

EC-2431. A communication from the Deputy Secretary of the Treasury, transmitting, a draft of proposed legislation to authorize the Bureau of Engraving and Printing to use recording clocks to record time and attendance of employees; to the Committee on Governmental Affairs.

EC-2432. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the disposal of excess property in a foreign country for fiscal year 1979; to the Committee on Governmental Affairs.

EC-2433. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of legislation adopted by the Council of the District of Columbia on October 9, 1979; to the Committee on Governmental Affairs.

EC-2434. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of legislation adopted by the Council of the District of Columbia on October 9, 1979; to the Committee on Governmental Affairs.

EC-2435. A communication from the Acting Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a report on the suspension of deportation of certain aliens under section 244(a)(1) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

EC-2436. A communication from the Secretary of Health, Education, and Welfare, transmitting notice that the annual report on activities under the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act covering fiscal years 1978 and 1979 will be submitted by January 31, 1980; to the Committee on Labor and Human Resources.

HOUSE BILL REFERRED

The following bill was referred, pursuant to section 401(b)(2) of the Congressional Budget Act, to the Committee on Appropriations for not to exceed 15 days that the Senate is in session, to be discharged from further consideration, if not reported by that date:

H.R. 1543. An act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment and an amendment to the title:

S. 6. A bill to amend the Agricultural Act of 1949, and for other purposes (Rept. No. 96-400).

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment:

S.J. Res. 107. A joint resolution authorizing and requesting the President to issue proclamations designating the weeks of January 21 through January 27, 1979, and January 20 through January 26, 1980, as "Junior Achievement Week" (Rept. No. 96-401).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LONG, from the Committee on Finance:

John Zeldes Bernstein, of Maryland, to be General Counsel of the Department of Health, Education, and Welfare.

N. Jerold Cohen, of Georgia, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service).

(The above nominations from the Committee on Finance were reported with the recommendation that they be confirmed, subject to the nominees' 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. HATCH (for himself, Mr. THURMOND, Mr. COCHRAN, Mr. HELMS, and Mr. LAXALT):

S. 1980. A bill to provide for more expeditious, effective, and equitable enforcement of the antitrust laws; to the Committee on the Judiciary.

By Mr. DECONCINI:

S. 1981. A bill to improve judicial machinery by amending the jurisdiction and venue requirements and damage provisions in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

By Mr. BENTSEN:

S. 1982. A bill to amend the Internal Revenue Code to extend in certain cases the six month deadline for exempting exports from the manufacturers excise tax; to the Committee on Finance.

Mr. MATHIAS (for himself, Mr. METZENBAUM, Mr. KENNEDY, and Mr. JAVITS):

S. 1983. A bill to amend section 1979 of the Revised Statutes to provide that States, municipalities, and agencies or units of government thereof, may be sued under the provisions of such section; to establish rules of liability with respect to such States, municipalities, and agencies or units of government thereof; and for other purposes; to the Committee on the Judiciary.

By Mr. WALLOP:

S. 1984. A bill to amend the Internal Revenue Code of 1954 to provide an unlimited marital estate and gift tax deduction, to modify provisions relating to special valuation of certain farm and other real property, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. THURMOND, Mr. COCHRAN, Mr. HELMS, and Mr. LAXALT):

S. 1980. A bill to provide for more expeditious, effective, and equitable enforcement of the antitrust laws; to the Committee on the Judiciary.

(The remarks of Mr. HATCH when he introduced the bill appear earlier in today's proceedings.)

By Mr. DECONCINI:

S. 1981. A bill to improve judicial machinery by amending the jurisdiction and venue requirements and damage provisions in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

1979 AMENDMENTS TO THE FALSE CLAIMS ACT

● Mr. DECONCINI. Mr. President, I am today introducing a bill, the proposed

amendments to the False Claims Act of 1979, which would provide the United States with an effective and useful tool to combat fraud in modern times.

This bill was developed by the Department of Justice in an attempt to bolster the mechanism available to the Department to carry out its responsibility of vigorously pursuing fraudulent practices in dealings with the Federal Government.

There can be no doubt that a need exists for reforming the False Claims Act, which has not been amended in any substantial respect since its enactment by the Congress in 1863. Although I retain some reservations about certain provisions of the bill, I am convinced that, on the whole, it is a valuable and necessary step forward in our struggle to protect the taxpayer from those who would defraud the United States.

The wholesale reform contemplated by the act would include provisions expanding jurisdiction and venue, increasing recoverable damages, raising the forfeiture levels and redefining the mental element required for a successful prosecution. In addition, the burden of proof would be altered, nolo contendere pleas would take on more serious consequences in subsequent civil actions and a mechanism would be established to provide the necessary investigative tools so crucial to the development of a case in the face of these sophisticated schemes.

Mr. President, present law is hopelessly anachronistic. It does not provide the Federal Government with the legal tools necessary to protect itself from the unscrupulous. Unfortunately, the American taxpayer loses millions of dollars each year as the result of false claims. The legislation I am offering will modernize and streamline the basic statute governing civil fraud against the Government. I view it as legislation designed to protect the taxpayer and urge my colleagues to support it. I ask unanimous consent that the text be printed in the RECORD at this point.

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

S. 1981

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 3490, 3491 and 3494 of the Revised Statutes, as amended, are amended as follows:

SECTION 1. Section 3490 of the Revised Statutes, as amended, is amended as follows:

(1) By deleting from section 3490 of the Revised Statutes the following words "who shall do or commit any of the acts prohibited by any of the provisions of section 5438, title 'Crimes' shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing of such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit" and, inserting in lieu thereof the following:

"who:

"(a) makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false or fictitious; or

"(b) for the purposes of obtaining or aiding to obtain the payment or approval of such claim, makes uses or causes to be made or used, any false bill; receipt, voucher, roll, account, claim, certificate, affidavit, deposition, computer print-outs or other computer-readable media, including, but not limited to, magnetic discs, paper tapes, punch cards and discs, knowing the same to contain any false or fictitious statement or entry or

"(c) knowingly enters into any agreement, combination, or conspiracy to present, or cause to be presented, any false or fictitious claim to the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fictitious claim,

shall be liable to the United States as provided in the next subsection."

(2) By adding new subsections (a) and (b), as follows:

"(a) Any person who shall do or commit any of the acts prohibited by any of the provisions of the preceding subsection shall for each such claim, forfeit and pay to the United States the sum of \$5,000; and in addition thereto:

"(1) double the amount of its damages, including double the amount of its consequential damages, which damages the United States would not have sustained either but for:

"(i) the doing or commission of any of the acts set forth in the preceding section; or

"(ii) having entered into or made any contract or grant as a result, in any material part, of any false statement; and, in addition thereto,

"(2) the costs of suit; minus

"(3) any credits to which the defendant may establish entitlement, which credits shall be deducted only after the damages sustained by the United States have been doubled as set forth in subsection (2) hereof. Such forfeiture or forfeitures and damages shall be sued for in the same suit."

"(b) The term 'knowing' or 'knowingly', as used in this Act, shall mean either that the defendant:

"(1) had actual knowledge; or

"(2) had constructive knowledge in that:

"(i) the defendant acted in reckless disregard of the truth; or

"(ii) the defendant should have known that the claim was false or fictitious;

and, in any suit under this Act, no proof of intent to defraud or proof of any other element of a claim for fraud at common law shall be required."

Sec. 2. Section 3491 of the Revised Statutes, as amended, is amended as follows:

(a) by deleting subsection A of Section 3491 and adding a new subsection A in lieu thereof as follows:

"(A) The district courts of the United States, the United States District Court for the District of Columbia, the United States District Courts for the Districts of Puerto Rico, the Virgin Islands, Guam, and any territory or possession of the United States, shall have jurisdiction over any action commenced by the United States under Sections 3490 through 3494 of the Revised Statutes, as amended, and venue of such action shall be proper in any district in which any defendant, or in the case of multiple defendants, any one defendant either can be found, resides, transacts business or in which any act proscribed by this Act shall be alleged by the United States to have occurred, and a summons as required by the Federal Rules of Civil Procedure shall be issued by said district court and served at any place within the United States, Puerto Rico, the Virgin Islands, Guam, and any territory or possession of the United States, or in any foreign country. The Court of Claims shall likewise

have jurisdiction of any such action if such is asserted by way of counterclaim by the United States, which may join as additional parties in such counterclaim all persons who may be jointly and severally liable with such party against whom a counterclaim is asserted by reason of having violated sections 3490 through 3494 of the Revised Statutes, as amended, provided however, that no cross-claims or third-party claims shall be asserted among such additional parties except as such claims may otherwise be within the jurisdiction of the Court of Claims."

(b) By adding new subsections G, H, I, and J, as follows:

"(G) In any action hereafter brought under sections 3490 through 3494 of the Revised Statutes, as amended, the United States shall be required to prove all essential elements of its cause of action, including damages, by a preponderance of the evidence."

"(H) A final judgment hereafter rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought by the United States pursuant to sections 3490 through 3494 of the Revised Statutes, as amended.

"(I) Any person, including, but not limited to, any partnership, firm, corporation or other association, State or political subdivision thereof, who shall pay or give, directly or indirectly, any thing of value to any officer or employee of the United States to influence such officer or employee in the performance of his official duty shall be liable in a civil action by the United States for any such amount so paid or given and, in addition, any contract made with such person, partnership, firm, corporation or other association, State or political subdivision thereof, in which such officer or employee shall have performed any substantial function, made within one year preceding, or following the payment or receipt, of any such thing of value shall be null and void and the United States may retain all benefits or consideration received by it pursuant to such contract and sue to recover in addition all benefits or consideration conferred or paid by it. Jurisdiction, venue, service of process and trial subpoenas and burden of proof in such actions shall be the same as in actions brought pursuant to sections 3490 through 3494 of the Revised Statutes, as amended.

"(J) The Attorney General or his designee may apply to any district court having jurisdiction over any action commenced pursuant to sections 3490 through 3494 of the Revised Statutes, as amended, for provisional relief whenever he has reasonable cause to believe that said sections may have been violated, and, if the Court shall find there is a reasonable likelihood that the United States will prevail after trial on the merits of its claim, it shall enjoin the defendant from taking any action which the Court, in the exercise of its discretion, finds reasonably likely to hinder or delay the United States in the collection of any judgment which may be obtained in such action and, in addition, the Court may from time to time make such other orders as it deems appropriate including, but not limited to, requiring the defendant to post security for judgment, or to seek the prior approval of the Court before making any transfer without an adequate and full consideration in money or moneys worth, paying an antecedent debt which has matured more than 30 days prior to payment, or otherwise engaging in any transaction not in the usual and regular course of the defendant's business. Except as provided for herein, such application by the Attorney General and proceedings hereunder shall be governed by Rule 65 of the Federal Rules of Civil Procedure."

Sec. 3. Section 3494 of the Revised Statutes, as amended, is amended as follows:

(a) by deleting the words "and not afterwards" and inserting in lieu thereof, the following: "or within three years from the time when facts material to the right of action are known or reasonably should have been known by the official within the United States Department of Justice charged with responsibility to act in the circumstances, whichever shall occur last", and

(b) by further amending section 3494 to add the following new subsections 2, 3, 4 and 5, as follows:

"Sec. 2. For the purpose of subsections 2 through 5 of Section 3494:

"(a) The term 'False Claims Act law' includes:

"(1) Each provision of sections 3490 through 3498 and 5498 of the Revised Statutes, commonly known as the False Claims Act; and

"(2) Any statute hereafter enacted by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any false claim or bribery or corruption of any officer or employee of the United States;

"(b) The term 'False Claim Act investigation' means any inquiry conducted by any False Claims Act investigator for the purpose of ascertaining whether any person is or has been engaged in any False Claims Act violation, including any bribery or corruption of any officer or employee of the United States proscribed by subsection I of Section 3491 of the Revised Statutes, as amended;

"(c) The term 'False Claims Act violation' means any act or omission in violation of any False Claims Act law;

"(d) The term 'False Claims Act investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any False Claims Act law;

"(e) The term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision;

"(f) The term 'documentary material' includes the original or any copy of any book, report, memorandum, paper, communication, tabulation, chart, or other document; and

"(g) the term 'custodian' means the custodian, or any deputy custodian designated by the Assistant Attorney General of the Civil Division."

"Sec. 3. (a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Civil Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a False Claims Act investigation, he may, prior to the institution of a civil proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

"(b) Each such demand shall state the nature of the conduct constituting the alleged False Claims Act violation which is under investigation, and the provision of law applicable thereof.

"(1) If it is a demand for production of documentary material—

"(A) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

"(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may

be assembled and made available for inspection and copying or reproduction; and

"(C) identify the custodian to whom such material shall be made available.

"(2) If it is a demand for answers to written interrogatories—

"(A) propound with definiteness and certainty the written interrogatories to be answered;

"(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

"(C) identify the False Claims Act investigator to whom such answers shall be submitted.

"(3) If it is a demand for the giving of oral testimony—

"(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(B) identify a False Claims Act investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

"(c) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers or testimony would be protected from disclosure under—

"(1) the standards applicable to subpoenas or subpoenas duces tecum by a court of the United States in aid of a grand jury investigation, or

"(2) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of Sections 3490 through 3494 and 5498 of the Revised Statutes.

"(d)(1) Any such demand may be served by any False Claims Act investigator, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) Any such demand or any petition filed under subsection 5 of this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

"(e)(1) Service of any such demand or of any petition filed under subsection 5 of this section may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or

"(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or of any petition filed under subsection 5 of this section may be made upon any natural person by—

"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

"(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(g) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(h) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

"(1)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

"(2) The False Claims Act investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the business, or in such other place as may be taken, and any stenographer taking such testimony.

"(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the False Claims Act investigator conducting the examination and such person.

"(4) When the testimony is fully transcribed, the False Claims Act investigator or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the False Claims Act investigator with a statement of

the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days of his being afforded a reasonable opportunity to examine it, the officer or the False Claims Act investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or False Claims Act investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(6) Upon payment of reasonable charges therefor, the False Claims Act investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Civil Division may, for good cause, limit such witness to inspection of the official transcript of his testimony.

"(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the False Claims Act investigator conducting the examination may petition the district court of the United States pursuant to subsection 5 of this section for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18, United States Code.

"(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States."

"Sec. 4. (a) The Assistant Attorney General in charge of the Civil Division of the Department of Justice shall designate a False Claims Act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and such additional False Claims Act investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(b) Any person upon whom any demand under subsection 3 of this section for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to subsection 5(d) of this section) on the return date specified in such demand (or on such later date as such cus-

todian may prescribe in writing). Such person may, upon written agreement between such person and the custodian, substitute copies for originals of all or any part of such material.

"(c) (1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return of documentary material, pursuant to this section.

"(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any duly authorized official or employee of the Department of Justice under regulations which shall be promulgated by the Attorney General. Notwithstanding paragraph (3) of his subsection, such material, answers, and transcripts may be used by any such official or employee in connection with the taking of oral testimony pursuant to this section.

"(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers or transcripts, by any individual other than a duly authorized official or employee of the Department of Justice. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof.

"(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe, (A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by any duly authorized representative of such person; and (B) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

"(d) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(e) If any documentary material has been produced in the course of any False Claims Act investigation by any person pursuant to a demand under this section and—

"(1) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

"(2) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any

court, grand jury, or agency through the introduction thereof into the record of such case or proceedings.

"(f) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this Act, or the official relief of such custodian from responsibility for the custody and control of such material, answers or transcripts, the Assistant Attorney General in charge of the Civil Division shall promptly (1) designate another False Claims Act investigator to serve as custodian of such material, answers, or transcripts, and (2) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have, with regard to such material, answers or transcripts, all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation."

"SEC. 5. (a) Whenever any person fails to comply with any civil investigative demand duly served upon him under section 3 or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

"(b) Within 20 days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such False Claims Act investigator a petition for an order of such court, modifying or setting aside such demand. The time allowed for compliance with the demand, in whole or in part, as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(c) At any time during which any custodian is in custody or control of any documentary material, answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office or such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(d) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code. Any

disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

"(e) To the extent that such rules may have application and are not inconsistent with the provisions of this section, the Federal Rules of Civil Procedure shall apply to any petition under this section.

"(f) Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this Act shall be exempt from disclosure under section 552 of title 5, United States Code."

SEC. 4. This act, and the amendments made by this act, shall become effective upon enactment but shall not be applicable to cases pending on that date.

By Mr. BENTSEN:

S. 1982. A bill to amend the Internal Revenue Code to extend in certain cases the 6-month deadline for exempting exports from the manufacturers excise tax; to the Committee on Finance.

MANUFACTURERS' EXCISE TAXES—12-MONTH EXTENSION OF CURRENT 6-MONTH EXPORT DEADLINE IN CASES OF CIVIL UNREST

● Mr. BENTSEN. Mr. President, I am today introducing a bill to give the Secretary of the Treasury discretion to extend for an additional 12 months certain excise tax deadlines with respect to exports in cases of civil unrest in a foreign nation.

Under section 4221 of the Internal Revenue Code, certain manufacturers' excise taxes do not have to be paid for those goods which will be exported within 6 months from the date of sale by the manufacturer (or if earlier, on the date of shipment by the manufacturer.) If the goods are not exported within this 6 month period the excise tax must be paid. (The excise tax is subsequently refunded upon the export of the goods.)

Earlier this year many American firms purchased goods for export to Iran. Due to the civil unrest in that nation the transfer of many of these goods has been delayed. These delays necessitate the payment of the excise tax even though the tax will be refunded later when the goods are exported.

My proposal simply gives the Secretary of the Treasury discretion to extend the deadline an additional 12 months in situations involving civil unrest.

In light of our current trade deficit of some \$30 billion, it is essential that Federal law provide greater flexibility for exporting firms.

We cannot expect to reverse our trade deficit unless our Government assists U.S. exporters to the same extent that foreign governments assist their own exporters. There is substantial precedent in current tax law to give IRS discretion in these types of cases. For example, penalties for late filing of tax returns can be waived for exceptional circumstances.

Mr. President, I urge the Senate to enact this technical tax proposal which would simply help recognize the added risks of engaging in export activities.●

By Mr. MATHIAS (for himself, Mr. METZENBAUM, Mr. KENNEDY, and Mr. JAVITS):

S. 1983. A bill to amend section 1979 of the Revised Statutes to provide that States, municipalities, and agencies or