been complied with at any time, the Attorney General shall bring a civil action in United States district court for a judgment against the party states (as defined in the compact) and Commission—

(A) declaring that the consent of Congress to the compact is of no further effect by reason of the failure to meet the condition;

(B) enjoining any further failure of compliance; and

(C) in any second or subsequent civil action under this subsection in which the court finds that a second or subsequent failure to comply with the condition stated in subsection (a)(3)(B) has occurred, ordering that the compact facility be closed.

(2) BY A MEMBER OF THE COMMUNITY IN WHICH A COMPACT FACILITY IS LOCATED.—If any person that resides or has a principal place of business in the community in which a compact facility is located obtains evidence that the condition stated in subsection (a)(3)(B) has not been complied with at any time, the person may bring a civil action in United States district court for a judgment against the party states and Commission—

(A) declaring that the consent of Congress to the compact is of no further effect by reason of the failure to meet the condition;

(B) enjoining any further failure of compliance; and

(C) in any second or subsequent civil action under this subsection in which the court finds that a second or subsequent failure to comply with the condition stated in subsection (a)(3)(B) has occurred, ordering that the compact facility be closed.

Mr. DOMENICI. I ask unanimous consent that the amendments be agreed to, the substitute amendment, as amended, be agreed to, the bill be considered read a third time and passed as amended, the motion to reconsider be laid upon the table, and that any statement relating to the bill appear at this point in the RECORD.

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

The bill (H.R. 629), as amended, was considered read the third time, and passed.

UNANIMOUS CONSENT AGREEMENT—H.R. 629

Mr. DOMENICI. Mr. President, I ask unanimous consent that, notwithstanding adoption of the Wellstone amendments and subsequent passage of H.R. 629, it be in order for Senator WELLSTONE on Thursday to modify those amendments only to allow them to conform to the substitute.

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

VISA WAIVER PILOT PROGRAM REAUTHORIZATION ACT OF 1998

Mr. DOMENICI. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 1178) to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1178) entitled ''An Act to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and for other purposes'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. EXTENSION OF VISA WAIVER PILOT PROGRAM.

Section 217(f) of the Immigration and Nationality Act is amended by striking ''1998.'' and inserting ''2000.''.

SEC. 2. DATA ON NONIMMIGRANT OVERSTAY RATES.

(a) COLLECTION OF DATA.—Not later than the date that is 180 days after the date of the enactment of this Act, the Attorney General shall implement a program to collect data, for each fiscal year, regarding the total number of aliens within each of the classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination.

(b) ANNUAL REPORT.—Not later than June 30, 1999, and not later than June 30 of each year thereafter, the Attorney General shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens from the country who are described in subsection (a).

SEC. 3. QUALIFICATIONS FOR DESIGNATION AS PILOT PROGRAM COUNTRY.

Section 217(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)), is amended to read as follows:

''(2) QUALIFICATIONS.—Except as provided in subsection (g), a country may not be designated as a pilot program country unless the following requirements are met:

''(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

''(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

''(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

''(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

''(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

''(B) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

''(C) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.''.

Amend the title so as to read ''An Act to amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.''.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House.

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

WIRELESS TELEPHONE PROTECTION ACT

Mr. DOMENICI. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 493) to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia,

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 493) entitled ''An Act to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Wireless Telephone Protection Act''.

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COUNTERFEIT ACCESS DEVICES.

(a) UNLAWFUL ACTS.—Section 1029(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by striking paragraph (8) and inserting the following:

''(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

''(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or''.

(b) PENALTIES.—

(1) GENERALLY.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

''(c) PENALTIES.—

''(1) GENERALLY.—The punishment for an offense under subsection (a) of this section is—

''(A) in the case of an offense that does not occur after a conviction for another offense under this section—

''(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

''(ii) if the offense is under paragraph (4), (5), (8), or (9), of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

''(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

''(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

''(2) FORFEITURE PROCEDURE.—The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act, except for subsection (d) of that section.''.

(2) ATTEMPTS.—Section 1029(b)(1) of title 18, United States Code, is amended by striking ''punished as provided in subsection (c) of this section'' and inserting ''subject to the same penalties as those prescribed for the offense attempted''.

(c) DEFINITIONS.—Section 1029(e)(8) of title 18, United States Code, is amended by inserting before the period ''or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument''.

(d) APPLICABILITY OF NEW SECTION 1029(a)(9).—

(1) IN GENERAL.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

''(g)(1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for the purpose of protecting the property or legal rights of that carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

''(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.''.

(2) DEFINITIONS.—Section 1029(e) of title 18, United States Code is amended—

(A) by striking ''and'' at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(C) by striking the period at the end of paragraph (8); and

(D) by adding at the end the following:

''(9) the term 'telecommunications service' has the meaning given such term in section 3 of title I of the Communications Act of 1934 (47 U.S.C. 153));

''(10) the term 'facilities-based carrier' means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934; and

''(11) the term 'telecommunication identifying information' means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.''.

(e) AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR WIRELESS TELEPHONE CLONING.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, if appropriate, to provide an appropriate penalty for offenses involving the cloning of wireless telephones (including offenses involving an attempt or conspiracy to clone a wireless telephone).

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the Commission shall consider, with respect to the offenses described in paragraph (1)—

(A) the range of conduct covered by the offenses;

(B) the existing sentences for the offenses;

(C) the extent to which the value of the loss caused by the offenses (as defined in the Federal sentencing guidelines) is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses;

(E) the extent to which the Federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties;

(G) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code;

(H) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(I) any other factor that the Commission considers to be appropriate.

Amend the title so as to read ''An Act to amend title 18, United States Code, with respect to scanning receivers and similar devices.''.

Mr. KYL. Mr. President, I rise today in support of S. 493, the Cellular Telephone Protection Act, and urge the President to sign this important piece of legislation without delay. This bill makes it easier for federal law enforcement to stop cell phone cloning by targeting cloning at its source—the equipment (''black boxes'') used to alter or modify the ESN (electronic serial number) of a cellular phone.

I am particularly pleased that this bill has the support of the U.S. Secret Service, the Department of Justice, the wireless phone industry, and Congress.

This bill is not only a victory for law enforcement, but also for the 56 million Americans who currently use wireless/cellular service. According to the cellular telecommunications industry, consumers lose in excess of $650 million a year due to fraud, much of it as a result of cloning. This results in increased costs to cellular customers.

S. 493 is the first in a series of anti-crime initiatives I introduced that are aimed at modernizing U.S. law to reflect changes in technology. It is another step to assure that law-abiding citizens don't inadvertently become part of a criminal activity.

Wireless fraud is not a victimless crime. It strikes at the heart of technology that is improving the safety, security and business productivity of the entire Nation. This bill will help stop the criminal cloning of wireless phones by giving law enforcement the tools they need to combat wireless fraud.

The Secret Secret—the Federal agency charged with investigating cloning offenses—has doubled the number of arrests in the area of wireless telecommunications fraud every year since 1991, with 800 individuals charged for their part in the cloning of cellular phones in 1996.

At a House Subcommittee on Crime hearing law year, the Secret Service conducted a demonstration in which a phone was cloned in approximately 30 seconds. At that hearing, law enforcement officials testified at how cloning technology is increasingly being used in various types of criminal activity—especially in drug crimes.

On February 24, 1998, I chaired a hearing of the Senate Subcommittee on Terrorism, Technology, and Government Information in which the Secret Service testified that foreign terrorists were financing their operations in the U.S. with the aid of ''cloned'' cellular telephones. Deputy Assistant Director Richard Rohde testified that foreign terrorists often make money by running illegal ''cell-sell'' rings. These rings involve the illegal sale of long-distance telephone access using fraudulently-obtained service. One common method is ''renting'' the use of a cellular phone which has been ''cloned,'' or modified to direct billing identification to the user of a different phone.

While the current cell phone law (18 U.S.C. 1029) has been useful in prosecuting some cloners, the statute has not functioned well in stopping those who manufacture and distribute cloning devices. In testimony before the House Subcommittee on Crime, Michael C. Stenger of the Secret Service stressed the need to revise our current cell phone statute:

Due to the fact that the statute presently requires the proof of ''intent to defraud'' to charge the violation, the distributors of the cloning equipment have become elusive targets. These distributors utilize disclaimers in their advertising mechanisms aimed at avoiding a finding of fraudulent intent. This allows for the continued distribution of the equipment permitting all elements of the criminal arena to equip themselves with free, anonymous phone service.

Under S. 493, a prosecutor would need to prove that an individual

knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunications identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization.

The removal of the ''intent to defraud'' language in 18 U.S.C. 1029 only applies to the possession and use of the hardware and software configured to alter telecommunications instruments. It does not apply to those who are in the possession of cloned phones. Nor does it apply to those in the possession of scanning receivers (which do have some legitimate uses). Someone who does not know that a telecommunications device has been altered to modify a telecommunications instrument would not be criminally liable under this section.

I am very proud of this important crime-fighting legislation and look forward to its prompt signature by the President.

Mr. LEAHY. Mr. President, in 1994, I authored the first law to provide specific protection against ''clone'' telephones. While the main focus of the Communications Assistance for Law Enforcement Act, or CALEA, was to help our law enforcement agencies deal with the challenge of new digital telecommunications equipment and services, the law also contained important bans on the use and trafficking of clone phones, scanning receivers, and hardware and software used to steal cellular service.

Specifically, in CALEA, we amended the Counterfeit Access Device law, 18 U.S.C. §1029, by adding a provision to criminalize the use and possession, with intent to defraud, of altered telecommunications instruments, or scanning receivers, hardware or software, to obtain unauthorized access to telecommunications services. This law also

added to the federal criminal code a definition of scanning receivers to mean devices used to intercept illegally wire or electronic communications.

''Clone'' telephones are used illegally to allow free riding on the cellular phone system and result in theft of that service. The cellular telephone industry estimates that it loses $650 million per year due to clone phones. I recall testimony at hearings I chaired jointly with Representative Don Edwards on CALEA about the need to address this problem in CALEA. Tom Wheeler, President of the Cellular Telecommunications Industry Association, testified in 1994 about:

> . . . people being surprised by ''humongous'' cellular bills because somebody had snatched their electronic code out of the air, cloned that into another phone, and was charging phone calls to Colombia or wherever onto their phone.

S. Hrg. 103–1022, at p. 148 (August 11, 1994).

In short, the theft of cellular telephone services amounts to millions of dollars of losses to wireless service providers and to consumers.

Just as disturbing, clone phones are used by drug dealers and other criminals trying to evade police surveillance of their phone conversations. The fraudulent use of electronic serial numbers, which are critical in identifying the cellular phone subject to wiretap orders, represented a real threat to privacy. Mr. Wheeler explained in 1994, ''If you have a situation where there is floating around out there multiple users of the same electronic serial numbers, you don't know who you are tapping.'' S. Hrg. 103–1022, at p. 148 (August 11, 1994).

Given the financial losses and the threats to privacy posed by clone phones, I urge the cellular telephone industry to consider the technical means available to better protect cellular phone service. In particular, if strong encryption were used to encrypt the radio waves transmitted from cellular phones to the nearest cell tower, stealing those signals for use in a clone phone would be much more difficult, if not impossible.

I have long been a proponent of more widespread use of strong encryption. Clone phones are a perfect example of where the use of strong encryption would be far more effective to prevent this crime from occurring than all the criminal laws we could consider passing.

This bill, as modified by the House, builds upon the work we accomplished in CALEA.

Current law contains an ''intent to defraud'' requirement that has apparently posed a stumbling block for law enforcement to crack down on the cloning of cellular phones. This bill would remove this intent requirement and make it illegal to use, sell or possess hardware or software knowing it has been configured for the purpose of altering a telephone to steal service.

The House of Representatives made a number of significant improvements to S. 493 to ensure that, upon removal of the ''intent to defraud'' requirement, the bill did not sweep too broadly. Indeed, I understand that even some cellular companies were concerned that the original bill introduced by Senator KYL might inadvertently have applied to machinery used by legitimate companies to test or reprogram their equipment.

Removal of the ''intent to defraud'' scienter requirement may still pose problems for those legitimate companies that with to offer ''extension'' telephones for cellular telephones. In fact, the Federal Communications Commission has a proceeding underway to determine whether companies may be allowed to alter the electronic serial number of a cellular telephone to allow more than one phone to have the same contact number.

Passage of this law may be interpreted as prejudging the outcome of that proceeding by making illegal the use of clone phones, even by legitimate subscribers who pay their bills. That would be regrettable. This bill should not affect the outcome of the FCC proceeding, since the public interest may be well served by allowing competition into the extension cellular telephone business. Depending on the outcome of the FCC proceeding, we may be revisiting this legislation.

This bill, as modified by the House, is supported by the FBI, Secret Service and the Cellular Telephone Industry Association (CTIA). We made important progress in this area when we passed CALEA, and I am glad to support legislation that will further help law enforcement combat cellular telephone fraud by those who steal cellular service.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House.

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

LAND CONVEYANCE ACT

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 321, H.R. 1116.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> A bill (H.R. 1116) to provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District.

There being no objections, the Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at the appropriate place in the RECORD.

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

The bill (H.R. 1116) was considered read the third time and passed.

MEASURE PLACED ON THE CALENDAR—S. 1889

Mr. DOMENICI. Mr. President, I understand that there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> A bill (S. 1889) to reduce tobacco use by children and others through an increase in the cost of tobacco products, the imposition of advertising and marketing limitations, assuring appropriate tobacco industry oversight, expanding the availability of tobacco use cessation programs, and implementing a strong public health prevention and education strategy that involves the private sector, schools, States and local communities.

Mr. DOMENICI. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

ORDERS FOR THURSDAY, APRIL 2, 1998

Mr. DOMENICI. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8:30 a.m. on Thursday, April 2; that immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of S. Con. Res. 86, with the pending business being the Bumpers amendment No. 2228.

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

Mr. DOMENICI. I further ask unanimous consent that immediately following the previously ordered two votes which will occur at 9 a.m., the Senate then proceed to consecutive votes on or in relation to the following amendments in the following order:

Dorgan amendment No. 2218, relating to the Tax Code;

Allard amendment No. 2170, regarding the Federal debt;

Lautenberg amendment No. 2195, environment programs;

Bond amendment No. 2213, income housing;

Bumpers amendment No. 2228, relating to mines.

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

PROGRAM

Mr. DOMENICI. Mr. President, tomorrow the Senate will resume consideration of the budget resolution. At 9 a.m., the Senate will proceed to a series of consecutive rollcall votes, with the first two votes in relation to two judicial nominations and the remaining votes in relation to pending amendments to the budget resolution.

It is hoped that during these votes, all Senators will contact the managers