

States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2657

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 2657, a bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes.

S. 2671

At the request of Mr. ROCKEFELLER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2671, a bill to extend temporary State fiscal relief, and for other purposes.

S. 2731

At the request of Mr. LAUTENBERG, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 2731, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 2741

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 2741, a bill to amend the Public Health Service Act to reauthorize and extend the Fetal Alcohol Syndrome prevention and services program, and for other purposes.

S. 2754

At the request of Mr. DASCHLE, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2754, a bill to amend the Social Security Act to protect social security cost-of-living adjustments (COLA).

S. 2756

At the request of Mr. ALLARD, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2756, a bill to extend a certain high priority corridor in the States of Colorado, Nebraska, South Dakota, and Wyoming.

S. 2761

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2761, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers, ranchers, and fishermen, and for other purposes.

S. CON. RES. 127

At the request of Mr. SCHUMER, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. Con. Res. 127, a concurrent resolution expressing the sense of Congress that the President should designate September 11 as a national day of voluntary service, charity, and compassion.

S. RES. 271

At the request of Mr. COLEMAN, the names of the Senator from Illinois (Mr.

FITZGERALD) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 311

At the request of Mr. BROWNBACK, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thadeus Nguyen Van Ly, and for other purposes.

S. RES. 387

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. Res. 387, a resolution commemorating the 40th Anniversary of the Wilderness Act.

S. RES. 392

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Mr. LEVIN), the Senator from Vermont (Mr. LEAHY) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 392, a resolution conveying the sympathy of the Senate to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

AMENDMENT NO. 3578

At the request of Mr. BAUCUS, the names of the Senator from Washington (Ms. CANTWELL), the Senator from North Dakota (Mr. DORGAN), the Senator from North Dakota (Mr. CONRAD) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of amendment No. 3578 intended to be proposed to H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

AMENDMENT NO. 3590

At the request of Mr. FITZGERALD, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of amendment No. 3590 intended to be proposed to H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

AMENDMENT NO. 3593

At the request of Mr. FITZGERALD, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of amendment No. 3593 intended to be proposed to H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. ALEXANDER, Mr. HAGEL, Mr. LEAHY, Mr. DEWINE, and Mr. COLEMAN):

S. 2781. A bill to express the sense of Congress regarding the conflict in Darfur, Sudan, to provide assistance for the crisis in Darfur and for comprehensive peace in Sudan, and for other purposes; to the Committee on Foreign Relations.

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

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

S. 2781

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

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Peace in Sudan Act of 2004".

### SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) JEM.—The term "JEM" means the Justice and Equality Movement.

(3) SLA.—The term "SLA" means the Sudanese Liberation Army.

(4) SPLM.—The term "SPLM" means the Sudan People's Liberation Movement.

### SEC. 3. FINDINGS.

Congress makes the following findings:

(1) A comprehensive peace agreement for Sudan, as envisioned in the Sudan Peace Act (50 U.S.C. 1701 note), and in the Machakos Protocol of 2002, is in grave jeopardy.

(2) Since 1989, the Government of Sudan has repeatedly engaged in and sponsored orchestrated campaigns of attacking and displacing targeted civilian populations, disrupting their ability to sustain themselves, and subsequently restricting assistance to those displaced in a coordinated policy of ethnic cleansing and Arabization that is most recently evident in the Darfur region of Sudan.

(3) In response to 2 decades of civil conflict in Sudan, the United States has helped to establish an internationally supported peace process to promote a negotiated settlement to the war that has resulted in a framework peace agreement, the Nairobi Declaration on the Final Phase of Peace in the Sudan signed June 5, 2004.

(4) At the same time that the Government of Sudan was negotiating for a final country-wide peace, enumerated in the Nairobi Declaration on the Final Phase of Peace in the Sudan, it refused to engage in any discussion with regard to its ongoing campaign of ethnic cleansing in the region of Darfur.

(5) It was not until the international community expressed its outrage, through high level visits by Secretary of State Colin Powell and others, and through United Nations Security Council Resolution 1556 of July 30, 2004, that the Government of Sudan agreed to engage in talks to bring peace to the Darfur region.

(6) According to the Government of the United States and United Nations officials, the Government of Sudan has engaged in an orchestrated campaign, with the assistance of its Arab Sudanese proxy militia, the

Janjaweed, to remove a significant part of the ethnically African population from North Darfur, West Darfur, and South Darfur, Sudan.

(7) The United Nations High Commissioner for Human Rights identified "massive human rights violations in Darfur perpetrated by the Government of Sudan and the Janjaweed, which may constitute war crimes and/or crimes against humanity".

(8) Evidence collected by international observers in the Darfur region between January 2003 and September 2004 indicate a coordinated effort to target African Sudanese civilians in a scorched earth policy, from both air and ground, that has destroyed African Sudanese villages, killing and driving away its people, while Arab Sudanese villages have been left unscathed.

(9) As a result of this coordinated campaign, which Congress has declared to be genocide, reports indicate tens of thousands of African Sudanese civilians killed, the systematic rape of thousands of women and girls, the destruction of hundreds of Fur, Masalit, and Zaghawa villages and other ethnically African populations, including the poisoning of their wells and the plunder of crops and cattle upon which they sustain themselves.

(10) According to the United Nations High Commissioner for Refugees, 1,400,000 people have been displaced in the Darfur region of Sudan, of whom over 200,000 have been forced to flee to Chad as refugees.

(11) The Government of Sudan conducted aerial attack missions and deadly raids across the international border between Sudan and Chad in an illegal effort to pursue Sudanese civilians seeking refuge in Chad.

(12) In addition to the thousands of violent deaths directly caused by ongoing Sudanese military and government sponsored Janjaweed attacks in the Darfur region, the Government of Sudan has restricted humanitarian and human rights workers' access to the Darfur area, primarily through bureaucratic and administrative obstruction in an attempt to inflict the most devastating harm on those displaced from their villages and homes without any means of sustenance or shelter.

(13) The Government of Sudan's continued support for the Janjaweed and their obstruction of the delivery of food, shelter, and medical care to the Darfur region—

(A) is estimated to be causing 500 deaths each day; and

(B) is projected to escalate to 2,400 deaths each day by December 2004, so that even a best-case scenario will likely result in the death of more than 320,000 people between April 1, 2004 and December 31, 2004.

(14) The Government of Chad served an important role in facilitating the Darfur humanitarian cease-fire (the N'Djamena Agreement dated April 8, 2004) for the Darfur region between the Government of Sudan and the 2 opposition rebel groups in Darfur (the JEM and the SLA) although both sides have violated it repeatedly.

(15) The people of Chad have responded courageously to the plight of over 200,000 Darfur refugees even though such assistance has adversely affected their own means of livelihood.

(16) The cooperation and inclusion of all Sudanese is essential to the establishment of peace and security throughout all of Sudan.

(17) The African Union has demonstrated renewed vigor in regional affairs through its willingness to respond to the crisis in Darfur, by convening talks between the parties and deploying several hundred monitors and security forces to the region, as well as by recognizing the need for a far larger force with a broader mandate.

(18) Despite the threat of international action expressed through United Nations Security Council Resolution 1556 of July 30, 2004, the Government of Sudan continues to obstruct and prevent efforts to reverse the catastrophic consequences that loom over Darfur.

#### **SEC. 4. SENSE OF CONGRESS REGARDING THE CONFLICT IN DARFUR, SUDAN.**

(a) SUDAN PEACE ACT.—It is the sense of Congress that the Sudan Peace Act (50 U.S.C. 1701 note) remains relevant and should be extended to include the Darfur region of Sudan.

(b) ACTIONS TO ADDRESS THE CONFLICT.—It is the sense of Congress that—

(1) a legitimate countrywide peace in Sudan will only be possible if the principles of the Machakos Protocol of 2002 and the Nairobi Declaration on the Final Phase of Peace in the Sudan signed June 5, 2004, negotiated with the SPLM, apply to all of Sudan and to all of the people of Sudan, including the Darfur region;

(2) the parties to the N'Djamena Agreement (the Government of Sudan, the SLA, and the JEM) must meet their obligations under that Agreement to allow safe and immediate access of all humanitarian assistance throughout the Darfur region and must expedite the conclusion of a political agreement to end the conflict in Darfur;

(3) the United States should continue to provide humanitarian assistance to the areas of Sudan to which the United States has access and, at the same time, develop a plan similar to that described in section 10 of the Sudan Peace Act to provide assistance to the areas of Sudan to which United States access has been obstructed or denied;

(4) the international community, including African, Arab, and Muslim nations, should immediately provide resources necessary to save the lives of hundreds of thousands of individuals at risk as a result of the Darfur crisis;

(5) the United States Ambassador-at-Large for War Crimes should travel to Chad and the Darfur region immediately to investigate war crimes and crimes against humanity to develop a more accurate portrayal of the situation on the ground and to better inform the report required in section 11(b) of the Sudan Peace Act;

(6) the United States and the international community should—

(A) provide all necessary means to assist in the immediate deployment of a contingent of 4,200 African Union forces as recommended by the United Nations and to sustain such forces; and

(B) work to increase the authorized level and expand the mandate of such forces commensurate with the gravity and scope of the problem in a region the size of France;

(7) the President should use all means to facilitate a comprehensive solution to the conflict in Sudan, including by directing the United States Permanent Representative to the United Nations to pursue a resolution of the United Nations Security Council that—

(A) condemns the actions of the Government of Sudan in engaging in an orchestrated campaign of ethnic cleansing in Darfur;

(B) calls on the Government of Sudan to cease support of ethnic cleansing and the killing of innocent civilians, disarm the Janjaweed militias, prevent such militias from harassing and killing civilians, and ensure immediate access for all humanitarian assistance to all areas of Darfur;

(C) calls on all parties to the conflict in the Darfur region to permit unimpeded delivery of humanitarian assistance directly to Darfur, in particular to allow such assistance to cross directly from countries that border Sudan;

(D) calls on the Government of Sudan to provide all assistance possible, including release of its strategic food reserves, to respond to the Darfur crisis;

(E) calls on the international community, particularly those countries with strong economic ties to Sudan, to expedite the provision of humanitarian assistance to Darfur;

(F) authorizes the African Union Mission in Sudan (AUMIS) now deploying to the Darfur region of Sudan, and calls for the expansion of such force, and extension of the force's mandate to include protection of civilians;

(G) establishes an international commission of inquiry to examine the actions and accountability of those responsible for war crimes and crimes against humanity in the Darfur region; and

(H) confirms the right of all displaced Sudanese to return to their villages under safe and secure conditions;

(8) an international commission of inquiry should be established to conduct an investigation of atrocities in the Darfur region and to preserve evidence of atrocities for use in the prosecution of those responsible for war crimes and crimes against humanity;

(9) sanctions should be imposed on the assets and activities of those Sudanese Government officials and other individuals that are involved in carrying out the policy of ethnic cleansing in the Darfur region;

(10) the Government of the United States should not normalize relations with Sudan, including through the lifting of any sanctions, until the Government of Sudan agrees to, and takes demonstrable steps to implement, peace agreements for all areas of Sudan, including Darfur; and

(11) Presidential Proclamation 6958 issued November 22, 1996, which suspends entry into the United States of members of the Government of Sudan, officials of that Government, and members of the Sudanese Armed Forces, should continue to remain in effect and be strictly enforced.

#### **SEC. 5. AMENDMENTS TO THE SUDAN PEACE ACT.**

(a) ASSISTANCE FOR THE CRISIS IN DARFUR AND FOR COMPREHENSIVE PEACE IN SUDAN.—

(1) IN GENERAL.—The Sudan Peace Act (50 U.S.C. 1701 note) is amended by adding at the end the following new section:

#### **"SEC. 12. ASSISTANCE FOR THE CRISIS IN DARFUR AND FOR COMPREHENSIVE PEACE IN SUDAN.**

**"(a) AUTHORIZATION OF APPROPRIATIONS.—**

**"(1) HUMANITARIAN ASSISTANCE.—**There is authorized to be appropriated to the President for assistance to address the humanitarian and human rights crisis in the Darfur region and its impact on eastern Chad, pursuant to the authority in section 491 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292), \$200,000,000 for fiscal year 2005, in addition to any other funds otherwise available for such purpose.

**"(2) ADDITIONAL ASSISTANCE.—**Subject to subsections (b) and (c), there is authorized to be appropriated to the President, for assistance for Sudan upon the conclusion of a North-South peace agreement, \$100,000,000 for fiscal year 2005 in addition to any other funds otherwise available for such purpose.

**"(3) AVAILABILITY.—**Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) or (2) are authorized to remain available until expended, notwithstanding any other provision of law other than the provisions in this section.

**"(b) REQUIREMENT FOR CERTIFICATION.—**The assistance authorized under subsection (a)(2) may be provided to the Government of Sudan only if the President submits the certification described in subsection (c).

**"(c) CERTIFICATION FOR THE GOVERNMENT OF SUDAN.—**The certification referred to in

subsection (b) is a certification submitted by the President to the appropriate congressional committees that the Government of Sudan has taken demonstrable steps to—

“(1) ensure that the armed forces of Sudan and any associated militias are not attacking civilians or obstructing human rights monitors or the provision of humanitarian assistance;

“(2) demobilize and disarm militias supported or created by the Government of Sudan;

“(3) allow full and unfettered access for the provision of humanitarian assistance to all regions of Sudan, including Darfur; and

“(4) cooperate fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan.

“(d) **SUSPENSION OF ASSISTANCE.**—If, on a date after the President submits the certification described in subsection (c), the President determines that the Government of Sudan—

“(1) has ceased taking the actions described in such subsection, the President shall immediately suspend the provision of any assistance to such Government until the date on which the President certifies that the Government of Sudan has resumed taking such actions; or

“(2) has not shown good faith in working to establish sustainable peace in all parts of Sudan, including but not limited to the Darfur region, the President may suspend all assistance until such time as these expectations are met.”.

(b) **REPORTING REQUIREMENT.**—Section 8 of the Sudan Peace Act (50 U.S.C. 1701 note) is amended in the first sentence by striking “Sudan.” and inserting “Sudan, including the conflict in the Darfur region.”.

#### **SEC. 6. OTHER RESTRICTIONS.**

(a) **BLOCKING OF ASSETS.**—On the date that is 120 days after the date of enactment of this Act, if the President has not submitted the certification described in subsection (c) of section 12 of the Sudan Peace Act, as added by section 5, the President shall, consistent with the authorities granted in the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block the assets of appropriate senior officials of the Government of Sudan.

(b) **CONTINUATION OF RESTRICTIONS.**—Restrictions against the Government of Sudan that were imposed pursuant to title III and sections 508, 512, and 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Division D of Public Law 108-199; 118 Stat. 143) shall remain in place until the President makes the certification described in subsection (c) of section 12 of the Sudan Peace Act, as added by section 5.

#### **SEC. 7. REQUIREMENT FOR REPORT.**

(a) **REQUIREMENT.**—Not later than 60 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report on the planned United States response to a comprehensive peace agreement for Sudan.

(b) **CONTENT.**—The report required by subsection (a) shall include—

(1) a description of the planned United States response to a modified peace process between the Government of Sudan and the SPLM that would account for the implementation of a peace in all regions of Sudan, in particular Darfur; and

(2) a contingency plan for extraordinary humanitarian assistance should the Government of Sudan continue to obstruct or delay the international humanitarian response to the crisis in Darfur.

(c) **FORM OF REPORT.**—The report required by subsection (a) may be submitted in classified form.

#### **SEC. 8. TECHNICAL CORRECTION.**

Section 12 of the International Organizations Immunities Act (22 U.S.C. 288f-2) is amended by striking “Organization of African Unity” and inserting “African Union”.

Mr. BIDEN. Mr. President, today Senator LUGAR and I, along with several other colleagues, introduce a bill that is designed to increase pressure on the government of Sudan to stop its campaign of genocide in Darfur.

There is now—at least in the U.S. Government—no dispute that genocide has occurred in Darfur. The Congress so stated by resolution in July. Today, in testimony to the Committee on Foreign Relations, the Secretary of State affirmed that “genocide has been committed in Darfur” and that the Government of Sudan and the janjaweed militia bear responsibility for it.

The situation in Darfur is dire. As many as 50,000 black Africans have been killed. Sexual violence is routinely used as a weapon by the Sudanese-sponsored janjaweed militia. Over a million people are displaced from their homes. And, because the Sudanese government refused to allow unrestricted access to war-affected populations at the onset of this crisis—a crisis of the government’s making—hundreds of thousands of people are likely to die by the end of the year.

Unless we act quickly and decisively to stop the violence in Darfur, history is going to judge us harshly for our lack of action. It may already be too late to avoid the condemnation of future generations.

On July 30, following UN Secretary General Kofi Annan’s visit to Sudan, the United Nations Security Council passed resolution 1556. The resolution was, in my view, inadequate. It provided an arms embargo and travel ban against the janjaweed, but did little to pressure the very government sponsoring the militia. The resolution provided only a vague threat to apply the sanctions to the government of Sudan if it failed to take certain steps, including ending all restrictions on humanitarian workers, investigating and punishing human rights abuses, immediately beginning disarmament of the janjaweed, and resuming talks with the rebels. Sudan was given 30 days to comply.

Sudan has not satisfied the conditions for the resolution. On September 2, the Secretary General’s Special Representative to Sudan reported to the Security Council that the government of Sudan has not taken any steps to disarm the janjaweed or improve security of internally displaced persons.

The administration’s response was to propose a new draft UN resolution yesterday. Unfortunately, this resolution only delays a decision about whether or not to impose sanctions for another 30 days. It does not label what is happening in Khartoum as genocide, although it does call upon the Secretary General to establish a commission of inquiry into violations of international humanitarian law and human rights. It

does not call for a chapter 7 peacekeeping mission in Darfur, and it does not call for an expansion of the mandate of the African Union Mission in Sudan.

I believe the Congress must do its part to pressure the government of Sudan, and to provide additional tools to the Administration.

On July 21, Senator DEWINE and I introduced S. 2705, which was aimed at pressuring the government of Sudan to fulfill commitments it made to the UN. On July 22, the chairman of the Committee on Foreign Relations, Senator LUGAR, also introduced a bill on Sudan, S. 2720. It had the same objective, though its provisions were different from the Biden-DeWine bill in several respects.

Over the recess, the chairman and I worked together to develop a joint bill. I believe it is important that the committee speak with one voice on the genocide in Darfur. I also recognize that this late in the congressional session, most legislation will require unanimous consent to pass. So I hope our joint effort will prove successful.

The bill we introduce today authorizes \$200 million in humanitarian assistance for Darfur. It holds out the promise of \$100 million in assistance for Sudan in connection with a peace agreement between the government and rebels in the south, but only if the President certifies that Khartoum takes demonstrable steps that it has stopped attacking civilians, disarmed the janjaweed and allowed unfettered access to Darfur for humanitarian workers. If the President cannot make this certification within 120 days, the bill requires that the President block the assets of senior members of the government of Khartoum.

The bill does not go as far as I would have liked. The Biden-DeWine bill provided additional resources to implement a north-south peace agreement as an incentive to the Khartoum government, and it provided for additional sanctions, including those sanctions already set forth in the Sudan Peace Act. But I have agreed to join with the chairman to take this intermediate action.

I want to make clear that this bill should only be considered a first step. If the tragedy in Darfur continues, and if Khartoum continues to ignore the demands of the international community that it cease the violence in Darfur, I intend to introduce stronger legislation next year.

Today the Secretary of State spoke clearly, for all the world to hear—genocide has occurred in western Sudan. Hundreds of thousands of lives are on the line. We cannot say we were not warned. We cannot say we did not know. We cannot say that we lacked the means to respond. We are obligated, by the Genocide Convention and our collective conscience, to act to assist the people suffering and to prevent further violence. Immediate support for the African Union is necessary, but

not sufficient to respond to the situation in Darfur. In addition, we need to press for a UN resolution that authorizes a multilateral force with a mandate to protect civilians. We also should look outside Africa for military and logistical assistance, rather than relying solely on the African Union.

What is occurring in Darfur is a travesty. Our response has not been commensurate with the suffering there. It is imperative that the United States and the international community increase assistance to the displaced, and increase pressure on the government of Sudan to take action.

By Mr. FEINGOLD:

S. 2783. A bill to clarify conditions for the interceptions of computer trespass communications under the USA-PATRIOT Act; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased to introduce the Computer Trespass Clarification Act of 2004, which would amend and clarify section 217 of the USA-PATRIOT Act. Section 217 addresses the interception of computer trespass communications. This bill would modify existing law to more accurately reflect the intent of the provision, and also protect against invasions of privacy.

Section 217 was designed to permit law enforcement to assist computer owners who are subject to denial of service attacks or other episodes of hacking. The original Department of Justice draft of the bill that later became the PATRIOT Act included this provision. A section-by-section analysis provided by the Department on September 19, 2001, stated the following:

Current law may not allow victims of computer trespassing to request law enforcement assistance in monitoring unauthorized attacks as they occur. Because service providers often lack the expertise, equipment, or financial resources required to monitor attacks themselves as permitted under current law, they often have no way to exercise their rights to protect themselves from unauthorized attackers. Moreover, such attackers can target critical infrastructures and engage in cyberterrorism. To correct this problem, and help to protect national security, the proposed amendments to the wiretap statute would allow victims of computer attacks to authorize persons "acting under color of law" to monitor trespassers on their computer systems in a narrow class of cases.

I strongly supported the goal of giving computer system owners the ability to call in law enforcement to help defend themselves against hacking. Including such a provision in the PATRIOT Act made a lot of sense. Unfortunately, the drafters of the provision made it much broader than necessary, and refused to amend it at the time we debated the bill in 2001. As a result, the law now gives the government the authority to intercept communications by people using computers owned by others as long as they have allegedly engaged in some unauthorized activity on the computer, and the owner gives

permission for the computer to be monitored.

Only people who have a "contractual relationship" with the owner allowing the use of a computer are exempt from the definition of a computer trespasser under section 217 of the PATRIOT Act. Many people—for example, college students, patrons of libraries, Internet cafes or airport business lounges, and guests at hotels—use computers owned by others with permission, but without a contractual relationship. They could end up being the subject of government snooping if the owner of the computer gives permission to law enforcement.

My bill would clarify that someone who has been given permission to use a computer by the owner or operator of that computer is not a computer trespasser. It would bring the existing computer trespass provision in line with the purpose of section 217 as expressed in the Department of Justice's initial explanation of the provision. Section 217 was intended to target only a narrow class of people: unauthorized cyberhackers. It was not intended to give the government the opportunity to engage in widespread surveillance of computer users without a warrant.

We don't know, of course, whether such surveillance is taking place. Unless criminal charges are brought against someone as a result of such surveillance, there would never be any notice at all that the surveillance has taken place. The computer owner authorizes the surveillance, and the FBI carries it out. There is no warrant, no court proceeding, no opportunity even for the subject of the surveillance to challenge the assertion of the computer owner that some unauthorized use of the computer has occurred.

The Computer Trespass Clarification Act would modify the computer trespass provision to protect against abuse, while still maintaining its usefulness in cases of denial of service attacks and other forms of hacking.

First, it would require that the owner or operator of the protected computer authorizing the interception has been subject to "communications activity that threatens the integrity or operation of such computer." In other words, the owner has to be the target of some kind of hacking.

Second, the bill would clarify that to be excluded from the definition of computer trespasser, a person who has permission to use a computer does not need to have a contractual relationship granting that permission.

Third, the bill limits the length of warrant-less surveillance to 96 hours. This is twice as long as is allowed for an emergency wiretap. With four days of surveillance, it should not be difficult for the government to gather sufficient evidence of wrongdoing to obtain a warrant if continued surveillance is necessary.

In addition, the bill would require the Attorney General to annually report on the use of Section 217 to the Senate and House Judiciary Commit-

tees. Section 217 is one of the provisions that is subject to the sunset provision in the PATRIOT Act and will expire at the end of 2005. We in the Congress need to do more oversight of the use of this and other provisions of the PATRIOT Act in order to evaluate their effectiveness.

The computer trespass provision now in the law as a result of section 217 of the PATRIOT Act leaves open the possibility for significant and unnecessary invasions of privacy. The reasonable and modest changes to the provision contained in this bill preserve the usefulness of the provision for investigations of cyberhacking, but reduce the possibility of abuse. We must continually seek to balance the need for effective tools to fight crime and terrorism and the civil liberties of our citizens. The Computer Trespass Clarification Act strikes the right balance and I urge my colleagues to support it.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2783

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Trespass Clarification Act of 2004".

#### SEC. 2. AMENDMENTS TO TITLE 18.

(a) DEFINITIONS.—Section 2510(21)(B) of title 18, United States Code, is amended by—

(1) inserting "or other" after "contractual"; and

(2) striking for "for access" and inserting "permitting access".

(b) INTERCEPTION AND DISCLOSURE.—Section 2511(2)(i) of title 18, United States Code, is amended—

(1) in clause (I), by inserting after "the owner or operator of the protected computer" the following: "is attempting to respond to communications activity that threatens the integrity or operation of such computer and requests assistance to protect rights and property of the owner or operator, and"; and

(2) in clause (IV), by inserting after "interception" the following: "ceases as soon as the communications sought are obtained or after 96 hours, whichever is earlier, unless an interception order is obtained under this chapter, and".

(c) REPORT.—The Attorney General shall annually report to the Committees on the Judiciary of the Senate and the House of Representatives on the use of section 2511 of title 18, United States Code, relating to computer trespass provisions as amended by subsection (b).

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 2785. A bill to amend title 4 of the United States Code to prohibit the double taxation of telecommuters and others who work at home; to the Committee on Finance.

Mr. DODD. Mr. President, I am pleased to rise today, together with my colleague Senator LIEBERMAN, to introduce The Telecommuter Tax Fairness Act of 2004.

The Telecommuter Tax Fairness Act of 2004 will put an end to an outdated

legal doctrine that unfairly penalizes thousands of workers in Connecticut and in other States throughout the country whose only offense is that they sometimes work from home.

Technology has changed the way business is conducted in America. With the use of cell phones, lap-top computers, email, the Internet, mobile networking, and many other telecommunication advancements of the 21st century, Americans have a greater flexibility in where they can work without compromising productivity. Many citizens now choose to work from home or alternative offices when their physical presence is not necessary at their primary place of work.

Telecommuting provides enormous benefits for businesses, families, and communities. It helps businesses lower costs and raise worker productivity. It reduces congestion on our roads and rails, and in so doing it lowers pollution. It helps workers better manage the demands of work and family. And last but not least, it can mean lower income taxes.

Yet, the many benefits to workers of telecommuting are today placed in jeopardy because of current law in New York. Today, New York State requires that workers pay income tax on income even if it is not earned in the State through their "convenience of the employer" rule. While there are several States that have the "convenience of the employer" rule, no other State applies it with the same rigor as New York.

New York's "convenience of the employer" rule requires that by working for a New York employer, all income earned from that employer must be declared in New York so long as the worker "could" perform his or her duties in New York. A worker for a New York employer who works part-time from home in Connecticut or another State is still subject to taxation by New York on 100 percent of his or her income. At the same time, the work done by that worker in a State outside New York is subject to taxation by that State.

This unfairly subjects many workers who telecommute from their homes or from satellite offices outside of New York to a double tax on that part of the income earned from home. According to Connecticut's Attorney General, thousands of Connecticut residents alone are affected by this unfair double taxation.

This potential for double taxation is not only unfair, but it is an incentive for workers not to telecommute, when what we should be doing is providing an incentive to encourage telecommuting.

Legislation is needed to protect these honest workers who deserve fair and equitable treatment under the law. The Telecommuter Tax Fairness Act of 2004 does this specifically by preventing a state from engaging in the current fiction of deeming a nonresident to be in the taxing State when the nonresident

is actually working in another State. In doing so, it will eliminate the possibility that citizens will be double-taxed when telecommuting.

Establishing a "physical presence" test—as this legislation would do—is the most logical basis for determining tax status. If a worker is in a State, and taking advantage of that State's infrastructure, the worker should pay taxes in that State.

Some suggest that the double-taxation quandary can easily be fixed by having other States provide a tax credit to those telecommuters. However, why should Connecticut, or any other State, be required to allow a credit on income actually earned in the State? If a worker is working in Connecticut, he or she is benefiting from a range of services paid for and maintained by Connecticut including roads, water, police, fire protection, and communications services. It's only fair that Connecticut ask that worker to help support the services that he or she uses.

This is not just an issue which deals with a small group of citizens from one small State. Rather, this is an issue which affects workers all over the country. It will only grow more pressing as people and businesses continue to seek to take advantage of new technologies that affect the way we live and work.

I hope our colleagues will favorably consider this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2785

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommuter Tax Fairness Act of 2004".

#### SEC. 2. PROHIBITION ON DOUBLE TAXATION OF TELECOMMUTERS.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following new section:

##### "§ 127. Prohibition on double taxation of telecommuters and others who work at home

"(a) PHYSICAL PRESENCE REQUIRED.—

"(1) IN GENERAL.—In applying its income tax laws to the salary of a nonresident individual, a State may only deem such nonresident individual to be present in or working in such State for any period of time if such nonresident individual is physically present in such State for such period and such State may not impose nonresident income taxes on such salary with respect to any period of time when such nonresident individual is physically present in another State.

"(2) DETERMINATION OF PHYSICAL PRESENCE.—For purposes of determining physical presence, no State may deem a nonresident individual to be present in or working in such State on the grounds that such nonresident individual is present at or working at home for the nonresident individual's convenience.

"(b) DEFINITIONS.—As used in this section—

"(1) STATE.—The term 'State' includes any political subdivision of a State, the District

of Columbia, and the possessions of the United States.

"(2) INCOME TAX.—The term 'income tax' has the meaning given such term by section 110(c).

"(3) INCOME TAX LAWS.—The term 'income tax laws' includes any statutes, regulations, administrative practices, administrative interpretations, and judicial decisions.

"(4) NONRESIDENT INDIVIDUAL.—The term 'nonresident individual' means an individual who is not a resident of the State applying its income tax laws to such individual.

"(5) SALARY.—The term 'salary' means the compensation, wages, or other remuneration earned by an individual for personal services performed as an employee or as an independent contractor.

"(c) NO INFERENCE.—Nothing in this section shall be construed as bearing on—

"(1) any tax laws other than income tax laws,

"(2) the taxation of corporations, partnerships, trusts, estates, limited liability companies, or other entities, organizations, or persons other than nonresident individuals in their capacities as employees or independent contractors,

"(3) the taxation of individuals in their capacities as shareholders, partners, trust and estate beneficiaries, members or managers of limited liability companies, or in any similar capacities, and

"(4) the income taxation of dividends, interest, annuities, rents, royalties, or other forms of unearned income."

(b) CLERICAL AMENDMENT.—The table of sections of such chapter 4 is amended by adding at the end the following new item:

"127. Prohibition on double taxation of telecommuters and others who work at home."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 420—RECOMMENDING EXPENDITURES FOR AN APPROPRIATE VISITORS CENTER AT LITTLE ROCK CENTRAL HIGH SCHOOL NATIONAL HISTORIC SITE TO COMMEMORATE THE DESEGREGATION OF LITTLE ROCK CENTRAL HIGH SCHOOL

Mr. PRYOR (for himself and Mrs. LINCOLN) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 420

Whereas the United States recognizes that in September 1957, 9 young students changed the course of American history by claiming the right to receive an equal education;

Whereas Ernest Green, Elizabeth Eckford, Jefferson Thomas, Terrence Roberts, Carlotta Walls, Minnijean Brown, Gloria Ray, Thelma Mothershed, and Melba Pattillo, known as the "Little Rock Nine", and their parents had the courage necessary to break the bonds of prejudice and desegregation and venture onto the world stage, with full knowledge of the perils and complexities inherent in their endeavor;

Whereas despite their effort to enroll at Little Rock Central High School and receive an education, the Little Rock Nine were met with severe adversity;

Whereas Little Rock Central High School became not only a crucial battleground in