

Mr. President, next year and thereafter I hope even more Americans will participate in an even greater variety of ways in the celebration of Ethnic American Day. Schoolchildren could be encouraged to compete in essay contests, writing about the contributions of ethnic Americans. Local organizations throughout the land could select their own honored citizens and sponsor local celebrations. Constitution Hall will be the site of the principal Ethnic American Day celebration again next year, but more Americans can experience the sheer enjoyment of honoring America's multiple ethnic heritages if people throughout the Nation cooperate in organizing more celebrations.

PRODUCT LIABILITY

Mr. HATCH. Mr. President, we have before us a cloture vote on the motion to proceed on consideration of S. 2760, the Product Liability Reform Act. I will vote for cloture, because this is an issue that should be debated and acted upon by the Senate. In my view, the liability crisis is one of the most critical issues facing our Nation's business. I have been concerned with this issue for quite some time. The problems are, I am sure, well known to all of you. Today, both the business community and consumers are threatened by the unpredictability of court awards and judge-made laws that allow a finding of liability even though a defendant is without fault. Insurance companies have responded to this unpredictability by doubling and even tripling their premiums each year. The heavy burden of insurance premiums has driven some companies out of business and has made life difficult for those who remain.

This is by no means a local problem. In fact, courts in Utah and her surrounding States have been relatively restrained when dealing with the issue. Those local courts have not joined the few States that have discarded traditional concepts of tort law that require negligence or recklessness in order to recover in favor of an expanded doctrine of strict liability. Furthermore, the Utah Legislature recently passed the Tort Reform Act of 1986 which abolished the legal theory of joint and several liability. But because insurance companies set their premiums based upon the worst-case scenario, professionals in Utah are feeling the effects of laws made in States thousands of miles away.

This is a national problem and several proposals have been presented in Congress in an attempt to reduce the pressure felt by the insurance unavailability/unaffordability crisis. These proposals range from "shotgun ideas" that would federalize the entire tort system to specific "rifle shots" that address only those areas most needing assistance.

Certainly, there is considerable controversy in Capitol Hill about these proposals. Part of the problem is due

to opposition lobbyists like the American Trial Lawyers Association. But what, to me, is a more serious concern, are the ramifications of dealing on a Federal level with legal principles that have traditionally remained on the State level. However, the scope of the liability crisis is, as I mentioned, one of national concern. There are thousands of businesses across the Nation, both small and large, that are seeing their costs increase, their profits disappear and their risk of being sued growing larger daily. In Florida, 20 percent of obstetricians have stopped delivering babies. Manufacturers of vaccines for our children are faced with skyrocketing insurance premiums that increase costs and limit innovation. One Utah town with 60 registered voters was recently held liable for \$2.7 million in a dispute over construction permits. Nationwide, people have been prevented from engaging in business because of their inability to obtain insurance.

Therefore, I believe that the Federal Government can and should take limited steps to correct our runaway liability system. Earlier this month I chaired hearings in the Senate Judiciary Committee in which we heard testimony demonstrating the need for a national remedy for products liability. I have therefore endorsed S. 2760, the Product Liability Reform Act, which I believe will have a great impact on the problem, but with minimal disruption of the ability of the people to govern themselves on the State level.

I am convinced that this bill would reduce the pressure that is currently felt by businesses who are exposed to product liability. Because businesses such as those in my own State of Utah are feeling the effects of court decisions rendered in States that have not adopted such laws, passage of this proposal by Congress would establish some level of uniformity, allowing insurance companies to better anticipate potential jury verdicts. A limited Federal product liability solution is needed and we must act on S. 2760.

However, as this legislation deals only with product liability, it does not alleviate the insurance crisis as it relates to our local governments and medical professionals, two other groups in great need. A separate proposal that I introduced is directed at reducing the risk of municipal liability. Courts have recently interpreted section 1983, a civil right statute, so that a city or local government may be sued in Federal court for a violation of Federal law unrelated to civil rights. If the plaintiff prevails, the defendant city or county must pay not only the amount awarded, but attorneys fees as well. This has forced insurance companies to raise liability insurance premiums of cities and local governments.

I have introduced S. 436, to limit the broad reading that courts have given to the Federal law in question, and return the interpretation to violations of civil rights, which was the original intent of the law. This bill would also establish an immunity for decisions of

local governments that were made in good faith; impose a uniform statute of limitations; and require the exhaustion of State administrative remedies prior to suit in Federal court. Passage of S. 436 would significantly reduce the pressure felt by municipalities and local governments. S. 436 was unanimously approved by the Constitution Subcommittee and is now pending before the Senate Judiciary Committee.

To respond to the health care professional liability crisis, I have introduced a bill providing incentives to States who modify their laws to provide for periodic payment of damage awards over \$100,000; elimination of the collateral source rule; limiting noneconomic damages to \$250,000; limiting contingency fee awards; and several other provisions to ensure record-keeping and discipline.

These three approaches respond to the liability problems facing practicing professionals, local governments, and American business generally. I believe that State governments bear the majority of the responsibility of modifying the laws as tort liability is traditionally an area of State law. However, through judicious use of the Federal power to provide stability in an area marked by continued turmoil, the Federal Government can join the States in making great strides in eliminating the liability crisis.

S. 2878—ANTI DRUG ABUSE ACT OF 1986

(Note: Later in today's proceedings the Senate proceeded to the consideration of S. 2878, the Anti Drug Abuse Act of 1986. By unanimous consent the text of the bill was ordered to be printed in the RECORD. To assure inclusion of the text of the bill in part I of today's RECORD, the text of the bill is printed at this point, as follows:)

S. 2878

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 "Anti Drug Abuse Act of 1986".

SEC. 2. TABLE OF CONTENTS.

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Compliance with Budget Act.

TITLE I—ANTI-DRUG ENFORCEMENT
Subtitle A—Drug Penalties Enhancement Act of 1986

- Sec. 1001. Short title.
- Sec. 1002. Controlled Substances Act penalties.
- Sec. 1003. Other amendments to the Controlled Substances Act.
- Sec. 1004. Amendment to title 18 of the United States Code.
- Sec. 1005. Amendment to title 28 of the United States Code.
- Sec. 1006. Amendment to the Federal Rules of Criminal Procedure.
- Sec. 1007. Elimination of special parole terms.
- Sec. 1008. Amendment to the Comprehensive Crime Control Act of 1984.
- Sec. 1009. Miscellaneous technical amendments.

Subtitl
Sec. 10:
Sec. 10:
Subtit
Sec. 11:
Sec. 11:
Sec. 11:
Sec. 11:
Subtitl
Sec. 11:
Sec. 11:
Sec. 11:
Subtit
Sec. 12:
Sec. 12:
Sec. 12:
Sec. 12:
Subtitl
Sec. 12:
Sec. 12:
Sec. 12:
Subtitl
and :
Act o
Sec. 13:
Sec. 13:
Subtit
Sec. 13
Sec. 1:
Sec. 13:
Sec. 13:
Sec. 13:
Su
Sec. 14:
Subtitl
Sec. 14:
Sub
Sec. 15:
Sec. 15
Subtit
Sec. 16:
Su
Sec. 16
S
Sec. 17
Subtitl
Sec. 17:
Sec. 17:
Subt
Unde
Sec. 17:
Subti
Sec. 18:
Sec. 18:
Subtitl
Sale
pherr
Sec. 18:

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle N—Drug Law Enforcement Cooperation Study

SEC. 1651. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle O—Arrest Authority for INS Officers

Subtitle P—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this part, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this part.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 1771. SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. 1772. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) striking out the matter following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A)."

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 1791. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.

"341. Definitions.

"342. Operation of a common carrier under the influence of alcohol or drugs.

"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than \$10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual."

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle S—Freedom of Information Act

SEC. 1801. LAW ENFORCEMENT.

(a) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any natural person";

(b) Section 552(a) of title 5, United States Code, is amended by adding after paragraph (6) thereof the following new paragraph:

"(7) Nothing in this section shall be deemed applicable in any way to the informant record maintained by a law enforcement agency under an informant's name or personal identifier, whenever access to such records is sought by a third party according to the informant's name or personal identifier."

SEC. 1802. ORGANIZED CRIME.

Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Nothing in this section shall be deemed applicable to documents compiled in any lawful investigation of organized crime, designated by the Attorney General for the purposes of this subsection and conducted by a criminal law enforcement authority for law enforcement purposes, if the requested document was first generated or acquired by such law enforcement authority within five years of the date of the request, except where the agency determines pursuant to regulations promulgated by the Attorney General that there is an overriding public interest in earlier disclosure or in longer exclusion not to exceed three years. Notwithstanding any other provision of law, no document described in the preceding sentence may be destroyed or otherwise disposed of until the document is available for disclosure in accordance with subsections (a) and (b) of this section for a period of not less than ten years."

Septem
(b) Sub
Code (as
ing out
serting a
(2) by
as clause
(3) by
of and in
(4) by
"(2) o
tured an
uals or
sociated
tory or
in pa
seeking
ties thr
tion, ar
hibits t
"(A) t
rial,
"(B)
they co
which a
"(C) i
thodica
ion,
"(D)
direct
their o
"(E)
govern
through
means,
"(F)
prises
loan-sh
invest
gitima
Subtit
Sale
pher
SEC. 18
This
Order
SEC. 18
(a) I
(1)
Posta
ance
pherr
(2)
inters
pherr
(3)
lia.
(b)
subse
oned
fined
(c)
any
tion
ure.
ered
ices,
may
may
or e
or lo
(d)
any
kind
signi
ing,
hur
tion
of F
limi
sign
erw
has
intc
(1)
pla

(b) Subsection (f) of title 5, United States Code (as redesignated) is amended by striking out the comma after "section" and inserting a dash;

(2) by designating the matter that follows as clause (1);

(3) by striking the period at the end thereof and inserting "; and"; and

(4) by inserting at the end thereof

"(2) 'organized crime' means those structured and disciplined associations of individuals or of groups of individuals who are associated for the purpose of obtaining monetary or commercial gains or profits, wholly or in part by illegal means, while generally seeking to protect and promote their activities through a pattern of graft or corruption, and whose associations generally exhibits the following characteristics:

"(A) their illegal activities are conspiratorial.

"(B) in at least part of their activities, they commit acts of violence or other acts which are likely to intimidate,

"(C) they conduct their activities in a methodical or systematic and in a secret fashion,

"(D) they insulate their leadership from direct involvement in illegal activities by their organizational structure,

"(E) they attempt to gain influence in government, politics, and commerce through corruption, graft, and illegitimate means, and

"(F) they engage in patently illegal enterprises such as dealing in drugs, gambling, loan-sharking, labor racketeering, or in the investment of illegally obtained funds in legitimate businesses."

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation interstate or foreign commerce drug paraphernalia;

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than \$100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes, but is not limited to, items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without

screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bonges;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate users of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any person or entity that, in the normal lawful course of business, imports, exports, transports, or sells through the mail or by any other means any pipe, paper, or accessory primarily intended for use with tobacco products.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective ninety days after the date of enactment of this subtitle.

Subtitle U—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"Sec. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$500,000, or both, or a fine of \$2,000,000 for a person other than an individual."

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Y—Controlled Substances Technical Amendments

SEC. 1861. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing, medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons."

SEC. 1862. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning " * * * the filing", by striking out "\$2,500" and inserting in lieu thereof "\$5,000".

SEC. 1863. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) is enacted by Public Law 98-473 is repealed.

SEC. 1864. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 1865. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been