international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC 1505. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC 1506. A communication from the General Counsel of the Department of Treasury, transmitting, a draft of proposed legislation to authorize appropriations to pay for the U.S. capital subscription as part of the eighth general capital increase of the Inter-American Development Bank; to the Committee on Foreign Relations.

EC 1507. A communication from the General Counsel of the Department of Treasury, transmitting, a draft of proposed legislation to authorize the U.S. participation in and appropriations for the U.S. contribution to the sixth replenishment of the resources of the Asian Development Bank; to the Committee on Foreign Relations.

EC 1508. A communication from the General Counsel of the Department of Treasury, transmitting, a draft of proposed legislation to authorize consent to and authorize appropriations for a U.S. contribution to the Interest Subsidy Account of the successor to the Enhanced Structural Adjustment Facility of the International Monetary Fund; to the Committee on Foreign Relations.

EC 1509. A communication from the General Counsel of the Department of Treasury, transmitting, a draft of proposed legislation to authorize the U.S. participation in and appropriations for the U.S. contribution to the eleventh replenishment of the resources of the International Development Association; to the Committee on Foreign Relations.

EC 1510. A communication from the General Counsel of the Department of Treasury, transmitting, a draft of proposed legislation to authorize the U.S. participation in an increase in authorized capital stock of the European Bank for Reconstruction and Development, and to authorize appropriations to pay for the increase in the U.S. capital subscription; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources: Alexis M. Herman, of Alabama, to Secretary of Labor.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. SANTORUM (for himself and Mr. COVERDELL):

S. 563. A bill to limit the civil liability of business entities that donate equipment to nonprofit organizations; to the Committee on the Judiciary.

S. 564. A bill to limit the civil liability of business entities providing use of facilities to nonprofit organizations; to the Committee on the Judiciary.

S. 565. A bill to limit the civil liability of business entities that make available to a nonprofit organization the use of a motor vehicle or aircraft; to the Committee on the Judiciary.

S. 566. A bill to limit the civil liability of business entities that provide facility tours; to the Committee on the Judiciary.

By Mr. SMITH of New Hampshire:

S. 567. A bill to permit revocation by members of the clergy of their exemption from Social Security coverage; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. MACK, Mr. KENNEDY, Mr. D'AMATO, and Mr. MOYNIHAN):

S. 568. A bill to make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states; to the Committee on the Judiciary.

By Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. DOMENICI, and Mr. DORGAN):

S. 569. A bill to amend the Indian Child Welfare Act of 1978, and for other purposes; to the Committee on Indian Affairs.

By Mr. NICKLES (for himself, Mr. BREAUX, Mr. MACK, Mr. BAUCUS, Mr. D'AMATO, Mr. BOND, Mr. DEWINE, Mr. COCHRAN, Mr. ENZI, Mr. HAGEL, and Mr. THOMAS):

S. 570. A bill to amend the Internal Revenue Code of 1986 to exempt certain small businesses from the mandatory electronic fund transfer system; to the Committee on Finance.

By Mr. REID:

S. 571. A bill to establish a uniform poll closing time throughout the continental United States for Presidential general elections; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WYDEN (for himself, Mr. REID, Mr. WELLSTONE, Mr. MURKOWSKI, and Mr. BRYAN):

S. Res. 71. A bill to ensure that the Senate is in compliance with the Congressional Accountability Act with respect to permitting a disabled individual access to the Senate floor when that access is required to allow the disabled individual to discharge his or her official duties; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM (for himself and Mr. COVERDELL):

S. 563. A bill to limit the civil liability of business entities that donate equipment to nonprofit organizations; to the Committee on the Judiciary.

S. 564. A bill to limit the civil liability of business entities providing use of facilities to nonprofit organizations; to the Committee on the Judiciary.

S. 565. A bill to limit the civil liability of business entities that make available to a nonprofit organization the use of a motor vehicle or aircraft; to the Committee on the Judiciary.

S. 566. A bill to limit the civil liability of business entities that provide facility tours; to the Committee on the Judiciary.

LEGISLATION TO LIMIT CIVIL LIABILITY OF BUSINESS

• Mr. SANTORUM. Mr. President, I introduce four related pieces of legislation all aimed at increasing donations of goods and services to charities. Collectively called the charity empowerment project, I urge my colleagues to consider cosponsoring these bills.

Over the past 30 years, courts have consistently expanded what constitutes tortious conduct. Regrettably, fault is often not a factor when deciding who should compensate an individual for damages incurred. This has had an impact on charitable giving. Today, individuals and businesses are wary of giving goods, services, and time to charities for fear of frivolous lawsuits.

The charity empowerment project is designed to free up resources for charities by providing legal protections for donors. Generally, these bills raise the tort liability standard for donors, whereby they are liable only in cases of gross negligence, hence eliminating strict liability and returning to a fault based legal standard. By allowing businesses to once again become good Samaritans, I look forward to seeing a massive increase in the donation of goods and services to charities.

Specifically, I am introducing four bills each of which accomplishes one of the following four objectives: First, to limit the civil liability of business entities that donate equipment to nonprofit organizations; second, to limit the civil liability of business entities that provide use of their facilities to nonprofit organizations; third, to limit the civil liability of business entities that provide facility tours; and fourth, to limit the civil liability of business entities that make available to nonprofit organizations the use of motor vehicles or aircraft.

Clearly, where an organization is grossly negligent when providing goods or the use of its facilities to charity, that organization should be fully liable for injuries caused. These bills merely require this to be the standard in cases arising from certain donations to charities.

Last autumn, the Good Samaritan Food Donation Act was passed into law. This law now protects donors of foodstuffs to charities from liability except in cases where the donor was grossly negligent in making the donation. I was proud to join Senator BOND in his successful efforts to pass this act. The bills I introduce today draw from my successful work with Senator BOND last year. Each of these bills is modeled on the legal framework of the Good Samaritan Food Donation Act. I hope my distinguished colleagues who supported the Food Donation Act will help further these efforts by supporting the charity empowerment project.

Mr. President, I wish to note additional efforts by my colleagues to enhance charitable giving. Senator COVERDELL and Senator ASHCROFT have recently introduced legislation which

protects volunteers from frivolous and damaging litigation. I am proud to be an original cosponsor of Senator COVERDELL's Volunteer Protection Act of 1997, and I anticipate supporting Senator ASHCROFT's bill with equal vigor. Collectively, I look forward to our legislation freeing up massive resources for charities through increased volunteerism and increased giving.

At the end of this month, the Summit for America's Future will assemble in Philadelphia. The Senate now has the opportunity to consider the Santorum, Coverdell, and Ashcroft bills prior to the convening of this century's greatest gathering on voluntarism. There may never be a more appropriate time to consider legislation which so dramatically empowers charities with enhanced ability to carry out their noble causes.

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

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 563

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

SECTION 1. LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.

(a) DEFINITIONS.—In this section:

(1) BUSINESS ENTITY.—The term ''business entity'' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(2) EQUIPMENT.—The term ''equipment'' includes mechanical equipment, electronic equipment, and office equipment.

(3) GROSS NEGLIGENCE.—the term ''gross negligence'' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(4) INTENTIONAL MISCONDUCT.—The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(5) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

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

(b) LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a noprofit organization.

(2) APPLICATION.—This subsection shall apply with respect to civil liability under Federal and State law.

(c) EXCEPTION FOR LIABILITY.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection for a business entity for an injury or death described in subsection (b)(1).

(2) LIMITATION.—Nothing in this Act shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply to such civil action in the State; and

(3) containing no other provisions.

S. 564

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

SECTION 1. LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.

(a) DEFINITIONS.—In this section:

(1) BUSINESS ENTITY.—The term ''business entity'' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(2) FACILITY.—The term ''facility'' means any real property, including any building, improvement, or appurtenance.

(3) GROSS NEGLIGENCE.—The term ''gross negligence'' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(4) INTENTIONAL MISCONDUCT.—The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(5) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

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

(b) LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization if—

(A) the use occurs outside of the scope of business of the business entity;

(B) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(C) the business entity authorized the use of such facility by the nonprofit organization.

(2) APPLICATION.—This subsection shall apply—

(A) with respect to civil liability under Federal and State law; and

(B) regardless of whether a nonprofit organization pays for the use of a facility.

(c) EXCEPTION FOR LIABILITY.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability for a business entity for an injury or death with respect to which conditions under subparagraphs (A) through (C) of subsection (b)(1) apply.

(2) LIMITATION.—Nothing in this Act shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply to such civil action in the State; and

(3) containing no other provisions.

S. 565

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

SECTION 1. LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.

(a) DEFINITIONS.—In this section:

(1) AIRCRAFT.—The term ''aircraft'' has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—the term ''business entity'' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) GROSS NEGLIGENCE.—The term ''gross negligence'' means voluntary and conscious conduct by a person with knowledge (at the

time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(4) INTENTIONAL MISCONDUCT.—The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(5) MOTOR VEHICLE.—The term ''motor vehicle'' has the meaning provided that term in section 30102(6) of title 49, United States Code.

(6) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

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

(b) LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity if—

(A) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(B) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death

(2) APPLICATION.—This subsection shall apply—

(A) with respect to civil liability under Federal and State law; and

(B) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) EXCEPTION FOR LIABILITY.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability for a business entity with respect an injury or death with respect to which the conditions described in subparagraphs (A) and (B) of subsection (b)(1) apply.

(2) LIMITATION.—Nothing in this Act shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer, nonprofit organization, or governmental entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply to such civil action in the State; and

(3) containing no other provisions.

S. 566

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

SECTION 1. LIABILITY OF BUSINESS ENTITIES PROVIDING TOURS OF FACILITIES.

(a) DEFINITIONS.—In this section:

(1) BUSINESS ENTITY.—The term ''business entity'' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(2) FACILITY.—The term ''facility'' means any real property, including any building, improvement, or appurtenance.

(3) GROSS NEGLIGENCE.—The term ''gross negligence'' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(4) INTENTIONAL MISCONDUCT.—The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

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

(b) LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury to, or death of an individual occurring at a facility of the business entity if—

(A) such injury or death occurs during a tour of the facility in an area of the facility that is not otherwise accessible to the general public; and

(B) the business entity authorized the tour.

(2) APPLICATION.—This subsection shall apply—

(A) with respect to civil liability under Federal and State law; and

(B) regardless of whether an individual pays for the tour.

(c) EXCEPTION FOR LIABILITY.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability for a business entity for an injury or death with respect to which the conditions under subparagraphs (A) and (B) of subsection (b)(1) apply.

(2) LIMITATION.—Nothing in this Act shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply to such civil action in the State; and

(3) containing no other provisions.●

By Mr. SMITH of New Hampshire:

S. 567. A bill to permit revocation by members of the clergy of their exemption from Social Security coverage; to the Committee on Finance.

SOCIAL SECURITY COVERAGE LEGISLATION

Mr. SMITH of New Hampshire. Mr. President, today I am introducing what I believe to be a very sensible piece of legislation which will allow a number of members of the clergy of all faiths to participate in the Social Security Program. Before 1968 a minister was exempt from Social Security coverage unless he or she chose to elect that coverage, and in 1968 ministers were covered by Social Security unless they filed an irrevocable exemption from the IRS on the grounds that they were opposed on basic religious principles to participate in any public insurance program. So a member of the clergy who is eligible for this exemption is an ''individual who is duly ordained, commissioned, or licensed member of a church, or a member of a religious order which has not taken a vow of poverty.''

About 260,000 ministers are affected by this exclusion. This legislation which I have offered would simply permit ministers and the few members of religious orders who have not taken a vow of poverty to secure that coverage. Modestly paid clergy would be among those most likely to need Social Security benefits when they retire. But earlier in their careers many chose not to participate in the program. They had good intentions. They were doing it on principle. But they didn't fully understand the ramifications of the exemption. Since 1968—once in 1977 and another time in 1986—ministers were given a temporary opportunity to revoke their exemption from Social Security; that is, they would have the opportunity to have a window whereby they could come back under the Social Security System.

This was brought to my attention by the distinguished bishop in Manchester, NH, Reverend Bishop O'Neil.

He brought this matter to my attention—that there are a number of hardships for individuals who may or may not have any retirement income as a result of this.

So this legislation simply provides another open season, a 2-year period whereby those who are clergy who may wish now to be under the Social Security System may take advantage of this opportunity to revoke their exemption.

That is all the bill does, and I think it is fair in that again these are very principled members of the cloth who have decided now that they would like to have the opportunity to get into the program.

So it is a 2-year open season during which the members of the clergy could opt into the system. The application for benefits must be filed before the clergy member can become entitled to benefits, and those who choose coverage would be subject to self-employment taxes. And their earnings would be credited for Social Security and for Medicare purposes. And, of course, no one who is at retirement age now would be allowed in. These would be people who are not yet at the retirement age.

Based on the experience in 1986 and the trends in the number of clergy since then, the Congressional Budget Office estimates that maybe as many as 1,500 to 1,600 members of the clergy would take advantage of the open season and enroll in Social Security. That is based on past performance. That is what happened in 1986. The bill was scored by the Congressional Budget Office. I have had it scored. It is a short-time revenue raiser because people would be paying into the system but, of course, it is going to ultimately be like any other Social Security beneficiary in the sense that we will be paying out more than comes in.

This legislation has the endorsement of the National Conference of Catholic Bishops. It is an issue of fairness. I hope my colleagues will join me in support of this legislation which I would like to see passed this year so that we could begin the open season process so that members of the clergy could opt in now to the Social Security System. I hope that many of my colleagues will join me as quickly as possible in cosponsoring the legislation so that we can get it out of the Finance Committee and here on the floor so that we can begin to correct this inadequacy, this unfairness where many members of the clergy are affected.

By Mr. McCAIN (for himself, Mr. CAMPBELL, Mr. DOMENICI, and Mr. DORGAN):

S. 569. A bill to amend the Indian Child Welfare Act of 1978, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN CHILD WELFARE ACT AMENDMENTS OF 1997

• Mr. McCAIN. Mr. President, I am introducing today a bill to amend the Indian Child Welfare Act [ICWA] of 1978 to make the process that applies to voluntary Indian child custody and adoption proceedings more fair, consistent, and certain. The provisions of this legislation would further advance the best interests of Indian children without eroding tribal sovereignty and the fundamental principles of Federal-Indian law.

I want to thank my principal cosponsors, Senators CAMPBELL, DOMENICI, and DORGAN, for their continued support of this much-needed legislation. Let me point out also that this bill is identical to legislation which passed the Senate by unanimous consent on September 26, 1996. It is the result of nearly 2 years of discussions and debates among representatives of the adoption community, Indian tribal governments, and the Congress to address some of the problems with the implementation of ICWA since its enactment in 1978.

Mr. President, ICWA was originally enacted to provide for procedural and substantive protection for Indian children and families and to recognize and formalize a substantial role for Indian tribes in cases involving involuntary and voluntary child custody proceedings, whether on or off the Indian reservation. Although implementation of ICWA has been less than perfect, in the vast majority of cases ICWA has effectively provided such protection. It has compelled greater efforts and more painstaking analysis by State and private adoption agencies and State courts before removing Indian children from their homes and communities. It has required recognition by all parties that an Indian child has a vital interest in retaining a connection with his or her Indian tribe.

Nonetheless, particularly in the voluntary adoption context, there have been occasional, high-profile cases which have resulted in lengthy, protracted litigation causing great anguish for the children, their adoptive families, their birth families, and their Indian tribes. This bill takes a measured and limited approach, crafted by representatives of tribal governments and the adoption community, to address the problems of implementing ICWA in voluntary adoption proceedings.

This legislation would achieve greater certainty and speed in the adoption process for Indian children by providing new guarantees of early and effective notice in all cases involving Indian children. The bill also establishes new, strict time restrictions on both the right of Indian tribes and families to intervene and the right of Indian birth parents to revoke their consent to an adoptive placement. Finally, the bill includes a provision which would encourage early identification of the relatively few cases involving controversy and promote the settlement of cases by making visitation agreements enforceable.

For a full analysis of the provisions of the bill, I respectfully refer my colleagues to the report accompanying the legislation as it was reported to the Senate on July 26, 1996, which is Senate Report No. 104–335.

Mr. President, nothing is more sacred and more important to our future than our children. The issues surrounding Indian child welfare stir deep emotions. I am thankful that, in formulating the compromise that led to the introduction of this bill in the last Congress, the representatives of both the adoption community and tribal governments were able to put aside their individual desires and focus on the best interests of Indian children.

Mr. President, last year, proposals were put forth in the House which would have gone too far in restricting the application of ICWA. Those proposals, which were considered by the Senate as title III of H.R. 3286, the Adoption Promotion and Stability Act of 1996, were deleted by the Indian Affairs Committee because of our concern about the breadth of the language and the fundamental changes the provisions would have made to the government-to-government relationship between the United States and Indian tribes.

I believe this bill represents an appropriate and fair-minded compromise proposal which would enhance the best interests of Indian children by guaranteeing speed, certainty, and stability in the adoption process. At the same time, the provisions of this bill preserve fundamental principles of tribal government by recognizing the appropriate role of tribal governments in the lives of Indian children.

Mr. President, this bill has been thoroughly analyzed and debated in the Senate, as well as in the adoption community and Indian tribal governments. I believe it is time for the Congress to act in the best interests of Indian children by approving these amendments to the voluntary adoption procedures in the 1978 ICWA.

Mr. President, I ask unanimous consent that the full text of the legislation I am introducing today be printed in the RECORD.

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

S. 569

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Indian Child Welfare Act Amendments of 1997''.

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 2. EXCLUSIVE JURISDICTION.

Section 101(a) (25 U.S.C. 1911(a)) is amended—

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

(2) by striking the last sentence and inserting the following:

''(2) An Indian tribe shall retain exclusive jurisdiction over any child custody proceeding that involves an Indian child, notwithstanding any subsequent change in the residence or domicile of the Indian child, in any case in which the Indian child—

''(A) resides or is domiciled within the reservation of the Indian tribe and is made a ward of a tribal court of that Indian tribe; or

''(B) after a transfer of jurisdiction is carried out under subsection (b), becomes a ward of a tribal court of that Indian tribe.''.

SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.

Section 101(c) (25 U.S.C. 1911(c)) is amended by striking ''In any State court proceeding'' and inserting ''Except as provided in section 103(e), in any State court proceeding''.

SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

Section 103(a) (25 U.S.C. 1913(a)) is amended—

(1) by inserting ''(1)'' before ''Where'';

(2) by striking ''foster care placement'' and inserting ''foster care or preadoptive or adoptive placement'';

(3) by striking ''judge's certificate that the terms'' and inserting the following: ''judge's certificate that—

''(A) the terms'';

(4) by striking ''or Indian custodian.'' and inserting ''or Indian custodian; and'';

(5) by inserting after subparagraph (A), as designated by paragraph (3) of this subsection, the following new subparagraph:

''(B) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has informed the natural parents of the placement options with respect to the child involved, has informed those parents of the applicable provisions of this Act, and has certified that the natural parents will be notified within 10 days of any change in the adoptive placement.'';

(6) by striking ''The court shall also certify'' and inserting the following:

''(2) The court shall also certify'';

(7) by striking ''Any consent given prior to,'' and inserting the following:

''(3) Any consent given prior to,''; and

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

''(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act.''.

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting ''(1)'' before ''Any''; and

(2) by adding at the end the following new paragraphs:

''(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

''(A) no final decree of adoption has been entered; and

''(B)(i) the adoptive placement specified by the parent terminates; or

''(ii) the revocation occurs before the later of the end of—

''(I) the 180-day period beginning on the date on which the Indian child's tribe receives written notice of the adoptive placement provided in accordance with the requirements of subsections (c) and (d); or

''(II) the 30-day period beginning on the date on which the parent who revokes consent receives notice of the commencement of the adoption proceeding that includes an explanation of the revocation period specified in this subclause.

''(3) The Indian child with respect to whom a revocation under paragraph (2) is made shall be returned to the parent who revokes consent immediately upon an effective revocation under that paragraph.

''(4) Subject to paragraph (6), if, by the end of the applicable period determined under subclause (I) or (II) of paragraph (2)(B)(ii), a consent to adoption or voluntary termination of parental rights has not been revoked, beginning after that date, a parent may revoke such a consent only—

''(A) pursuant to applicable State law; or

''(B) if the parent of the Indian child involved petitions a court of competent jurisdiction, and the court finds that the consent to adoption or voluntary termination of parental rights was obtained through fraud or duress.

''(5) Subject to paragraph (6), if a consent to adoption or voluntary termination of parental rights is revoked under paragraph (4)(B), with respect to the Indian child involved—

''(A) in a manner consistent with paragraph (3), the child shall be returned immediately to the parent who revokes consent; and

''(B) if a final decree of adoption has been entered, that final decree shall be vacated.

''(6) Except as otherwise provided under applicable State law, no adoption that has been in effect for a period longer than or equal to 2 years may be invalidated under this subsection.''.

SEC. 6. NOTICE TO INDIAN TRIBES.

Section 103(c) (25 U.S.C. 1913(c)) is amended to read as follows:

''(c)(1) A party that seeks the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child shall provide written notice of the placement or proceeding to the Indian child's tribe. A notice under this subsection shall be sent by registered mail (return receipt requested) to the Indian child's tribe, not later than the applicable date specified in paragraph (2) or (3).

''(2)(A) Except as provided in paragraph (3), notice shall be provided under paragraph (1) in each of the following cases:

''(i) Not later than 100 days after any foster care placement of an Indian child occurs.

''(ii) Not later than 5 days after any preadoptive or adoptive placement of an Indian child.

''(iii) Not later than 10 days after the commencement of any proceeding for a termination of parental rights to an Indian child.

''(iv) Not later than 10 days after the commencement of any adoption proceeding concerning an Indian child.

''(B) A notice described in subparagraph (A)(ii) may be provided before the birth of an Indian child if a party referred to in paragraph (1) contemplates a specific adoptive or preadoptive placement.

''(3) If, after the expiration of the applicable period specified in paragraph (2), a party referred to in paragraph (1) discovers that the child involved may be an Indian child—

''(A) the party shall provide notice under paragraph (1) not later than 10 days after the discovery; and

''(B) any applicable time limit specified in subsection (e) shall apply to the notice provided under subparagraph (A) only if the party referred to in paragraph (1) has, on or before commencement of the placement, made reasonable inquiry concerning whether the child involved may be an Indian child.''.

SEC. 7. CONTENT OF NOTICE.

Section 103(d) (25 U.S.C. 1913(d)) is amended to read as follows:

''(d) Each written notice provided under subsection (c) shall contain the following:

''(1) The name of the Indian child involved, and the actual or anticipated date and place of birth of the Indian child.

''(2) A list containing the name, address, date of birth, and (if applicable) the maiden name of each Indian parent and grandparent of the Indian child, if—

''(A) known after inquiry of—

''(i) the birth parent placing the child or relinquishing parental rights; and

''(ii) the other birth parent (if available); or

''(B) otherwise ascertainable through other reasonable inquiry.

''(3) A list containing the name and address of each known extended family member (if any), that has priority in placement under section 105.

''(4) A statement of the reasons why the child involved may be an Indian child.

''(5) The names and addresses of the parties involved in any applicable proceeding in a State court.

''(6)(A) The name and address of the State court in which a proceeding referred to in paragraph (5) is pending, or will be filed; and

''(B) the date and time of any related court proceeding that is scheduled as of the date on which the notice is provided under this subsection.

''(7) If any, the tribal affiliation of the prospective adoptive parents.

''(8) The name and address of any public or private social service agency or adoption agency involved.

''(9) An identification of any Indian tribe with respect to which the Indian child or parent may be a member.

''(10) A statement that each Indian tribe identified under paragraph (9) may have the right to intervene in the proceeding referred to in paragraph (5).

''(11) An inquiry concerning whether the Indian tribe that receives notice under subsection (c) intends to intervene under subsection (e) or waive any such right to intervention.

''(12) A statement that, if the Indian tribe that receives notice under subsection (c) fails to respond in accordance with subsection (e) by the applicable date specified in that subsection, the right of that Indian tribe to intervene in the proceeding involved shall be considered to have been waived by that Indian tribe.''.

SEC. 8. INTERVENTION BY INDIAN TRIBE.

Section 103 (25 U.S.C. 1913) is amended by adding at the end the following new subsections:

''(e)(1) The Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court only if—

''(A) in the case of a voluntary proceeding to terminate parental rights, the Indian tribe filed a notice of intent to intervene or a written objection to the termination, not later than 30 days after receiving notice that was provided in accordance with the requirements of subsections (c) and (d); or

''(B) in the case of a voluntary adoption proceeding, the Indian tribe filed a notice of intent to intervene or a written objection to the adoptive placement, not later than the later of—

''(i) 90 days after receiving notice of the adoptive placement that was provided in accordance with the requirements of subsections (c) and (d); or

''(ii) 30 days after receiving a notice of the voluntary adoption proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(2)(A) Except as provided in subparagraph (B), the Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court in any case in which the Indian tribe did not receive written notice provided in accordance with the requirements of subsections (c) and (d).

''(B) An Indian tribe may not intervene in any voluntary child custody proceeding in a State court if the Indian tribe gives written notice to the State court or any party involved of—

''(i) the intent of the Indian tribe not to intervene in the proceeding; or

''(ii) the determination by the Indian tribe that—

''(I) the child involved is not a member of, or is not eligible for membership in, the Indian tribe; or

''(II) neither parent of the child is a member of the Indian tribe.

''(3) If an Indian tribe files a motion for intervention in a State court under this subsection, the Indian tribe shall submit to the court, at the same time as the Indian tribe files that motion, a certification that includes a statement that documents, with respect to the Indian child involved, the membership or eligibility for membership of that Indian child in the Indian tribe under applicable tribal law.

''(f) Any act or failure to act of an Indian tribe under subsection (e) shall not—

''(1) affect any placement preference or other right of any individual under this Act;

''(2) preclude the Indian tribe of the Indian child that is the subject of an action taken by the Indian tribe under subsection (e) from intervening in a proceeding concerning that Indian child if a proposed adoptive placement of that Indian child is changed after that action is taken; or

''(3) except as specifically provided in subsection (e), affect the applicability of this Act.

''(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the Indian child's tribe receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(h) Notwithstanding any other provision of law (including any State law)—

''(1) a court may approve, if in the best interests of an Indian child, as part of an adoption decree of that Indian child, an agreement that states that a birth parent, an extended family member, or the Indian child's tribe shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

''(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be considered to be grounds for setting aside a final decree of adoption.''.

SEC. 9. FRAUDULENT REPRESENTATION.

Title I of the Indian Child Welfare Act of 1978 is amended by adding at the end the following new section:

''SEC. 114. FRAUDULENT REPRESENTATION.

''(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person knowingly and willfully—

''(1) falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

''(A) a child is an Indian child; or

''(B) a parent is an Indian; or

''(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

''(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact described in paragraph (1).

''(b) CRIMINAL SANCTIONS.—The criminal sanctions for a violation referred to in subsection (a) are as follows:

''(1) For an initial violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 1 year, or both.

''(2) For any subsequent violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 5 years, or both.''.●

Mr. CAMPBELL. Mr. President, as Chairman of the Committee on Indian Affairs, today I join Senator MCCAIN in introducing the Indian Child Welfare Act Amendments of 1997. This legislation will amend the 1978 Indian Child Welfare Act [ICWA] and will serve the best interests of Indian children across the United States in the process. The ICWA is a procedural statute and this legislation clarifies and strengthens the procedures contained in it. The bill strengthens the statute by providing certainty, stability, and finality to adoptions and other placements involving Indian children.

In the 104th Congress, this legislation received the support of parties affected by and knowledgeable of ICWA-related adoptions: tribal organizations, and non-Indian adoption attorneys. The bill I am cosponsoring today addresses the major concerns of these parties in a way that strengthens the existing ICWA, and provides certainty and finality to non-Indian adoptive families. Most important, this bill serves the best interests of Indian children and enhances the integrity of Indian families.

Adoption and child custody proceedings are delicate and emotional matters for all involved: for the Indian child; for the birth parents; for the Indian tribe; and for the adoptive parents. My own experience as a youth is helpful in providing a context for ICWA and why it was enacted. I grew up in California, many miles from the Northern Cheyenne Reservation in Montana where my tribe and relatives lived. I am lucky in that even though I was not raised on the reservation, I still cling to my tribal identity, my culture, and the spiritual traditions that make me a member of the Northern Cheyenne Tribe. Many Indian youth are not so lucky, and once removed from their Indian families, tribes and cultures, never regain what they have lost.

The 1978 statute has worked well since its inception, and the reasons it was introduced are crucial to understanding the act and the legislation we introduce today. After exhaustive congressional testimony and many years of hard work the Indian Child Welfare Act was enacted in 1978. Prior to 1978 there were no available protections for Indian children, families, or tribes in situations involving the unwarranted and forced removal of Indian children from their families, tribes, and rich cultures. The cold fact is that prior to ICWA between 25 percent and 35 percent of all Indian children were separated from their families and given to adoptive families or placed in foster care or in institutions.

Through exhaustive hearings prior to enactment of the 1978 act, the Congress realized that at the staggering rate of Indian child removal, it would have been simply a matter of time before Indian families and tribes would literally be sapped of their futures—their precious children.

The ICWA is procedural in nature and is designed to protect the best interests of Indian children by reinforcing the strong interests Indian families and tribes have in maintaining their relationships with their children. The act also recognizes that tribal authorities and tribal courts are the appropriate authorities over Indian adoptions and placements. Just as we in the majority often speak of maintaining families and traditions and of respecting the rights of local governments, this act is one of the few Indian statutes that actually does both.

Non-Indian institutions, including State courts, do not and cannot completely understand the unique culture and relationships that make up tribal life. Because they cannot know these facts and these relationships, they should not be given authority to make child custody decisions involving Indian children. Practically, State authorities are not in a position to make these decisions. Legally, they should not be allowed to make these decisions. The right of any sovereign nation, including Indian nations, includes the right to determine who is and who is not a member or citizen. The legislation we introduce today preserves those most basic rights of Indian tribes: tribal self-preservation and self-determination.

Mr. President, I want to say a word about adoptive parents and families. The decision to adopt a child or children is one that is done out of the noblest motives, and with much love and affection. It is often a process fraught with many obstacles, both emotional and financial. I have nothing but the greatest respect and admiration for adoptive parents. This legislation will provide adoptive parents with the security they sometimes lack under current law. The bill will provide what many have complained of: finality and security in cases involving Indian children. For the past several years, there have been highly publicized cases involving Indian children and what some felt were late interventions by tribes in these proceedings.

By strengthening the procedures of ICWA this bill will make cases like the ones we saw last year a thing of the past. Parties seeking placement of Indian children would be required to file detailed notices with the tribe that includes biographical information on the child, as well as information regarding the rights of the tribe in responding to the notice. With the notice in hand, the

tribe must decide if it wants to intervene or not, and to inform the party seeking placement of its intentions.

By requiring tribes to file written notice of intervention and providing time limits within which tribes can intervene in proceedings, adoptive parents can be assured that they will not face the prospect of having final or near final. These procedural demands are not unduly burdensome and fall equally on both the parties seeking placement and tribal governments.

The truth is that many of these inflammatory and well-publicized cases involved unethical attorneys and other adoption professionals who advised their Indian clients to conceal or not reveal their Indian heritage in an effort to expedite the adoption. Because ICWA-related adoptions and proceedings involve procedural requirements, some attorneys and professionals seek to cut corners and save time and money. Not only is this shortsighted, but is damaging to all parties involved in an adoption or custody proceeding.

By expediting these adoptions, the attorneys interests were served. But what about the Indian children, Indian families, Indian tribes, and non-Indian adoptive families?

As we have seen, these people have had to endure long, bitter, and costly court battles some of which continue to this day. The legislation we introduce today will provide tough civil and criminal penalties to any person that willfully falsifies facts regarding whether a child is Indian or whether a parent is Indian; makes false or fraudulent statements; or falsifies documents containing facts related to the proceeding.

These provisions are not radical notions. They simply provide that if you are involved in an ICWA-related proceeding, and if you do not want to lose your money and your freedom, follow the law. No good adoption attorney worth his salt will fear these penalties if he or she follows the law and is forthright with the facts.

I urge my colleagues to join in enacting this crucial legislation to bring stability and certainty to adoptions and other proceedings involving Indian children.●

By Mr. NICKLES (for himself, Mr. BREAUX, Mr. MACK, Mr. BAUCUS, Mr. D'AMATO, Mr. BOND, Mr. DEWINE, Mr. COCHRAN, Mr. ENZI, Mr. HAGEL, AND MR. THOMAS):

S. 570. A bill to amend the Internal Revenue Code of 1986 to exempt certain small businesses from the mandatory electronic fund transfer system; to the Committee on Finance.

MANDATORY ELECTRONIC FUND TRANSFER SYSTEM LEGISLATION

Mr. NICKLES. Mr. President, today, I am introducing legislation with my colleague from Louisiana, Senator BREAUX, to address the ever-recurring problem of Federal mandates on small business. Our bill will prohibit the Internal Revenue Service from forcing thousands of small businesses to deposit payroll taxes by electronic funds transfer under threat of penalty. In addition to Senator BREAUX, I would like to thank several other Senators who have agreed to cosponsor this legislation, including Senator MACK, Senator BAUCUS, Senator D'AMATO, Senator BOND, Senator DEWINE, Senator COCHRAN, and Senator ENZI.

Legislation enacted in 1993 to implement the North American Free-Trade Agreement directed the IRS to begin collecting a progressively larger percentage of payroll tax deposits from employers by electronic funds transfer, in lieu of the Federal tax deposit coupon system. Congress' intent was to simplify the tax deposit system and reduce paperwork for taxpayers, financial institutions, and the IRS. The Senate report accompanying this bill recommended that the implementation of this mandate not create hardships for small businesses, and that no small business should be required to purchase computers or gain access to any electronic equipment other than a touch-tone telephone. Further, the report urged Treasury to take into account the specific needs of small employers, including possible exemption for the very smallest businesses from the electronic deposit system.

Unfortunately, the IRS has done little to mitigate the impact on small business. Instead, they sent notices to 1.2 million small businesses last summer stating that they must begin using the new electronic Federal tax payment System, or EFTPS, to make payroll tax deposits on January 1, 1997. Further, the IRS told these taxpayers that continued use of the Federal tax deposit coupon system would result in penalties equal to 10 percent of each deposit. The IRS targeted this mandate on any business which deposited more than $50,000 in payroll taxes in 1995. Prior to this time, the threshold for mandatory electronic deposits was $47 million. If the IRS is not stopped, Mr. President, the threshold will drop to $20,000 next year.

The reaction from the small business community to this mandate last year was adverse and vocal, Mr. President. Fortunately, Congress acted to delay the EFTPS mandate until July 1, 1997. However, that date is quickly approaching, and thousands of small business owners are no more comfortable with the mandate now than they were last year. Business owners who have used the coupon system for years to diligently pay their taxes on time are incensed to learn that they can be forced from that system against their will. Some fear IRS access to their bank accounts, and others fear the additional costs which may arise if their bank begins charging fees for these transactions. Finally, many small businesses are discovering that their current bank does not participate fully in the electronic transaction system.

Mr. President, small business owners should not have a new tax deposit system forced down their throats without alternatives and without enough time or information to make an orderly transition to the new system. Further, they should not be forced to incur fees or other additional costs in order to pay their taxes. While I agree that many taxpayers will come to prefer an electronic deposit system, I do not believe such a change should be mandated under threat of penalty. If a small business prefers to use the coupon system and continues to pay their taxes on time, they should not be penalized for doing so.

Mr. President, the legislation Senator BREAUX and I are introducing today will phase in the requirement to pay depository taxes electronically in manageable increments and exempt most small businesses permanently. Under our bill, only businesses who annually deposit over $5 million in payroll taxes will ever be mandated to use the electronic deposit system. Further, the bill directs the Secretary of the Treasury to establish a program to encourage all business taxpayers to voluntarily participate in the electronic deposit system.

Enactment of this legislation will free small business owners from yet another heavyhanded Federal mandate and preserve their right to pay their taxes in a manner which best suits their business needs. I encourage all Senators to join in this effort.

Mr. President, again I wish to thank the Presiding Officer of the Senate at this time, the Senator from Wyoming, for cosponsoring this legislation. I also ask unanimous consent that Senator HAGEL be added as an original cosponsor.

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

Mr. NICKLES. Mr. President, to summarize again for the benefit of my colleagues, effective July 1, if we do not change this current—I started to say ''law,'' but this is not a law. The IRS came up with a regulation. We passed a law. Congress passed a law that says we want to encourage electronic fund transfers of payroll taxes. A good idea. It makes sense. It will work for a lot of people.

IRS, to implement this, and maybe with some direction of Congress—Congress said put most of the taxpayers in. The IRS did so, and then they came up with a 10-percent penalty. That is a big inducement, encouragement. Congress did not put on the 10-percent penalty; the IRS did—it puts a gun to the taxpayer's head—and then said, ''You have to do this.'' Then they said, ''This is not too much of a challenge for bigger employers.'' As a matter of fact, the current requirement, the threshold is $47 million of payroll taxes. If you have payroll taxes of $47 million, that is a big operation. And they are doing that now. That actually applies to 1,500 taxpayers in the country today.

The next threshold level drops from $47 million to $50,000. Now you are talking about a lot of companies. You

are talking about a lot of businesses. You do not have to be very big to have payroll taxes of $50,000. You might have total payroll of a quarter of a million or $300,000. That deadline is July 1. It was to be January 1. We postponed it for 6 months.

The legislation we have introduced today, it phases down the $47 million threshold to $30 million, to $10 million, to $5 million, and says, ''If you have payroll taxes of less than $5 million, you do not have to do this. You can still do it, you still have the option to do it.''

I met with some representatives from the IRS. They said, ''We are concerned, if we pass this legislation, a lot of people might not get into the system. Maybe that would not be fair for the people already in the system.''

I said I want them to have the option. In our legislation, we want to encourage people to move into the electronic fund transfer. We think that would be good. A lot of people pay their home notes—I do that. When I pay my home mortgage, I do it by electronic fund transfer where you used to have the coupon system. I am happy with that. I think a lot of taxpayers will be happy paying payroll taxes this way, and we want this to be an option.

We want to eliminate the 10-percent penalty for noncompliance, especially for small business.

So that is what we have done. I ask unanimous consent Senator THOMAS also be included as an original cosponsor.

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

Mr. NICKLES. Mr. President, I ask unanimous consent to have printed in the RECORD immediately following my statement a copy of this legislation and, in addition to the legislation, a letter from the Small Business Legislative Council and a letter from the National Restaurant Association endorsing the bill.

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

S. 570

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

(a) IN GENERAL.—Section 6302(h)(2) of the Internal Revenue Code of 1986 (relating to use of electronic fund transfer system for collection of certain taxes) is amended to read as follows:

''(2) TAXPAYERS SUBJECT TO SYSTEM.—

''(A) IN GENERAL.—The regulations referred to in paragraph (1) shall only require taxpayers to use the electronic funds transfer system for a calendar year if the aggregate amount of depository taxes of such taxpayer for the second preceding calendar year exceeded the applicable dollar amount.

''(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A)—

''If the 2d preceding calendar year is:	The applicable dollar amount is:
1995	$47,000,000
1996	30,000,000
1997	20,000,000
1998	10,000,000
1999 or later	5,000,000.

''(C) AGGREGATION RULE.—All persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer for purposes of subparagraph (A).

''(D) VOLUNTARY COMPLIANCE.—The Secretary shall encourage taxpayers not described in subparagraph (A) to participate in the electronic funds transfer system. The participation of such taxpayers shall be voluntary.''

(b) CONFORMING AMENDMENT.—Section 6302(h)(4) of such Code is amended to read as follows:

''(4) COORDINATION WITH OTHER ELECTRONIC FUND TRANSFER REQUIREMENTS.—Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) are met.''

(c) REPORTS.—The Secretary of the Treasury or his delegate shall submit annual reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Such reports shall provide an analysis of the progress being made in implementing the electronic funds transfer system under section 6302(h) of the Internal Revenue Code of 1986, including, but not limited to, information with respect to—

(1) the number and nature of any penalties imposed on taxpayers due to noncompliance with such system,

(2) any administrative efficiencies accruing to the Federal Government by reason of such system, and

(3) the amount of any additional costs imposed on businesses to comply with such system.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to deposits required to be made on and after the date of the enactment of this Act.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, April 14, 1997.

Senator DON NICKLES,
Assistant Majority Leader,
Washington, DC.

DEAR SENATOR NICKLES: On behalf of the 770,000 restaurant locations nationwide, we would like to thank you and Senator Breaux for introducing legislation to help reduce the regulatory burden on our nation's employers.

As part of a revenue-raising provision in NAFTA, our members were mandated to begin filing payroll taxes electronically over a five year phase-in period. Starting July 1, all businesses that deposit over $50,000 in federal payroll taxes will have to start wiring their tax deposits to the Internal Revenue Service. This is the first phase-in that will truly affect the small businesses, including thousands of restaurant owners. For months, the National Restaurant Association and other employer groups have been warning the government that many businesses don't know about the mandate and could face penalties beginning in July for not complying.

We strongly support this bipartisan legislation which will allow small businesses the option of filing electronically, and will provide a reasonable phase-in of the mandate for larger businesses. Thank you for your leadership on this issue.

Sincerely,

ELAINE Z. GRAHAM,
Senior Vice President,
Government Affairs and Membership.
KATHLEEN O'LEARY,
Legislative Representative.

SMALL BUSINESS
LEGISLATIVE COUNCIL,
Washington, DC, April 14, 1997.

Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATOR NICKLES: On behalf of the members of the Small Business Legislative Council (SBLC), I wish to commend your efforts to address the concerns of the small business community with respect to the Electronic Federal Tax Payment System (EFTPS).

The EFTPS has proven to be a source of great frustration for us. On one hand, we applaud the movement towards an electronic funds transfer system. Any small business owner can vouch for the inherent flaws in the current paper coupon-based deposit system. Errors and inadvertent late payments are still all too frequent. And, while the IRS has become more reasonable in ultimately absolving small businesses of blame, it is difficult to turn off the IRS paper spigot. It can take several unnecessary exchanges to resolve the problem.

The electronic age is upon us and, ultimately, most small businesses will embrace it fully. But the small business community is not ready yet and, more importantly, neither is the technology and structure to implement this concept. As you know, we secured one delay in implementation in the hopes everything would work out.

It appears we still have a long way to go, and until such time as the small business community's confidence is secured, it appears a voluntary approach is in everyone's best interest. If the technology does work, it would seem foolish for small business' owners not to embrace it. But, rather than work everyone up into a ''tizzy'' as each new deadline approaches, it may be better to take the longer view, and make sure everyone comes on-board at their own pace and comfort level. We'd rather see the program make it on its own merits. And it does have merit, if done properly.

Therefore, we support your effort. Once again, you have demonstrated your strong commitment to small business.

As you know, The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional, and technical services, construction, transportation, tourism, and agriculture. For your information, a list of our members is enclosed.

Sincerely,

BENHAMIN Y. COOPER,
Chairman.

Mr. BAUCUS. Mr. President, I am very pleased today to join my colleagues Senator NICKLES and Senator BREAUX in introducing legislation to help support America's small businesses. This bill will address the problem created for the small business community by the Internal Revenue Services' requirement that they convert to a system of depositing payroll taxes by electronic funds transfer.

IRS has been implementing legislation directing the agency to begin collecting a progressively larger percentage of Federal tax deposits from employers by electronic funds transfer, rather than the current Federal tax deposit coupon system. The intent behind the legislation was to simplify the tax

deposit system and reduce paperwork for taxpayers, financial institutions, and the Internal Revenue Service itself. The Senate report accompanying the bill recommended that the implementation of this mandate not create hardships for small businesses, and that no small business should be required to purchase computers or gain access to any electronic equipment other than a touch-tone telephone. The report also urged Treasury to take into account the specific needs of small employers, including possible exemption for the very smallest businesses from the electronic deposit system.

We do not believe the Treasury Department has accomplished this goal. While a timetable for compliance has been established, there is little evidence that the concerns of the small business community have been alleviated as July 1, 1997, the deadline for implementation, draws near. Business owners who have used the coupon system for years to diligently pay their taxes on time do not understand why they are being required to convert to an electronic funds transfer system. Many small business owners I have spoken with in Montana fear IRS access to their bank accounts, particularly in light of recent reported incidences of IRS employee browsing through taxpayer records without a valid reason. Other small business owners are concerned, and not unreasonably, that banks may begin charging fees for these transactions, adding to their costs of doing business. Finally, many small businesses are discovering that their current banks do not even participate fully in the electronic transfer system, forcing them to find a new bank through which to send in their deposit payments.

Mr. President, I agree with my colleagues that small businesses have not been given enough time or information to make an orderly transition to the new electronic funds transfer system. I also agree that they should not be required to pay a fee in order to pay their taxes. The bill we are introducing today will exempt businesses who annually deposit under $5 million in payroll taxes from the electronic payment requirement permanently, and phase it in for the rest at a much more manageable rate.

I believe this bill will preserve the right of small business owners to pay their taxes in a manner which best suites their business needs. I commend Senators NICKELS and BREAUX for the work they have done on this bill, and encourage our other colleagues to join in our effort.

By Mr. REID:

S. 571. A bill to establish a uniform poll closing time throughout the continental United States for Presidential general elections; to the Committee on Rules and Administration.

THE UNIFORM POLL CLOSING ACT OF 1997

Mr. REID. Mr. President, today I am introducing legislation which will set a uniform poll closing time for the continental United States. Election officials and political scientists for years have believed that early announcements, based on exit polls, discourage thousands of people from voting and affect the outcome of close races for other Federal, State and local offices. Less than 50 percent of eligible voters actually voted last year. As public officials, we have a responsibility to do everything we can to encourage voting, not dissuade it. Uniform poll closing times is a step in this direction.

We are all aware that the controversy over early network projections is not a new one. Senator Barry Goldwater introduced a bill after the 1960 election prohibiting radio broadcast of any Presidential election returns until after midnight on election day. Network predictions 4 years later of Goldwater's landslide loss, and of Richard Nixon's landslide victory in 1972, spawned several Senate bills to muzzle radio and television. But none were enacted.

In 1980, when new technology made it unnecessary for networks to wait for actual returns, the furor over early projections was brought to its highest pitch. In that year, voters in the West were told at 5 p.m., hours before their polls closed, who the next President of the United States would be. The three major networks trumpeted Ronald Reagan's victory long before the polls had closed in their States. After the election, our colleagues, Representatives Tim Wirth and Al Swift began a congressional search for a way to prevent early calls of elections. Numerous ideas were discussed as solutions to the problem of early projections based on exit polls, but there was no consensus. In addition to uniform poll closing times, shifting election day to Sunday, spreading voting over 2 days, making election day a national holiday and forbidding the networks from issuing predictions were proposed. Of course the best solution would be voluntary restraint on the part of the networks, but that has proven to be a failure.

My legislation simply states that each polling place in the continental United States must close, with respect to a Presidential general election, at 10 p.m. eastern standard time. This means the polls with close at 7 p.m. Pacific time, 8 p.m. mountain time and 9 p.m. central time. I do not believe these times are unreasonable. It is my hope that this legislation will revive the debate over the use of exit polls. I welcome my colleagues to work with me for a solution.

ADDITIONAL COSPONSORS

S. 11

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 11, a bill to reform the Federal election campaign laws applicable to Congress.

S. 39

At the request of Mr. STEVENS, the names of the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 39, a bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

S. 224

At the request of Mr. WARNER, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 224, a bill to amend title 10, United States Code, to permit covered beneficiaries under the military health care system who are also entitled to Medicare to enroll in the Federal Employees Health Benefits Program, and for other purposes.

S. 238

At the request of Mr. GRAMS, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 238, a bill to amend title XVIII of the Social Security Act to ensure Medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes.

S. 248

At the request of Mrs. FEINSTEIN, the names of the Senator from Nevada [Mr. BRYAN], the Senator from Washington [Mrs. MURRAY], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 248, a bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 311

At the request of Mr. GRAHAM, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 311, a bill to amend title XVIII of the Social Security Act to improve preventive benefits under the Medicare Program.

S. 342

At the request of Mr. THOMAS, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 342, a bill to extend certain privileges, exemptions, and immunities to Hong Kong Economic and Trade Offices.

S. 356

At the request of Mr. GRAHAM, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the title XVIII and XIX of the Social Security Act to assure access to emergency medical services under group