move that the Senate recede from its amendment to the bill.

The motion was agreed to.

Mr. HRUSKA. I thank the Senator for yielding.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on S. 3164, the Real Estate Settlement Procedures Act of 1974.

Mr. BROCK. Mr. President, I rise in support of the conference report accompanying S. 3164, the Real Estate Settlement Procedures Act of 1974.

Quick passage of this important consumer protection legislation will be the most meaningful step Congress can take this year to bring immediate relief to the prospective home buyer from the high cost of homeownership. The home buyer has had to shoulder enormous financial burdens in the past which really were unnecessary and self-defeating. If this legislation is enacted, the prospective buyer will know exactly what he is paying for, and if he is really paying for a necessary service.

This bill provides reforms in the complex real estate settlement process needed to insure that consumers are provided with greater and more timely information on the nature and costs of the settlement. It eliminates certain abusive practices, such as kickbacks, which increase the costs of real estate settlements. Additionally, amounts that home buyers are required to place in escrow accounts will be limited.

The most significant difference between the Senate and House versions was resolved when the conference committee agreed to retain section 701 of the Emergency Home Finance Act of 1970. That section gives the Department of Housing and Urban Development and the Veterans' Administration the authority to prescribe standards governing the amounts allowable in connection with the financing of HUD and VA assisted housing. The conference recognized that section 701 authority is not currently being used, but that it can be retained as standby authority for the deterrent effect and can, in fact, facilitate the achievement of the purposes of the act.

Those of us who believe that section 701 ought to be repealed are convinced on the basis of the hearings and floor debate that took place on S. 3164 that HUD now recognizes that this section does not authorize Federal rate regulation. Moreover, we are convinced that HUD will not arbitrarily use this standby authority and that any "standards" developed by HUD under section 701 will be based on a full and fair analysis of the costs of rendering settlement services.

The Senate bill would:

Prohibit all kickbacks and referral fees paid or received in connection with a real estate settlement;

Require HUD to develop special information booklets to explain in understandable language the settlement process and its costs and these booklets will have to be given by a mortgage lender to a prospective home buyer at the time he files a mortgage loan application;

Require the lender to provide the home buyer with a detailed estimate of his settlement costs sufficiently in advance of the closing to allow the home buyer to comparative shop for settlement services and to be fully aware of the various charges—such as transfer taxes, recording fees, et cetera—that he will have to pay at closing;

Require HUD to develop a uniform settlement statement for use in all federally related mortgage loans so as to eliminate the confusion caused by the tremendous diversity of forms presently used throughout the country;

Place strict limitations on the amounts lenders can require borrowers to pay into escrow accounts established for the purpose of insuring payment of real estate taxes and insurance;

Require HUD to take steps to develop model land recordation systems that can subsequently be adopted by local governments to eliminate the present wasteful and costly systems of recording and indexing land title information; and

Require HUD to report back to the Congress on what further legislative measures may be needed to deal with problems and unreasonable practices in the settlement process.

All of these important provisions were retained by the conference. The conference report contains the following House provisions relating to property covered by federally related mortgage loans;

In certain cases the seller would be required to disclose to the buyer the previous selling price of the property;

Sellers of property would be prohibited from requiring buyers who are the purchasers of title insurance to use a particular title company;

The beneficial interest of a person in a federally-related mortgage loan would have to be revealed to the lender and appropriate Federal regulatory agency; and finally

States would be allowed to enforce their settlement practice laws which are not inconsistent with the act.

Quick action by the Senate and House on the conference report and the signing of the act into law by the President this year will bring needed relief to the hard-pressed homebuyer.

I am delighted with the action of the conferees.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. PROXMIRE. Mr. President, I move that the printing of the conference report as a Senate document be waived.

The motion was agreed to.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from California may be recognized to call up a matter which he and the Senator from Nebraska are in agreement on, that there be a time limitation of 8 minutes to be equally divided between them.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

ANTITRUST PROCEDURES AND PENALTIES ACT

Mr. TUNNEY. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 782.

The PRESIDING OFFICER (Mr. HELMS) laid before the Senate the amendment of the House of Representatives to the bill (S. 782) to reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the Expediting Act as it pertains to Appellate Review, as follows:

Strike out all after the enacting clause and insert: That this Act may be cited as the "Antitrust Procedures and Penalties Act".

CONSENT DECREE PROCEDURES

SEC. 2. Section 5 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 16), is amended by redesignating subsection (b) as (i) and by inserting immediately after subsection (a) the following:

"(b) Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

"(1) the nature and purpose of the proceeding;

"(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

"(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for

the consent judgment is entered in such proceeding;

"(5) a description of the procedures available for modification of such proposal; and

"(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

"(c) The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the cases has been filed, in the District of Columbia, and in such other districts as the court may direct—

"(i) a summary of the terms of the proposal for the consent judgment,

"(ii) a summary of the competitive impact statement filed under subsection (b),

"(iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

"(d) During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b). The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

"(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

"(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

"(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

"(f) In making its determination under subsection (e), the court may—

"(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

"(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

"(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

"(4) review any comments including any objections filed with the United States under subsection (d) concerning the proposed judgment and the responses of the United States to such comments and objections; and

"(5) take such other action in the public interest as the court may deem appropriate.

"(g) Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

"(h) Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding."

PENALTIES

SEC. 3. Sections 1, 2, and 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1, 2, and 3), are each amended—

(1) by striking out "misdemeanor" whenever it appears and inserting in lieu thereof in each case "felony";

(2) by striking out "fifty thousand dollars" whenever such phrase appears and inserting in lieu thereof in each case the following: "one million dollars if a corporation, or, if any other person, one hundred thousand dollars"; and

(3) by striking out "one year" whenever such phrase appears and inserting in lieu thereof in each case "three years".

EXPEDITING ACT REVISIONS

"SEC. 4. (a) The first section of the Act of February 11, 1903 (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the "Expediting Act", is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with such court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.".

(b) Section 2 of the Act of February 11, 1903 (15 U.S.C. 29; 49 U.S.C. 45), commonly known as the Expediting Act, is amended to read as follows:

"SEC. 2. (a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved June 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. An appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to section 1292(a)(1) and 2107 of title 28, United States Code, but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28, United States Code.

"(b) An appeal from a final judgment entered in any action specified in subsection (a) shall lie directly to the Supreme Court if the Attorney General files in the district court a certificate stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such certificate shall be filed within 10 days after the filing of a notice of appeal. When such a certificate is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) deny the direct appeal and remit the case to the appropriate court of appeals, which shall then have jurisdiction to hear and determine such case as if the appeal and any cross appeal in such case had been docketed in the court of appeals in the first instance pursuant to subsection (a).".

APPLICATION OF EXPEDITING ACT REVISIONS

SEC. 5. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) Section 3 of the Act entitled "An Act to further regulate commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 849; 49 U.S.C. 43), is amended by striking out the following: "The provisions of an Act entitled 'An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission".

EFFECTIVE DATE OF EXPEDITING ACT REVISIONS

SEC. 6. The amendment made by section 4 of this Act shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45), which were in effect on the day preceding the date of enactment of this Act.

Mr. TUNNEY. Mr. President, on November 19, the House passed, with an amendment, S. 782, the Antitrust Procedures and Penalties Act. During the last 2 weeks, negotiations have resulted in agreement among various Senators, and with Members of the House, on cer-

tain changes which should be made in the House-passed version of S. 782.

Today I will move, on behalf of Senator HRUSKA, to accept the House amendments to S. 782, with a further amendment. By means of this procedure, my colleagues and I expect that the House can then adopt the bill as revised and send it to the White House for signature. This will avoid the necessity of going to a conference in these hectic, final days of the session.

The amendment which I will propose, makes some changes in the third title of this bill, dealing with the procedures for appeals of final judgments of antitrust cases. The provisions of the first two titles of the bill, which contain reforms of the consent decree process, and a major increase in penalties for antitrust violations, are unchanged.

Mr. President, our action today in repassing S. 782, with an amendment, marks what I hope is the culmination of more than 2 years of effort to strengthen the antitrust laws.

The genesis of this legislation came during the hearings held by the Senate Judiciary Committee on the nomination of Richard Kleindienst, the hearings which quickly became known as the ITT hearings, because the major issue involved allegations that a massive behind-closed-doors campaign resulted in halting the Justice Department's prosecution of the ITT case and its hasty settlement favorable to the company. During these hearings, I became concerned with the apparent weaknesses of the consent decree process, which could allow this kind of corporate pressures to be exercised.

I asked many questions of the witnesses at the ITT hearings concerning the consent decree process, and I forwarded these questions to the Department of Justice. As a result of the information generated during the ITT hearings, Senator GURNEY and I introduced a bill, in the fall of 1972, to prevent back room deals in the consent decree process for the Department of Justice.

This bill was reintroduced in the 93d Congress as S. 782, and after several days of hearings and unanimous approval by the full Judiciary Committee, I was privileged to be Senate floor manager when the Antitrust Penalties and Procedures Act was adopted by an unusual roll call vote of 92–0 in July, 1973.

The Senate bill was the first significant reform of the antitrust laws in 2 decades. It opened up the consent decree process, by requiring the Justice Department to file with the court and publish an "impact statement" explaining the background, purpose, and effect of each proposed consent decree. The public would then have 60 days to study and comment on this impact statement, and the Department would also have to file with the court and publish in the Federal Register answers to all the public comments. Relevant materials and documents would have to be made available by the Department to the public.

Under the Senate-passed bill, the defendant will also have to file within 10 days after the proposed consent decree is filed, a statement detailing all contacts made by the defendant's employees or officials with officials of the Government, concerning the consent decree. An exemption was provided for contacts made by or in the presence of the counsel of record. This provision was a concrete response to the intensive lobbying of all levels of government officials—up to the Vice President—which was revealed in the ITT case.

After the 60 day period is over, the judge would have the obligation to review all the filed papers and comments, and determine if the proposed consent decree is in the public interest. The judge could, if he felt necessary, call for more documents or hold a hearing, although the usual case would not require any additional proceedings.

Through these reforms, I am convinced that the consent decree process will be opened up to significant public scrutiny, and judges will take a more active role in assessing the worth of the proposed judgments. However, these new procedures will not be burdensome, and will not interfere with the important role which consent decrees have in disposing of the large bulk of antitrust cases.

In adopting S. 782, the Senate also made two other changes in the antitrust laws. First, the fines for violations of the Sherman Act were increased greatly, to provide a greater deterrent to violations. The existing maximum fine of $50,000 was raised to a maximum of $100,000 for individuals and $500,000 for corporations.

Second, some amendments were made to the law governing the appeal of antitrust cases.

After more than a year's consideration in the House, S. 782 was finally passed by that body on November 19 of this year. Given the preoccupation of the House Judiciary Committee with impeachment and related matters over the past year, this action demonstrated the great interest and commitment of Chairman RODINO and his committee members to this important reform measure. The House has made several, mostly minor, changes in the bill as passed by the Senate, but the consent decree and appeals portions of the bill remain essentially unchanged in scope and effect. The House did take a major step in further increasing the maximum penalties for antitrust violations, following the welcome expression of interest in this subject by President Ford and Attorney General Saxbe. In line with the recommendations made by the administration, the House increased the maximum corporate fine to $1 million, and increased the severity of violations from a misdemeanor to a felony, also increasing the maximum jail sentence from 1 to 3 years.

I am in full agreement with these further increases, which will serve to demonstrate the importance which the Congress and the executive branch place on antitrust enforcement as a means of lowering costs of goods to the consumer, and making our economic marketplace more equitable.

Although the work of the House on this bill was generally most helpful, Senators HRUSKA and ERVIN have expressed reservation about one change made by the House. This involves the procedure for handling appeals of final judgments of antitrust cases. Under the bill as passed by the Senate, appeals from final judgments of Government antitrust cases will go to the courts of appeals, in contrast to present law where appeals go directly to the Supreme Court.

The Senate-passed bill did provide for a special procedure to allow direct appeals to the Supreme Court in cases of general public importance: The defendant or the Department of Justice could file with the judge, within 15 days of the filing of a notice of appeal, an application for direct appeal to the Supreme Court. If the judge certifies the request, the appeal would be docketed with the Supreme Court following its rules. The Court would then decide whether to hear the case immediately, or remand it to the court of appeals for normal adjudication, in which case a writ of certiorari could be sought at a later time.

The House version of this special procedure for direct appeal to the Supreme Court differs from the Senate version only in the way the decision is made. Instead of allowing the district judge to decide, upon motion of either party, the House version allows the Attorney General alone to file a certificate accomplishing the direct appeal, where the Attorney General feels that immediate consideration of the appeal is of general public importance.

I am willing to acceed, to the preferences of my two colleagues for the Senate-passed version of this provision on direct appeals to the Supreme Court. It is this change alone which is accomplished by the amendment which I offer at this time to the House amendment to S. 782. I have been assured by Senator HRUSKA, that he is willing to accept the other amendments made by the House to the bill.

By making this amendment, and returning the bill to the House, it is my hope and expectation that further changes in the bill can be avoided and the legislation sent to the White House. It has been my intent to avoid a conference on this bill, if possible, since I know how busy all of us in both Houses are in the final days of this session. It is my understanding that the chairman and ranking member of the House Judiciary Committee, Mr. RODINO and Mr. HUTCHINSON, will be agreeable to the changes we are making today, and will act promptly to send this bill to the White House.

I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, may I inquire of the Senator whether he has proposed the amendment or does he want me to propose it?

Mr. TUNNEY. Well, I was going to propose it myself, but inasmuch as the Senator is here and it is his amendment, I do not see any reason why I should.

Mr. HRUSKA. That pertains to the amendment that is at the desk at the present time?

Mr. TUNNEY. That is correct.

Mr. HRUSKA. Mr. President, I would like to make a few remarks on it.

The PRESIDING OFFICER. The Chair would inquire if the Senator wishes the amendment to be called up.

Mr. HRUSKA. Mr. President, I move the Senate agree to the engrossed amendment of the House to the bill (S. 782) to reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the expediting act as it pertains to appellate review, with the following amendment to such engrossed amendent; namely, striking at page 8, beginning with line 4, the balance of that amendment to the end of the amendment and insert in lieu thereof the following, and I ask that the amendment which is at the desk be read and considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HRUSKA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, beginning with line 4, strike out all through the end of the amendment and insert in lieu thereof the following:

EXPEDITING ACT REVISIONS

SEC. 4. Section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49 U.S.C. 45) is amended to read as follows:

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

SEC. 6. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) Section 3 of the Act entitled "An Act to further regulate commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 849; 49 U.S.C. 43), is amended by striking out "proceeding:" and inserting in lieu thereof "proceeding." and striking out thereafter the following: "*Provided*, That the provisions of an Act entitled 'An Act to expedite the hearing and determination of suits in equity pending or thereafter brought under the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission".

SEC. 7. The amendment made by section 5 of this Act shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

Mr. HRUSKA. Mr. President, there are two provisions in this bill which seem to me to be very unwise and very unfair.

First, violation of the Sherman Act was changed from a misdemeanor to a felony for individuals and, second, the procedural law was changed so that appeals in Government antitrust actions must be taken to the court of appeals rather than directly to the Supreme Court, except where the Attorney General files a certificate within 10 days after the date of any appeal stating that immediate consideration by the Supreme Court is of general public importance.

Mr. President, the first of those points is not altered by the amendment which I have proposed. The second of those points is affected by the amendment in that the House language on that second point will be stricken entirely by this amendment, and there will be inserted in lieu thereof the text of the amendment which embodies the Senate-approved language in bill S. 782, as enacted.

I ask unanimous consent, Mr. President, that there be printed at this point in the RECORD some remarks commenting on those two points, to be treated as part of my remarks.

If violations of the antitrust law are to be put in the class of felonies there must, in all justice, be some qualification providing that only deliberate and intentional violations are to be considered criminal. As an illustration of the technical and unpredictable nature of the antitrust laws let me refer to *Albrecht* v. *Herald Co.*, 390 U.S. 145 (1968), in which a newspaper publisher attempted to establish the maximum price at which distributors could sell his newspapers to customers. A distributor who was charging higher prices sued the publisher. The district court held that there was no antitrust violation and the court of appeals held that there was no antitrust violation. However, the Supreme Court, in a 7-to-2 decision, held that the fixing of maximum resale prices, in these circumstances, was per se an illegal restraint of trade under the Sherman Act. Justices Harlan and Stewart, dissenting, said that the decision "stands the Sherman Act on its head." In any event, of the 13 judges who passed on this case, 6 of them thought that there was no violation of the Sherman Act involved, and 7 held that there was. Under the House version of S. 782 the newspaper publisher in this case would be branded as a felon and could be prosecuted as such by the Department of Justice.

Numerous similar cases could be cited but this is sufficient to make the point.

With respect to the right of appeal, it must be recognized that the Department of Justice is, properly, a highly partisan litigant. It must also be recognized that neither the Attorney General nor the Assistant Attorney General is in a position to make a personal judgment on each one of the hundreds of cases being tried continuously by the Department of Justice.

The Senate version of S. 782 provided that after appeal from a final judgment in an antitrust case the district judge sitting on the case might enter an order permitting direct appeal to the Supreme Court. This provision has been changed in the House version to a provision permitting the Department of Justice to present the appeal directly to the Supreme Court merely upon the filing of a certificate by the Attorney General. The other party has no right to seek or secure such a direct appeal.

Even assuming that permitting a direct appeal to the Supreme Court might be appropriate upon certification by the Attorney General in advance of trial that a case was of general public importance, I submit that it is entirely unfair and unreasonable to put it in the hands of one of the litigating attorneys in the case to choose his appellate forum without permitting either the trial court or the adverse party to have any voice in the matter.

The combination of these two provisions in the House version of S. 782 puts antitrust defendants in a position of depending upon the discretion of the prosecutorial staff to a degree that invites abuse. The decisions of a trial court, even though rendered by an impartial official, are subject to appellate review.

However, the decisions of the prosecutorial staff are subject to no review whatever. In a case such as the Albrecht case there is no legal bar to the bringing of a government suit which would require a district court, under the rule of law laid down by the Supreme Court, to brand individuals as felons for actions taken openly and in good faith in an effort to offer products to the public at a lower price and upon a basis that was considered perfectly legal by many lawyers and judges.

Similiarly, with respect to controlling the appellate forum the prosecuting staff of the Department of Justice can wait until the trial court has rendered its decision and then decide whether or not its position is more likely to be favorably received in a particular court of appeals or in the Supreme Court before deciding whether to file a certificate authorizing direct appeal. As a practical matter this decision will ultimately depend upon the prosecuting attorneys since they are the ones familiar with the case and will necessarily be the ones to provide the information and advice upon which the Assistant Attorney General and the Attorney General will rely.

I respectfully urge upon you that it is completely contrary to the American concept of due process to give one of the litigants in an adversary proceeding—even if the litigant is a government employee—such a tremendous advantage over his adversary. Furthermore, when this is coupled with the unbridled discretion to bring a felony charge against individuals who may have lost a complex and debatable issue of law, there will exist the possibility for an abuse of power which I can morally certain will constitute a threat to the civil liberties of everyone engaged in commercial activities.

Mr. President, while I object to, and would not vote for, the bill as amended with reference to the penalties or title 3, I would not agree necessarily with title 1. But I have no objections to the consideration by the Senate at this time and a vote to be taken thereon.

The PRESIDING OFFICER. Who yields time?

Mr. TUNNEY. Mr. President, I would like to say that I think this legislation that we are passing today, which the Senate passed in July of last year, is a very important piece of legislation. It represents a significant reform of the antitrust laws.

I want to thank the Senator from Nebraska for his courtesy and for his interest in helping develop the legislation and working out the procedure that we presently are involved in, making sure that there can be expeditious consideration of the bill by the Senate so that the House can pass it prior to adjournment.

It would have been impossible to have received this expeditious consideration had it not been for the consideration and courtesies of the Senator from Nebraska.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TUNNEY. Will the Senator yield 1 more minute?

Mr. HRUSKA. I yield.

Mr. TUNNEY. I would like to thank the Senator from Nebraska for the work that he put in on this legislation, and for helping to develop the final product in its present form.

Mr. HRUSKA. I yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TUNNEY. Mr. President——

The PRESIDING OFFICER. The Senator from West Virginia has the floor. He yielded to the distinguished Senator from California.

Mr. TUNNEY. Will the Senator yield further?.

Mr. ROBERT C. BYRD. I yield.

Mr. TUNNEY. Mr. President, if there be no further debate, I move that the Senate agree to the amendment of the House as amended by the Senate.

The motion was agreed to.

ORDER FOR VOTE ON SUPPLEMENTAL APPROPRIATIONS CONFERENCE REPORT AT 4:10 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I have discussed this request with the distinguished chairman of the Appropriations Committee, the distinguished assistant Republican leader, and the distinguished Senator from Alabama (Mr. ALLEN).

I think it will meet with the approval of all Senators.

The yeas and nays have been ordered on the adoption of the supplemental appropriations conference report. There will be some discussion with reference to amendments in disagreement. I think it would be the better part of wisdom to forgo until tomorrow the discussion on those amendments in disagreement.

I, therefore, ask unanimous consent that the vote on the adoption of the conference report occur at 4 p.m. today, and that discussion with respect to the amendments in disagreement be delayed until 1 p.m. tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Reserving the right to object, will the Senator consider making that vote at 5 or 10 minutes after 4 o'clock?

Mr. ROBERT C. BYRD. Yes.

I amend my request, Mr. President, to read, instead of 4 p.m., that the vote begin at 10 minutes after 4 p.m.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

TRADE REFORM ACT OF 1974—PRIVILEGE OF THE FLOOR

Mr. LONG. Mr. President, I ask unanimous consent that during the consideration of H.R. 10710, the trade reform bill, including amendments, that the following staff personnel be permitted the privilege of the floor:

From the Finance Committee: Michael Stern, Bob Best, Dick Rivers, Mark Sandstrom, Michael Rowny, Bob Willan, Bill Morris, and Joe Humphreys.

From the Joint Tax Committee: Laurence Woodworth, Mike Byrd, Howard Silverstone, Paul Oesterhuis, and Bobby Shapiro.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair, with the understanding that the recess not extend beyond the hour of 4:10 p.m. today.

The motion was agreed to; and at 3:56 p.m., the Senate took a recess until 4:10 p.m.: whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HELMS).

SUPPLEMENTAL APPROPRIATIONS, 1975—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes.

The PRESIDING OFFICER. The question is on the adoption of the conference report on H.R. 16900. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Oklahoma (Mr. BELLMON), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Connecticut (Mr. WEICKER).

If present and voting, the Senator from Oregon would vote "yea" and the Senator from Connecticut would vote "nay."

The result was announced—yeas 80, nays 9, as follows:

[No. 523 Leg.]

YEAS—80

Abourezk	Brooke	Cook
Aiken	Buckley	Cotton
Bayh	Burdick	Cranston
Beall	Byrd, Robert C.	Curtis
Bennett	Cannon	Dole
Bentsen	Case	Domenici
Bible	Chiles	Dominick
Biden	Church	Eagleton
Brock	Clark	Ervin