intend to continue to stand up for trial lawyers, who do a great job for consumers in this country, but we are talking about a little bit of a different problem.

Mr. President, I rise to express my support for the final passage of S. 96, the Y2K Act, as modified by S. 1138, the bipartisan Dodd-McCain-Hatch-Feinstein-Wyden-Gorton-Lieberman-Bennett amendment. This bill effectively addresses the very serious problems associated with the Y2K computer problem.

As you know, Mr. President, what is now known as the Y2K problem arises from the inability of computers to correctly process the date after December 31, 1999. When January 1, 2000 arrives, the computers that cannot process that date will have a variety of problems, ranging from very mild glitches to severe breakdowns. In the technologically dependent world we live in, this creates obvious problems for both individuals and for any business that relies on computer technology at any point in its business.

As a result of this problem, we face the threat of an avalanche of Y2K-related lawsuits that will be filed on or about January 3, 2000. Such an unprece-

dent wave of litigation will overwhelm the computer industry's ability to correct the problem. As I have said before, this super-litigation threat is real, and the consequences for America could be disastrous. Already, there have been more than 66 lawsuits, including 31 class actions, filed based on the Y2K problem. These suits are the beginning of a tsunami of litigation that could drown America.

As a Senator from the State of Utah, I am extremely aware of the impact this problem will have on the economy of the United States, as well as that of the entire world. Utah stands with a number of other states as a leader in the technological boom that has fueled America's economic progress in recent decades. The future of Utah, and of all America, relies on our ability to continue in our role as the global technological leader. As I have said before, if we fail to counteract the negative effects of the Y2K problem, we will be killing the goose that lays the golden egg.

Every dollar that industry has to spend defending itself from frivolous litigation is a dollar that cannot be spent on fixing the problem. The way to minimize the hardships caused by the problem on January 1st is to encourage remediation by the technology industry and to encourage mitigation by would-be plaintiffs, both before and after January 1st. This bill does precisely that.

The Y2K bill provides powerful incentives for industry to fix the Y2K problem before it happens and to remedy problems once they occur. Contrary to what some opponents of the bill have alleged, there is absolutely nothing in the bill that would deny any aggrieved party the right to sue. Let me repeat this. There is nothing in the bill that would prohibit anyone from bringing a lawsuit. What the bill does is to create powerful incentives to fix problems before resort to the courts is necessary. It encourages remediation through the requirement of pre-litigation notice and by providing opportunities for alternative dispute resolution. The pre-litigation notice and pleading requirements also assist industry in fixing Y2K problems by requiring that prospective plaintiffs provide the information necessary for the defendant to understand and remedy the problem during the cure period.

In addition to encouraging the computer industry to remediate the problem, this bill fosters action by both industry and consumers to avoid the problems caused by Y2K failures. This bill preserves contracts and State contract law, encouraging contracting parties to anticipate the possibilities of Y2K failure and to do all they can to avoid them. The bill also imposes a duty to mitigate, requiring prospective plaintiffs to do what they reasonably can to avoid damages occurring because of a Y2K failure.

Some Senators have raised concerns about some of the provisions of the

Y2K Act. Let me address some of these concerns.

Specifically, some Senators have opposed to the punitive damages provision, the proportional liability provision, and the section dealing with the economic loss rule. In the past several days, however, we have also heard many of my colleagues set forth the reasons why these provisions are central to the effective operation of the bill in preventing the disaster that is imminent in the wake of extensive frivolous Y2K litigation.

The punitive damages provision of the Y2K Act is essential in order to prevent the destruction of America's small businesses by excessive punitive damage awards. This section of the bill is extremely limited, as it applies only to small businesses. The bill simply does not impose a cap on punitive damages for any defendants other than small businesses. Opponents of this provision argue that punitive damages serve as a deterrent to misconduct, and that placing a cap on them will remove that deterrent. The punitive damage cap created by this bill does not remove any deterrent to misconduct.

Punitive damage awards against small businesses will be limited to three times the amount awarded for compensatory damages or \$250,000, whichever is less. For small businesses consisting of an individual whose net worth does not exceed \$500,000 or a company with less than 50 employees, this is a significant deterrent to misconduct. In addition, there is no cap at all if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff. I cannot take seriously the argument that this formulation of punitive damages is too small to act as a deterrent. Treble damages or \$250,000 is a significant piece of change to pay for a small business.

In fact, I supported a similar cap for all businesses. But, in the spirit of bipartisan compromise, we agreed to limit the caps to small businesses. I understand that even the White House supported a similar small business cap provision in the products liability bill of two years ago. So what's the big deal?

What the small business punitive damages cap does do is to protect our small businesses from utter destruction by excessive punitive damage awards. As last year's Rand Corporation study of punitive damages concluded, the United States has witnessed a substantial increase in the amount of punitive damage awards. Witness the recent May 10 punitive damage award by an Alabama jury of \$581 million to a family that complained they were overcharged \$1,200 for two satellite dishes. According to Rand, although punitive damages amounts to a minority of all damages awarded, the very size of these awards skewers the civil justice system. Even frivolous lawsuits are settled for fear of large judgments. This has led to what

is termed "jackpot justice." Lawsuits have been grossly transformed from a search of justice to a search of deep pockets. We have tried to counter this trend—at least for small businesses—in the Y2K Act.

Speaking about "jackpot justice"—the proportionate liability provision is intended to mitigate the quest for deep pockets by assuring fairness in the award of damages. Punishment must fit the crime and it is only fair that defendants should be liable only for the part of the damage that they cause. In an attempt to forge a bipartisan compromise, Senators MCCAIN, DODD, WYDEN, LIEBERMAN, FEINSTEIN, GORTON, BENNETT, and myself, agreed to the formulation of proportionate liability found in the Federal Private Securities Litigation Reform Act of 1995. This act was signed into law by the President several years ago—so it should be acceptable to the administration.

Yet some opponents to this bill have spoken out against this provision. Opponents of this section of the bill apparently want some defendants to be liable for all damages, even if they were responsible only for a tiny fraction of the damage. That is the very definition of "deep pockets." The Y2K Act would prevent this and that is why it is opposed by the trial attorneys. The act ensures that a defendant's liability in a Y2K action will be for the damage that they caused, and not for the damages caused by other defendants.

Another section of the bill that is under attack is the class action section. Opponents of the bill say that this provision would federalize all State actions. This is a gross exaggeration. Let me explain.

The class action provision is vital to the effective operation of the bill. Class actions are a significant source of abuse. I have seen this as chairman of the Judiciary Committee. Far too often, Federal jurisdiction is defeated by joining just one nondiverse class plaintiff—even if the overwhelming number of parties are from differing States. This wrecks the clear purpose of Federal Rule of Civil Procedure 23—to provide for a Federal forum ameliorates myriad state judicial decisions that are conflicting in scope and onerous to enforce.

Now, as I stated before in this debate, I am a great proponent of federalism and the right of our States to act as what Justice Brandeis termed national laboratories of change. But it is axiomatic that a national problem needs a uniform solution. That is the justification for Congress' commerce clause power and its consequent promulgation of rule 23. That is the justification for the Y2K Act itself, in which the Y2K defect is clearly a national problem in need of a Federal answer.

The economic loss section of the Y2K Act has also been the subject of some contention. Let me reiterate some of the arguments I made last Thursday on

the Senate floor in opposition to the Edwards amendment which if passed would have weakened this section. The economic loss rule is already widely accepted and has been adopted by both the U.S. Supreme Court and by a majority of States. The rule basically mandates that when parties have entered into contracts and the contract is silent as to consequential damages—which is the contract term for economic losses—the aggrieved party may not turn around and sue in tort for economic losses. Under the rule, the party may only sue under tort for economic losses. Under the rule, the party may only sue under tort law when they have suffered personal injury or damage to property other than the property in dispute.

In short, the Y2K Act's economic loss section ensures fairness in contract law by applying the rule already in use in most states to Y2K lawsuits. It prevents "tortification" of contract law by flagging an end run against terms of a contract agreed to by the parties.

Let me also remind the critics of this bill that it is of limited duration. This bill is designed to specifically address the problems related to Y2K computer failures that will occur around the turn of the millennium. In keeping with this purpose, the bill has a sunset period, which means that the entire bill will only be in effect until January 1, 2003.

Let me also make a variant of Pascal's wager. If these disputed provisions are harmful, as some critics contend, enacting them will do little harm because the bill will expire in 3 years. But if, as the supporters of this bill believe, these provisions are critical, not including them in the final bill could greatly harm the economy and our high tech industries. The choice is obvious. Both reason and equity require that these provisions remain in the bill.

Some have expressed concern that President Clinton will veto this bill. I don't think he will. This bill can only solve the problems created by the Y2K problem. Its provisions encourage remediation and mitigation, and encourage solutions to problems. The President knows this. He knows that to sign the bill can only help our nation and the world. He knows that by vetoing the bill he will, at best, be doing nothing to solve the Y2K problem, and that at worst he will be contributing to it. If we are to be successful in solving this great problem before us, we must overcome our fear and pass the Y2K bill as a strong and effective piece of legislation.

Again, I emphasize the importance of this bill to our nation's future. Without meaningful legislation addressing the Y2K problem and the deluge of litigation that will surely follow, our nation may suffer devastating consequences. The Y2K Act before the Senate today is that meaningful legislation. This is a bipartisan bill, created and shaped through cooperation on both sides of the aisle. I urge my colleagues to vote for its final passage.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. President, very briefly, I want to once again commend my colleague from Utah. He has given a very insightful legal analysis of what the implications of this proposal are, what the authors of this bill are attempting to do. I will restate, not as eloquently as he has, the fact that the trial bar performs a very valuable service in this country.

There is no way in the world the Justice Department, and others, could do all the work the private litigators achieve on behalf of all citizens. But to listen to some talk about this bill, you would think we had just voided all litigation when it came to the Y2K issue. Nothing could be further from the truth. In fact, quite to the contrary, it provides for a systematic way for laws to be filed should there be no other means of resolving the difficulties.

I commend my colleague from Utah. I also commend Senator MCCAIN, the chairman of the committee and the principal author of this legislation, my colleague from Oregon, Senator WYDEN, and the many others who have been involved in putting this piece of legislation together. I also wish to commend the hard work of Senator MCCAIN's staff, Senator WYDEN's staff and I wish to particularly recognize my own staff and all the work that they have done.

We have now resolved most of the outstanding issues, or we have had votes on a number of them. I understand we will have a final passage vote sometime early this afternoon.

We, as a nation, and the world at large are going to meet the new millennium 199 days from today. That is when the clock turns. As many of my colleagues know, Senator BENNETT of Utah and I were asked by the leadership of this body—the majority and the minority—to head up a special committee, if you will, to take a good, hard look at the Y2K issue and the full ramifications of it on our National Government, State and local governments, private industry, nonprofits, and the world.

We have held, over the last year and several months, some 22 hearings; we have had site visits to nuclear power plants, hospitals, and financial services sectors; we have had staff who have gone overseas to meet with leaders of other countries—all of this, as quickly as we could, to give our colleagues and the country the benefit of an analysis of where we stand with this issue of the year 2000 millennium bug.

I am not going to go into all the details of the work. We have had a good committee. I commend my colleague from Utah, Senator BENNETT, who has done a very fine job chairing this committee. We think—we hope—we have provided a valuable service in highlighting and pushing and using the forum of that special committee to urge a greater sense of urgency on the

part of the various sectors of our society to get ready for this problem.

I think it is fair to say we believe we are in fairly good shape on this issue. Again, I will not go through all the details, but, by and large, most sectors in our society—government at all levels—are doing a good job of remediating the problem, taking the steps that are necessary to fix these computers and to eliminate the potential hazards and harm. There are larger problems offshore. I am not going to go into that at this point. But there has been a lot of work up to this point.

One of the things we concluded, in part, is that we ought to come up with some sort of a means by which, if problems do emerge after January 1, we ought to try to fix the problem before we litigate the problem.

This is an outrageous thought, but maybe Congress might actually do something in anticipation of a potential problem. We do not normally do that around here. We wait for the problem to hit us. We wait for catastrophes to occur, many of which we cannot predict, obviously, because in many cases we talk about natural disasters or unanticipated events.

However, in 199 days, we have a very anticipated event. We have been told by experts, knowledgeable people, during the last 2 years in our hearing cycle—one expert after another—that we have a very serious problem hanging over us potentially, come the change in the millennium date.

You could go the traditional route and rush to the courthouse every time a problem emerges—with a handful of law firms, by the way. To speak about the trial bar on this issue, you can count the law firms on one hand, almost, that are involved in this kind of litigation. Let there be no illusion, this isn't your fender-bender, your product liability case, your personal injury case. This is a very specialized area. They would prefer to run to the courthouse for the problem.

Those of us who have offered this bill do not rule out the courthouse at all, but we say: Why not a 90-day cooling off period? How about saying you have to take some time to try to fix the problem? As much as we try to anticipate the problem, we cannot guarantee that we have done so. If a problem emerges, why not try to fix the problem? If you cannot fix it, then go to the courthouse. It is not much more complicated than that.

This bill lasts 36 months. You would think, to listen to some of my colleagues, we were amending the Constitution of the United States, the Bill of Rights, that we were changing the Ten Commandments. This is a 36-month bill for one short window in time, for us to say we want to try to solve the problem and not run to the courthouse for 36 months.

Can the trial bar bear that for 36 months? To see if we can't come to some conclusion and avoid the tremendous cost, the business to consumers,

and others, as they spend weeks and months, if not years, litigating these problems instead of trying to fix them? That is really what this is all about.

We came to some significant compromises here. In fact, this bill ought to have been done on a consent calendar, in my view. It should not have taken a week's time in the Senate to deal with this issue. It is not that complicated.

What we have done here is, we have put caps on punitive damages for small business. We do not think you ought to wipe out a small business because you file a lawsuit against them, because they have a computer glitch problem. These punitive damage caps apply only to businesses that employ 50 people or less. We have directors' and officers' liabilities—again, no ceilings here on punitive damages at all. The trial bar begged for those things. That is included. That is in our bill.

We have proportionate liability here. This is the great stumbling block, I guess, for some in this 36-month bill. For 36 months we are going to have proportional liability—this cataclysmic event that is occurring here for 36 months—where we say that if, in a normal case, you are guilty of involvement in some problem, you are responsible for that percentage of the problem you caused—that is a radical idea—except, however, that is not the case if in fact you had an intentional, willful action on the part of the defendant. Under those circumstances, there is no proportional liability; it is joint and several. So we protect the plaintiff that may have been severely hurt as a result of this problem.

That is basically the sum and substance of this legislation—for 36 months.

This is an important industry, the high-technology community. It is changing the economy of our Nation and the world in which we live. The United States is on the cutting edge. We are leading the world. Ten or fifteen years ago, all we talked about was the Japanese and the Pacific rim. The United States could not compete in high technology. We had lost it forever. Well, there were bright people in this country who had other thoughts. As a result of their ingenuity and hard work, they changed the nature of how the world looks to leadership in high technology. Today the United States is the leader. These leaders champion ideas that are incubated in basements and garages, these technology leaders are often young people who are coming out with little or no money in their own pockets but a good idea. They are changing how you and I live.

Mr. President, I ask unanimous consent for 30 additional seconds to wrap up.

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

Mr. DODD. These industries are critical to the 21st century economy of this country. I do not think we ought to allow some big appetites and a handful of law firms to go out there and try

and do damage unnecessarily to these people. If you have to get to a courthouse, you get to the courthouse. But, for 36 months in this country, let us take time out and try and solve the problem.

This bill that Senator MCCAIN, Senator WYDEN, myself and others have authored, we think buys us this short window of time to resolve these difficulties. I hope this afternoon, when final passage occurs, my colleagues will vote for the 21st century future and not for a handful of law firms that want to litigate forever.

Mr. MOYNIHAN. Mr. President, I rise to congratulate Senators MCCAIN, DODD, BENNETT, and HATCH for all the work they have done on S. 96, the Y2K Act. The bill will help protect against frivolous Y2K lawsuits. With just 199 days until 2000, the focus must remain on fixing the computer problem, not on litigating it.

The Y2K computer problem has been with us for some while, and it would be derelict of me not to mention that it was brought to my attention by a dear friend from New York, a financial analyst, John Westergaard, who began talking to me about the matter in 1995. On February 13, 1996, I wrote to the Congressional Research Service to say: Well, now, what about this? Richard Nunno authored a report which the CRS sent to me on June 7, 1996, saying that, "the Y2K problem is indeed serious and that fixing it will be costly and time-consuming. The problem deserves the careful and coordinated attention of the Federal Government, as well as the private sector, in order to avert major disruptions on January 1, 2000."

I wrote the President, on July 31 of that year, to relay the findings of the CRS report and raise the issue generally. In time, a Presidential appointment was made to deal with this in the executive branch. And last spring—less than 1 year ago—the majority and minority leaders had the perception to appoint the Senate Special Committee on the Year 2000 Technology Problem.

We have done a fine job preparing for the Year 2000. It took some cajoling, but people finally began to listen. The Federal Government should make it. The securities industry has been out on front on this. Their tests went very well this past March and April. When Senator BENNETT and I held a field hearing last summer—July 6—in the ceremonial chamber of the U.S. Federal Court House for the Southern District of New York, we found the big, large international banks in the City advanced in their preparations regarding this matter.

But much work still remains to be done. Testing and contingency plans are still being addressed. Last year, Senators BENNETT, DODD, and I introduced the Y2K Disclosure Act. This act, which the President signed on October 19, 1999, has been very successful in getting businesses to work together and share information on Y2K. S. 96 builds on the Disclosure Act and en-

courages remediation and information sharing. It is a good short-term fix for a once-in-a-modern-civilization problem, and I encourage the Senate to pass it forthwith.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Does the Senator from North Carolina want to use his time?

Mr. HOLLINGS. I thank the distinguished Senator. Mr. President, I yield 10 minutes to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. EDWARDS. I thank the Chair.

Mr. President, we have a bill before us today that has had a great deal of discussion. I just listened to my friend, the distinguished Senator from Connecticut, discuss it. He and I agree about a great many things. We agree about a great many things with respect to this bill.

I think it makes great sense to pass a moderate, thoughtful bill that provides protection for the computer industry. I think it makes sense to create incentives for consumers, buyers of computer products and those people who sell those products to, No. 1, try to remedy any Y2K problems that might exist with the computers they purchase and, No. 2, to work together to solve any problem that either of them may have, either the seller or the purchaser.

I think it makes a great deal of sense, as a result of that, to have a cooling off period. I think the 90-day cooling off period is something I strongly support. I add to that, I strongly support the idea of alternative dispute resolution which has been discussed at great length on the floor of the Senate. I think all those things accomplish positive things. They accomplish the goal of providing some legitimate protection for the computer industry. They accomplish the goal of having folks work together to try to avoid lawsuits. I think those are things that we ought to support.

There is a fundamental problem with this particular bill. The problem is this: There are going to be cases where purchasers of computers, whether they be consumers or small businesspeople, are going to suffer legitimate losses. They are going to have a Y2K problem. Their business is going to get shut down. They are going to have to continue to make payroll. All of us who grew up with small businesses understand that proposition. They are going to have to keep paying their employees, keep having overhead. But as a result of a Y2K problem, they do not keep generating revenue.

They are going to have a real and substantial loss. The computer company or salespeople who sold them the computer may well be responsible for that loss. In those cases where the computer company or the manufacturer acted in a reckless or irresponsible way on one hand, and in addition to that, we have a purchaser who suf-

fered a real substantial and legitimate loss—I am not talking about something frivolous, not talking about their VCR won't work; I am talking about their family-run and family-owned business has been put out of business—that loss exists as a result of a Y2K problem clearly caused by somebody's irresponsibility, what we have to recognize is that loss will not go away. It exists. It exists in reality. It exists in the pocketbook of this small businessman.

The question is really very simple. Who will bear that real and legitimate loss when it occurs?

There are two problems in this bill. One has to do with the issue of joint and several liability. The other has to do with economic loss. They are both devastating in how they deal with that issue.

If you start with the basic premise that that loss which has been suffered by the consumer or a small businessperson is a real loss that is not going to go away, then the question becomes, who is going to pay for it? By eliminating joint and several liability, what we have said by law is if there are multiple parties who may be responsible, but for some reason one of those parties can't be reached, that we are going to shift that part of the responsibility, whatever, because it is an off-shore company, if it is a company going bankrupt, out of business, whatever, and that company was 20 percent responsible, that loss gets shifted to the innocent consumer, the businessman, under this law. That is exactly what this law does.

Joint and several liability has existed in this country for 200 years. It exists for a simple reason—because it is fair and it is equitable.

What we say in the law of the United States is that we always want the guilty to pay and not the innocent. What this law does is, it changes that fundamental premise. If a Y2K problem exists and an innocent consumer or businessman suffers as a result, that share of the loss that can't be recovered will be borne not by those who participated in the loss, the guilty, but will be borne by the innocent. That is one problem.

There is a second problem that is even more devastating. This bill essentially eliminates the right to recover economic losses, which means, in my example, a small businessman whose family-run-and-owned business has been put out of business, as between him or her and a computer company or computer sales business that has sold the computer to him knowing it was non-Y2K compliant, as between those two, what we say in this law is, the innocent purchaser will bear the loss.

It is so important for all of my colleagues and the American people to recognize that there has been a lot of rhetoric on the floor about lawsuits and lawyers and the trial bar I heard Senator DODD talking about a few minutes ago. This has nothing to do with lawyers. What we are taking about and

what we ought to be talking about is who is going to be protected by this bill and who is going to be hurt by it.

We know who is going to be protected. The big computer companies will be protected. Now the question is, Who will be hurt? It is not lawyers that will be hurt. The people who will be hurt are consumers and small businessmen. It really becomes a very simple proposition. We are protecting the big guy, and we are shifting that injury and damage to the little guy. It is the little guy that gets hurt by this bill.

In my example where a computer has been sold that is non-Y2K compliant, the people who sold it did it absolutely intentionally. They knew exactly what they were doing and some innocent businessman in a small town in North Carolina gets put out of business. If this law passes, this is what he can recover; he can recover the cost of his computer.

Well, he is going to have a great time explaining to his family, to his mother and father, who spent their life building up his business, that they have been put out of business and they can identify who caused it and they did it intentionally and willfully and they were irresponsible, but all they can ever get back is the cost of their computer.

It is fundamentally wrong. It is inequitable and it is unfair. That is what is wrong with this bill.

I want to mention three specific examples that I think show the American people what a problem we have. Example No. 1, let's suppose we have a businessman who runs his assembly line with a computer system. On November 15, 1999, this year, the computer salesman comes to him and sells him a new system. Let's assume that computer salesman knows the system is not Y2K compliant. On January 2, 2000, his assembly line comes to a grinding halt. It does so because of this Y2K problem. The people who sold it to him were reckless and irresponsible in doing so. He has lost all of his sales. He can't produce a product.

Let's assume that some of his customers will void their contracts, which they would. He doesn't have what they need and they have to get their product somewhere. They void their contract because he doesn't have anything to sell them. He can't meet payroll. For about 3 weeks, he is able to pay his people, but he can't meet payroll now because he has nothing to sell anymore. He goes out of business. Under section 12 of this bill, under that example, this is what this manufacturer can recover: The cost of the computer. He may have lost thousands and thousands of dollars. He has been put out of business, and what he can get back is the \$5,000 cost of the computer. That is one example.

Let me give a second example. Suppose a businessman buys a computer program that manages his billings, his promotional mailing, and his data bases. On January 1, 2000, the program

fails and renders the computer unworkable. The business can't send out its bills and loses the use of its mailing list and data base for more than 2 months; as a result, it goes under. Under this bill, he has been run out of business—clearly a Y2K problem, clearly the responsibility of the people who sold him the computer system. But all he can recover is the cost of his computer.

Finally, assume that we have a doctor who buys an infusion pump which is run by a computer, which is done all over the country in doctors' offices, and he uses it for a surgical procedure in his office. Because of a Y2K problem, it fails during surgery and a patient he cares about is severely injured as a result. They sue him for malpractice. He has to pay some huge judgment. He doesn't have enough insurance to cover it, so he loses thousands and thousands of dollars and his business is ruined. What that doctor who is operating in small town North Carolina is allowed to recover is the cost of his computer.

The problem is—and all three of these examples show it—it is very fundamental to the problem existing in this bill. We are going to have real and legitimate losses that are caused by irresponsible conduct. The vast majority of computer companies in this country will act responsibly, but the reality is, as we all know, there will be a minority of those companies that do not act responsibly. We are going to have small businesspeople and consumers all across the United States who have real losses. I think my colleagues, Senator MCCAIN, Senator WYDEN, and Senator DODD, would all recognize that is true. That is reality.

What we do when we pass this bill is we take that real, legitimate loss that has to be borne by somebody—it doesn't disappear into thin air because the Congress of the United States passes a law. These folks who run small businesses and these consumers are going to have some real losses. It is a simple question: Who pays for those losses?

What I propose is that we have a bill that creates every conceivable incentive to cure Y2K problems, to cause these people who have legitimate complaints to work to solve those problems; that makes the purchaser do everything in his power to reduce his losses, to act in a very responsible way; that we streamline the process; that we find a way to have alternative dispute resolution; that we make the court procedure as simple as it can possibly be. All of those things would go to help with any litigation that might occur, or any day in court that may occur.

The problem is that this bill takes that loss that is real and legitimate and says we are going to go a step further; we are going to say when somebody suffers a real and meaningful loss, we are going to make the innocent consumer and the small businessman bear that loss. It is fundamentally wrong. It is inequitable. It violates every principle of law that exists in this country.

The American people absolutely do not believe in this and would not support it. They don't want frivolous lawsuits. None of us do. We ought to cut those off. They want people to use alternative dispute resolution. They don't want people going to the courthouse the first time they have a problem. We ought to do something about that. But what we should not do is throw the baby out with the bath water. There are going to be real people out there who have real losses, and it is simply not right—and the American people in their gut know it is not right—to take that loss and shift it from the people who are responsible to the innocent people who have suffered.

I will make one last comment and I will be finished. I have heard Senator DODD and Senator WYDEN talk at great length about the sunset nature of this bill, that this is a 3-year bill. With all due respect to those arguments, I think they are a smokescreen. This bill will cover virtually every Y2K problem that exists, because by the very nature of the problem, it is going to come into existence in the year 2000. So it doesn't make any difference. They could cut it off in 2 years, or in a year and a half. It would not make any difference whatsoever. It could be 20 years. It is going to cover exactly the same losses—those losses that rear their ugly heads in the year 2000 because of a Y2K problem.

So what I say to my colleagues and to the American people is that, being from a State where we are very proud of our technology industry and believing that the great majority of technology companies act in a very responsible way, I think it makes a lot of sense to provide some thoughtful protection for those folks and to provide the kind of incentives we have talked about today. But I don't think we should go so far and be so drastic and so dramatic as to take away a real and legitimate loss and to take that loss, which is not going to disappear, and shift it from the people who are responsible for it to the innocent consumers and to innocent small businesspeople. I think that is wrong. I think it is protecting the big guy against the little guy. For that reason, I oppose this bill and will vote against it.

I yield the remainder of my time.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I want to respond to some of the points made by the distinguished Senator from North Carolina. But before I do that, I want to talk about what a vote against this legislation means today.

A vote against this legislation today means that the high-technology sector, which is driving this Nation's economic prosperity, doesn't deserve the same kind of treatment afforded the airline manufacturers; the high-technology sector doesn't deserve the same kind of treatment afforded the securities industry; the high-technology sector doesn't deserve the same kind of treatment afforded the financial services

sector. I just don't think that makes sense, when it is so clear that we are going to have problems in the next century with respect to Y2K, that we would compound those problems by not giving high technology the same sort of protection that we have given to a variety of other industries.

Second, it seems to me that a vote against this legislation is a vote against the Nation's risk-takers, and it is a vote against the Nation's entrepreneurs who are working their heads off today to make their systems Y2K-compliant but are legitimately concerned about frivolous lawsuits. I don't think the Senate ought to be voting today against those risk-takers and entrepreneurs.

Third, it seems to me that a vote against this bill fails to recognize how dramatic the bipartisan changes have been to this legislation since it came out of the Senate Commerce Committee. The Senate Commerce Committee bill, as far as I am concerned, was a nonstarter. The House bill is a nonstarter. But this bill puts tough pressure on business and directs systems to cure problems, as well as those who might want to bring suits to mitigate damages.

Now, my friend from North Carolina has said repeatedly for days that if you have a problem and you are a small businessperson, you are not going to get to recover anything except the cost of the computer.

My question, colleagues, is, Why in the world would the overwhelming majority of the Nation's small businesses be calling for passage of this bill if all they got when there was a problem was the cost of a computer?

I agree with the Senator from North Carolina. These are dedicated, thoughtful people. Why in the world would they be in support of a bill if all they got was the cost of the computer?

The reason they are for the bill is they get all the rights that are prescribed in the contract that a majority of them signed when they purchased a computer. They get the damages that are the foreseeable consequence of a Y2K problem. They get economic losses as prescribed by State contract law. That is the reason why the overwhelming number of small businesses in this country are for this legislation.

The fact of the matter is, colleagues, that the so-called culprits who are behind the Y2K problem are folks who didn't really realize decades ago what we would be faced with at the end of the century.

Let me tell you what Alan Greenspan had to say recently on this issue. Alan Greenspan said, "I am one of the culprits who created the problem. I used to write those programs back in the 1960s and 1970s, and was so proud of the fact that I was able to squeeze a few elements of space by not having to put 19 before the year."

That is what Alan Greenspan said. He said he was one of the culprits behind the problem. In the infancy of the in-

formation age when every byte of memory cost about \$1 million, he saved his company a lot of money. Today a million bytes of memory can be bought for less than a penny.

This problem was a result of an engineering tradeoff, not some kind of conspiracy of computer geeks. I doubt that any computer programmer ever dreamed that programs written in the 1960s and 1970s would still be running today.

But the point of this legislation is to keep the heat on all of our Nation's companies to do everything they can to make the chips and the computers and all of our systems Y2K compliant. Let's get the problem fixed. But let's also have a safety net in order to ensure justice for those who have problems.

I want to say to my friend from North Carolina, the distinguished Senator, that he talked about how companies that are big and bad are going to get off the hook; they are going to get a free ride, and, again, you are not going to get anything except the cost of the computer.

Let me tell you what the hooks are for those that are big and bad. If you are ripping people off, you are going to get stuck with joint and several liability. You are going to get stuck with punitive damages. That is what happens under this legislation when you are big and bad.

But what we say in the many cases where we don't have that kind of conduct—the Senator from North Carolina and I certainly agree on this point—is you will be liable for the proportion of the problem that you caused. We say that the small businesses deserve a break on punitive damages.

But let's make no mistake about it, colleagues. If you are big and bad, the hooks in this bill are clear. Nobody is getting off the hook. You get stuck with joint and several liability. You can be held for punitive damages. That is in the text of this legislation.

There is a reason, colleagues, why the little guy is for this bill. There is a reason why the overwhelming number of small businesses in this Nation are for the bill. It is that those risk takers, those entrepreneurs, those innovators are saying, as we take the steps to make our systems Y2K compliant, let's also have a safety net so if there are frivolous lawsuits that we aren't going to lose everything as a result.

This bill has seen 11 major changes to favor the consumer, the plaintiff, and small businessperson since the legislation left the Senate Commerce Committee. I particularly want to credit the chairman of the committee, Senator MCCAIN, and the Democratic leader on the technology issue, Senator DODD, who have worked so hard to help fashion this proposal.

I hope today when we vote that we will not send a message that high technology doesn't deserve the same kind of treatment that airlines get, that the securities industry gets, that the financial services sector gets. Let's pass this

bill. Let's send it to the conference with a resounding vote.

I yield the floor.

UNANIMOUS CONSENT AGREEMENT—H.R. 1664

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that prior to the cloture vote on the motion to proceed to H.R. 1664 there be 10 minutes of debate equally divided between Senators NICKLES and BYRD.

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

Mr. MCCAIN. Mr. President, I ask unanimous consent that the agreement regarding H.R. 1664 be amended to add 5 minutes for Senator DOMENICI.

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

Mr. MCCAIN. Mr. President, I yield the floor.

Y2K ACT

The Senate continued with the consideration of the bill.

Mr. HOLLINGS. I yield 2 minutes to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I would like to respond very briefly to my colleague from Oregon, Senator WYDEN.

First, I point out that based on my study of the issue it appears to me that virtually every consumer group which is composed of, among others, small businesspeople around this country is opposed to this bill.

Second, and more importantly, Senator WYDEN said—I am quoting him—that the "bill permits recovery of damages for foreseeable consequences."

I say with all due respect to my colleagues that is exactly what the bill does not permit. That language appears nowhere in this bill. I challenge him, since he has made that statement, to find the language in the bill that says "damages for foreseeable consequences."

Mr. WYDEN. Will my colleague yield?

Mr. EDWARDS. I will.

Mr. WYDEN. I appreciate that. Of course, that is what many contracts say. That is the economic loss rule. We say that the rights that apply are the rights of contracts, which most small businesses enter into when they buy the system. It is the State economic loss rule. State contract law with respect to economic loss covers those issues.

I appreciate him yielding.

Mr. EDWARDS. My response to that is, first of all, the vast majority of the computers are not bought pursuant to a written law in contract, because most folks are not able to hire a team of lawyers to draft a contract on their behalf. So the contracting is a meaningless concept, except as between one